

International Labour Conference, 101st Session, 2012

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

*(articles 19, 22 and 35 of the Constitution)*

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

Report III (Part 1A)

General Report  
and observations concerning particular countries

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

- (a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) (**Part 1A, pages 1–4**).
- (b) **Part I: the General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work (**Part 1A, pages 5–41**).
- (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 43–976**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III (Part 1B)) and this year it concerns fundamental Conventions in light of the Declaration on Social Justice for a Fair Globalization, 2008 (**Part 1B**).

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

The report of the Committee of Experts is also available at: [www.ilo.org/global/standards/lang-en/index.htm](http://www.ilo.org/global/standards/lang-en/index.htm).



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## **List of Conventions by Subject**

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

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

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

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

### **2 Forced labour**

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

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

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

### **4 Equality of opportunity and treatment**

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

**5 Tripartite consultation**

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

**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)
- C073 Medical Examination (Seafarers) Convention, 1946 (No. 73)
- C074 Certification of Able Seamen Convention, 1946 (No. 74)
- ◆● C075 Accommodation of Crews Convention, 1946 (No. 75)
- ◆● C076 Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)
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- C092 Accommodation of Crews Convention (Revised), 1949 (No. 92)
- ◆● C093 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)
- C108 Seafarers' Identity Documents Convention, 1958 (No. 108)
- ◆● C109 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)
- C133 Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)
- C134 Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)
- C145 Continuity of Employment (Seafarers) Convention, 1976 (No. 145)
- C146 Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)
- ★ C147 Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)
- C163 Seafarers' Welfare Convention, 1987 (No. 163)
- C164 Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
- C165 Social Security (Seafarers) Convention (Revised), 1987 (No. 165)
- C166 Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
- C178 Labour Inspection (Seafarers) Convention, 1996 (No. 178)
- C179 Recruitment and Placement of Seafarers Convention, 1996 (No. 179)
- C180 Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
- C185 Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)
- ◆ MLC Maritime Labour Convention, 2006

**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)
- ◆ C189 Domestic Workers Convention, 2011 (No. 189)

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

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		C095 .....	779

C098.....	219	<b>Seychelles</b>	
C111.....	561	C008.....	926
C138.....	419	General observations.....	48
<b>Russian Federation</b>		Submission to the competent authorities.....	966
C092.....	925	<b>Sierra Leone</b>	
C100.....	561	C017.....	887
C111.....	562	C029.....	284
C133.....	925	C059.....	426
C152.....	936	C094.....	780
Submission to the competent authorities.....	965	C095.....	780
<b>Rwanda</b>		C098.....	224
C017.....	886	C101.....	793
C062.....	848	C111.....	567
C081.....	669	C119.....	848
C087.....	221	C125.....	931
C094.....	779	C144.....	593
C098.....	222	General observations.....	48
C100.....	562	Submission to the competent authorities.....	966
C111.....	563	<b>Singapore</b>	
Submission to the competent authorities.....	965	C029.....	285
<b>Saint Kitts and Nevis</b>		C094.....	780
C144.....	592	<b>Slovakia</b>	
Submission to the competent authorities.....	965	C100.....	568
<b>Saint Lucia</b>		C111.....	568
C017.....	886	<b>Slovenia</b>	
Submission to the competent authorities.....	965	C097.....	911
<b>Saint Vincent and the Grenadines</b>		C121.....	888
C081.....	670	C143.....	912
Submission to the competent authorities.....	965	<b>Solomon Islands</b>	
<b>Samoa</b>		Submission to the competent authorities.....	966
C098.....	223	<b>Somalia</b>	
Submission to the competent authorities.....	966	General observations.....	49
<b>Sao Tome and Principe</b>		Submission to the competent authorities.....	967
C018.....	886	<b>South Africa</b>	
C081.....	670	C100.....	569
C087.....	223	C111.....	570
C088.....	739	C138.....	426
C098.....	224	C182.....	426
C144.....	593	<b>Spain</b>	
C159.....	740	C044.....	888
General observations.....	48	C111.....	570
Submission to the competent authorities.....	966	C114.....	931
<b>Sarawak (Malaysia)</b>		C156.....	571
C019.....	869	C158.....	759
<b>Saudi Arabia</b>		C182.....	428
C081.....	670	<b>Sri Lanka</b>	
C111.....	564	C081.....	675
C182.....	420	C100.....	572
<b>Senegal</b>		C103.....	900
C081.....	671	C108.....	926
C102.....	887	C111.....	573
C105.....	283	C138.....	429
C111.....	566	C182.....	429
C138.....	423	<b>St Helena (United Kingdom)</b>	
C182.....	424	C017.....	893
<b>Serbia</b>		General observations.....	49
C081.....	673	<b>Sudan</b>	
C111.....	567	C122.....	741
C122.....	740	C182.....	431
C131.....	780	Submission to the competent authorities.....	967
C144.....	593	<b>Suriname</b>	
		C017.....	888

C042 .....	888	<b>Turkmenistan</b>	
C081 .....	677	Submission to the competent authorities.....	968
C182 .....	433	<b>Uganda</b>	
Submission to the competent authorities .....	967	C017.....	892
<b>Swaziland</b>		C026.....	781
C029 .....	285	C029.....	289
C087 .....	225	C081.....	681
C138 .....	434	C098.....	232
<b>Sweden</b>		C105.....	290
C100 .....	574	C122.....	744
C129 .....	678	C138.....	450
C187 .....	849	C144.....	594
<b>Switzerland</b>		C158.....	759
C111 .....	575	C182.....	451
C182 .....	435	Submission to the competent authorities.....	968
<b>Syrian Arab Republic</b>		<b>Ukraine</b>	
C029 .....	285	C081.....	683
C081 .....	678	C095.....	781
C100 .....	576	C129.....	684
C105 .....	286	C131.....	783
C129 .....	679	C138.....	453
C138 .....	437	C182.....	455
Submission to the competent authorities .....	967	Submission to the competent authorities.....	968
<b>Tajikistan</b>		<b>United Arab Emirates</b>	
Submission to the competent authorities .....	967	C138.....	457
<b>Tanganyika (United Republic of Tanzania)</b>		C182.....	457
C081 .....	679	<b>United Kingdom</b>	
<b>Thailand</b>		C017.....	892
C019 .....	889	C029.....	290
C029 .....	286	C111.....	579
C100 .....	576	C122.....	746
C105 .....	288	<b>United Republic of Tanzania</b>	
C122 .....	742	C182.....	437
C182 .....	439	<b>United States</b>	
<b>The former Yugoslav Republic of Macedonia</b>		C055.....	927
C111 .....	576	<b>United States Virgin Islands (United States)</b>	
C182 .....	441	C055.....	928
Submission to the competent authorities .....	967	<b>Uruguay</b>	
<b>Togo</b>		C081.....	684
C138 .....	443	C098.....	233
C182 .....	444	C111.....	580
Submission to the competent authorities .....	967	C121.....	893
<b>Trinidad and Tobago</b>		C122.....	747
C098 .....	226	C133.....	928
C100 .....	577	C150.....	685
C105 .....	289	C155.....	850
C111 .....	577	C167.....	851
C125 .....	931	C182.....	459
<b>Tunisia</b>		<b>Uzbekistan</b>	
C081 .....	680	C105.....	291
C087 .....	227	C122.....	749
C107 .....	956	C182.....	460
C111 .....	578	Submission to the competent authorities.....	969
C118 .....	891	<b>Vanuatu</b>	
C122 .....	744	General observations.....	49
<b>Turkey</b>		Submission to the competent authorities.....	969
C087 .....	228	<b>Viet Nam</b>	
C098 .....	230	C100.....	581
C138 .....	446	C111.....	582
C144 .....	594	<b>Yemen</b>	
C182 .....	447	C087.....	235
		C098.....	236

C111.....	584	C138.....	466
General observations.....	49	C182.....	467
Submission to the competent authorities.....	969	<b>Zimbabwe</b>	
<b>Zambia</b>		C081.....	685
C087.....	237	C087.....	239
C095.....	784	C129.....	687
C098.....	238	C138.....	469
C103.....	902	C182.....	470

## Reader's note

### Overview of the ILO supervisory mechanisms

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

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

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

### Role of employers' and workers' organizations

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

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

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

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

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response, the Conference in 1926 adopted a resolution<sup>3</sup> establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

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

#### **Composition**

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

#### **Mandate**

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

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

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

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

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

<sup>4</sup> There are currently 17 experts appointed.

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

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

<sup>7</sup> In its 1987 report, the Committee stated that in its evaluation of national law and practice in relation to the requirements of international labour Conventions: "... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations, which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States". Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), International Labour Conference, 73rd Session, 1987, para. 24.

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. They are not published in the report of the Committee of Experts, but are communicated directly to the government concerned.<sup>8</sup> In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey covers fundamental Conventions. Pursuant to the decision taken by the Governing Body at its 307 Session (March 2010), the subjects of General Surveys have been aligned with the four strategic objectives of the ILO as set out in the ILO Declaration on Social Justice for a Fair Globalization, 2008 (the Social Justice Declaration).<sup>9</sup>

## Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes. The first volume (Report III 1A)<sup>10</sup> is divided into two parts:

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

The second volume contains the **General Survey** (Report III (Part 1B)).<sup>11</sup>

Furthermore, an *Information document on ratifications and standards-related activities* (Report III (Part 2)) accompanies the report of the Committee of Experts.<sup>12</sup>

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

### Composition

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

### Mandate

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

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

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

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,

<sup>8</sup> Observations and direct requests are accessible through the NORMLEX database accessible via <http://www.ilo.org>.

<sup>9</sup> By virtue of the follow-up to the Social Justice Declaration, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee.

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

<sup>11</sup> *ibid.*

<sup>12</sup> This document provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, full information on the ratification of Conventions, together with "country profiles" containing key information on standards for each country.

employers and workers to examine together the manner in which States are fulfilling their standards-related obligations, particularly with regard to ratified Conventions. Governments are able to elaborate on information previously supplied to the Committee of Experts, indicate any further measures taken or proposed since the last session of the Committee of Experts, draw attention to difficulties encountered in the fulfilment of obligations and seek guidance as to how to overcome such difficulties.

The Conference Committee on the Application of Standards discusses the report and the General Survey of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts, and with a discussion on the General Survey. With regard to the alignment of the subject of General Surveys with the strategic objective discussed in the context of the recurrent report under the follow-up to the Social Justice Declaration, the outcome of the discussion of the Conference Committee concerning the General Survey is transmitted to the Conference Committee responsible for examining the recurrent report. Following its general discussion, the Conference Committee examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee embarks upon its main task, which is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. The Conference Committee invites the Government representatives concerned to attend one of its sittings to discuss the observations in question. After listening to the Government representatives, the members of the Conference Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts conclusions on the case in question. Furthermore, in accordance with a resolution adopted by the Conference in 2000,<sup>13</sup> the Conference Committee holds, at each of its sessions, a special sitting on the application by Myanmar of the Forced Labour Convention, 1930 (No. 29).

In its report<sup>14</sup> submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the member State whose case has been discussed to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

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

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

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

<sup>14</sup> The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 100th Session, Geneva, 2011.

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***Part I. General Report***



## I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 82nd Session in Geneva from 24 November to 9 December 2011. The Committee has the honour to present its report to the Governing Body.

### **Composition of the Committee**

2. The composition of the Committee is as follows: Mr Mario ACKERMAN (Argentina), Mr Denys BARROW, SC (Belize), Mr Lelio BENTES CORRÊA (Brazil), Mr James J. BRUDNEY (United States), Mr Halton CHEADLE (South Africa), Ms Laura COX, QC (United Kingdom), Ms Graciela Josefina DIXON CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Pierre LYON-CAEN (France), Ms Elena MACHULSKAYA (Russian Federation), Mr Vitit MUNTARBHORN (Thailand), Ms Rosemary OWENS (Australia), Ms Ruma PAL (India), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Mr Yozo YOKOTA (Japan). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee notes with regret that Mr Anwar Ahmed Rashed AL-FUZAIE (Kuwait), who had been a member of the Committee since 1998, has submitted his resignation. The Committee expresses its great appreciation for the outstanding manner in which Mr Al-Fuzaie has carried out his duties during his 13 years of service on the Committee and, in particular, commends him warmly for the excellent way in which he has carried out his duty as Reporter for the last seven years.

4. During its session, the Committee welcomed Ms Dixon Caton, nominated by the Governing Body at its 309th Session (November 2010).

5. Mr Yokota continued its mandate as Chairperson of the Committee, and the Committee elected Mr Barrow as Reporter.

### **Working methods**

6. The Committee has in recent years undertaken a thorough examination of its working methods. In order to guide this reflection on working methods efficiently, a subcommittee was set up in 2001. The mandate of the subcommittee includes examining the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee.<sup>1</sup> The subcommittee met on three occasions between 2002 to 2004.<sup>2</sup> During its sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting.<sup>3</sup> Since 2007, the subcommittee has met at each of the Committee's sessions.<sup>4</sup>

<sup>1</sup> The subcommittee is open to any member of the Committee wishing to participate.

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

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

<sup>4</sup> See General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9; General Report, 80th Session (November–December 2009), paras 7–8; General Report, 81st Session (November–December 2010), paras 6–13.

7. This year, the subcommittee on working methods met under the guidance of Ms Pal, who was re-elected to this function. The subcommittee undertook a close examination of the comments made on specific aspects of the work of the Committee by members of the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011). Following consideration of the recommendations made by the subcommittee, the Committee agreed on the following issues.

8. With respect to **the current procedure for briefing the new members of the Committee of Experts**, the Committee recalls that all experts have to undergo a rigorous preparation, interview and selection process prior to joining the Committee. Before his or her arrival in Geneva, every new expert is provided with a wide range of documentation. Upon their arrival in Geneva, new experts are also given a thorough briefing, including on the interaction between the Committee of Experts and the Conference Committee on the Application of Standards. In addition to the numerous substantive orientation measures that the ILO provides for new members on an individual basis, it should be noted that the Office holds a general briefing session for all experts and a mentoring programme for new experts.

9. With respect to the possibility for the Committee to add a specific section on governments' follow-up to the conclusions reached by the Conference Committee at its previous session, the Committee recalls that a similar approach was taken last year to highlight follow-up actions for the examination of articles 24 and 26 procedures. Therefore, the Committee has decided to create in this year's General Report a table showing the actions taken as follow-up to the conclusions reached by the Conference Committee at its previous session. This table will be preceded by an introductory paragraph which will reflect the information contained in the table.

10. With respect to **the current procedure for taking into account the comments of the social partners**, the Committee reaffirms that all views of the social partners are taken into consideration, so long as these communications are received prior to the established deadline. The Committee wishes to encourage the social partners to make full use of the possibility they have to submit their comments on the application of ratified Conventions under article 23 of the ILO Constitution and that these comments should reach the ILO by 1 September each year at the latest.

11. **Regarding the particular issue of the right to strike**, the Committee recalls that the right to strike was reflected in the 1994 General Survey on Freedom of Association and Collective Bargaining and has been dealt with in this year's General Survey on the fundamental Conventions, which clearly reflects the views of the social partners.

12. With respect to *the possibility to better highlight in the General Report the cases where an observation was formulated for the failure to respond to comments of the Committee of Experts*, the Committee recalls that a listing of this information already existed in a footnote of its General Report. In order to give greater visibility to this information, they have been presented in a summary table this year.

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

13. 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 into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also with regard to specific matters concerning the way in which States fulfil their standards-related obligations. Moreover, the Committee pays close attention to the comments on its working methods that are made by the members of the Committee on the Application of Standards and the Governing Body, which it normally considers through its subcommittee, as it has done this year again.

14. In this context, the Committee once more welcomed the participation of Mr Yokota as an observer in the general discussion of the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011). It noted the decision by the Conference Committee to request the Director-General to renew this invitation for the 101st Session (June 2012) of the Conference. The Committee of Experts accepted this invitation.

15. The Chairperson of the Committee of Experts invited a representative of the Employers' group (Mr Chris Syder) and the Worker Vice-Chairperson (Mr Luc Cortebeek) of the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

16. During this special sitting, a thorough exchange of views took place on matters of mutual interest. The discussion emphasized the importance of reinforcing the complementary relationship between the two Committees, in the interest of the effective application of international labour Conventions by member States. In line with the spirit of mutual respect governing their relationship, the discussion referred to possible improvements in the way that consideration is given by each Committee to the views expressed by the other, including how such consideration is reflected in their respective work.

17. The Worker Vice-Chairperson commented on the absence in the Committee of Experts' report of serious cases of non-compliance for certain countries, on the need to avoid information in the Committee's report being out of date and on the importance of highlighting cases of non-reporting for a number of years. He looked forward to seeing in the Committee's report comments on European countries where the economic and financial crisis was having a serious

impact. He also noted that the General Survey on fundamental Conventions was a very complex document, and that the Committee of Experts' balanced and impartial approach and assessment of the responses it had received would be very useful to improve implementation of these Conventions. The representative of the Employers' group made comments on the role of, and the cooperation between the Conference Committee and the Committee of Experts, on the question of interpretations made by the Committee of Experts and on the development of a method for measuring progress in compliance with standards. The Employer representative emphasized that General Surveys should promote compliance with ILO standards and identify obstacles to ratification and implementation. In reply to some of the observations made by the Employer representative, the members of the Committee of Experts emphasized the independent, impartial and technical role that is required of them, as legal experts, in carrying out their work. The nature of that role and of the task they must perform is not always fully understood. The members therefore agreed that it would be helpful to find ways of improving even further the dialogue between the Committee of Experts and the Conference Committee, to enable a fuller understanding of that role and of its impact on their work. They also indicated that they would welcome increased participation by workers' and employers' organizations, for example through comments on government reports, which would provide a real opportunity for the social partners to enhance the Committee's assessment of the application of ratified Conventions.



## **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***

18. The Committee recalls that, at the instigation of the Committee on the Application of Standards at the 93rd Session (June 2005) of the International Labour Conference, the two Committees, with the assistance of the Office, strengthened the follow-up given to cases of serious failure by member States to fulfil reporting and other standards-related obligations with a view to identifying more accurately the difficulties underlying these failures and helping the countries concerned to identify appropriate solutions to resolve them. As both Committees have recalled on numerous occasions, such failures hinder the functioning of the supervisory system, which is based primarily on the information provided by governments in their reports. Cases of failure to fulfil reporting obligations therefore have to be given the same level of attention as those relating to the application of ratified Conventions. The Committee also recalls that an assessment of the strengthened follow-up in cases of serious failure to comply with reporting obligations was submitted to the Governing Body at its 306th Session (November 2009).<sup>1</sup> The assessment emphasized that the systematic and strengthened technical assistance provided in the context of the follow-up on the basis of the comments of the Committee of Experts and the Conference Committee has had a significant impact on the submission of reports.

19. The Committee notes that, during the general discussion of the Conference Committee at the 100th Session of the International Labour Conference (June 2011) and the special sitting in which it examines these cases of serious failure, several members of the Conference Committee emphasized this positive impact. The Office was invited to continue and intensify technical assistance activities, and particularly to continue identifying the difficulties encountered by member States in compliance with their obligations with a view to resolving them. In the view of certain members, it is also necessary to continue the efforts made to lighten the workload relating to the submission of reports. They also emphasized that, in addition to causes that have their roots at the national level, cases of failure to comply with reporting obligations are related to the workload of governments in sending reports, which illustrates, on the one hand, the need for countries to evaluate their capacity to implement Conventions and to submit the corresponding reports before considering their ratification and, on the other, the need to continue the integration and simplification of ILO Conventions by focusing on essential rules. Finally, the Committee notes that certain members of the Conference Committee once again emphasized that it is essential to provide high-quality information, and that cases of failure to reply to the comments of the Committee of Experts should be addressed more effectively. Other members also expressed concern at the number of reports that arrive late.

20. The Committee was informed that, pursuant to the discussions of the Conference Committee, the Office had sent special letters to the 40 member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning their failure to fulfil their obligations respecting the sending of reports (there were 39 such member States in 2010, 44 in 2009, 55 in 2008, 45 in 2007, 49 in 2006 and 53 in 2005).

21. The Committee welcomes the fact that four countries which had experienced persistent difficulties and which as such had been mentioned in several reports of both Committees have this year fulfilled all their constitutional

<sup>1</sup> GB.306/LILS/4(Rev.), paras 36–42.

obligations in terms of the submission of reports and information due on the application of ratified Conventions.<sup>2</sup> The Committee notes that since the end of the session of the Conference, certain other member States, often with the assistance of the Office, have fulfilled part of their reporting and other standards-related obligations.<sup>3</sup>

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

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

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

### *Reporting arrangements*

24. The Committee recalls that at its 306th Session (November 2009), the Governing Body decided to increase from two to three years the reporting cycle for the fundamental and governance Conventions and to maintain the cycle at five years for the other Conventions. This decision is implemented starting with the reports for 2012.

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

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

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

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

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

### *Reports requested and received*

28. This year a total of **3,013** reports (under articles 22 and 35 of the Constitution) were requested from governments on the application of Conventions ratified by member States, compared to 2,990 reports last year. At the end of the present session of the Committee, **2,084** reports had been received by the Office. This figure corresponds to **69.1** per cent of the reports requested. Last year, the Office received a total of 2,002 reports, representing 66.95 per cent.

29. In accordance with article 22 of the Constitution, **2,735** reports were requested from governments. Of these, **1,855** had been received by the Office by the end of the present session of the Committee. This figure corresponds to **67.82** per cent of the reports requested (compared to 67.98 per cent last year). The Committee wishes to express its gratitude to the **92** member States, which have submitted all the reports due this year.

30. In accordance with article 35 of the Constitution, **278** reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories. Of these, **229** reports, or **82.37** per cent, had been received by the end of the Committee's session (compared to 55.51 per cent last year).

<sup>2</sup> Central African Republic, Samoa, Singapore and United Kingdom (Bermuda).

<sup>3</sup> Dominica, Gambia, Guinea-Bissau, Netherlands (Aruba), Seychelles, Singapore, Solomon Islands, Thailand, Togo, Trinidad and Tobago, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Vanuatu and Zambia.

## Compliance with reporting obligations<sup>4</sup>

31. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all of the reports requested (see Appendix I of this report). However, no reports due have been received for the past two or more years from the following **11** countries: **Chad, Djibouti, Equatorial Guinea, Grenada, Guinea, Guyana, Kyrgyzstan, Nigeria, Sierra Leone, Somalia** and **Yemen**. The Committee examines compliance by each of these countries with their reporting obligations in the observations contained at the beginning of Part II (section I) of this report.

32. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. As it emphasized in paragraph 19, the Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems are at the origin of the difficulties encountered by governments in fulfilling their constitutional obligations. In certain exceptional cases, the absence of reports is a result of more general difficulties related to the national situation, which often prevents the provision of any technical assistance by the Office. In such cases, it is important for governments to request assistance from the Office as soon as possible and for such assistance to be provided rapidly.

### Late reports

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

34. The Committee observes that by **1 September 2011 the proportion of reports received was 35.1 per cent**, compared with 31.4 per cent at its previous session. The number of reports received on time this year has once again risen above 30 per cent, as it did in 2007, 2008 and 2010, following a significant decrease in 2009. The Committee is particularly grateful to the **38 countries which provided all the reports due within the time-limits** with the information requested.<sup>5</sup> It notes that the request it made last year to member States to make a particular effort to ensure that their reports were submitted in time this year has had a certain effect. Nevertheless, the Committee is bound to emphasize once again that the number of reports received on time remains low. A significant number of reports are received after 1 September, during a very short period, thereby disturbing the sound operation of the regular supervisory procedure.

35. Furthermore, the Committee notes that a number of countries sent some or all of the reports **due by 1 September 2010 during the period between the end of the Committee's last session (November–December 2010) and the beginning of the 100th Session of the International Labour Conference (June 2011)**, or even during the Conference.<sup>6</sup> The Committee emphasizes that this practice also disturbs the regular operation of the supervisory system and makes it more burdensome. As requested by the Conference Committee, the Committee notes that the countries which followed this practice over the indicated period are the following: **Algeria, Angola, Armenia, Bahamas, Barbados, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cambodia, Central African Republic, Congo, Cyprus, Democratic Republic of the Congo, Denmark, Ethiopia, Fiji, France, France (French Southern and Antarctic Territories), Greece, Hungary, Islamic Republic of Iran, Italy, Kazakhstan, Lao People's Democratic Republic, Luxembourg, Malawi, Malta, Mongolia, Nigeria, Pakistan, Panama, Papua New Guinea, Slovakia, Slovenia, Thailand, Tunisia, Turkey, Uganda, United Kingdom, United Kingdom (Bermuda, Gibraltar, Saint Helena), United States (Guam, Northern Mariana Islands), Bolivarian Republic of Venezuela.**

36. In view of the high number of reports this year which do not include information in reply to its comments, the Committee requests all member States to pursue and strengthen their efforts with a view to ensuring that next year a larger number of reports are submitted within the time-limits and with all the required information. The Committee also requests the Office to intensify its technical assistance for this purpose. Finally, in line with the comments of the Conference Committee, the Committee hopes that the measures to streamline the sending and processing of information and reports, including the grouping of Conventions by strategic objective for reporting purposes and the lengthening of the reporting

<sup>4</sup> In general, the Committee makes observations in the most serious and persistent cases of failure by member States to respect their reporting and other standards-related obligations based on the following criteria: the failure to send reports for two or more years, the failure to supply first reports for two or more years, and the absence of an indication in the reports received (or in the majority of them) of the representative employers' and workers' organizations to which copies of the reports and information are to be communicated. The Committee makes a direct request when a country has not sent the reports due, or the majority of reports due, in the current year.

<sup>5</sup> **Afghanistan, Antigua and Barbuda, Australia (Norfolk Island), Austria, Plurinational State of Bolivia, Bosnia and Herzegovina, Brunei Darussalam, Cameroon, Central African Republic, China (Macau Special Administrative Region), Colombia, Cuba, Denmark (Faeroe Islands), El Salvador, Gabon, Gambia, Georgia, Guatemala, India, Indonesia, Israel, Jordan, Republic of Korea, Kuwait, Latvia, Lithuania, Netherlands (Sint Maarten), Nicaragua, Oman, Saint Kitts and Nevis, Seychelles, Sri Lanka, Ukraine, United Kingdom, United States (Guam, Northern Mariana Islands), Uruguay, Uzbekistan, Bolivarian Republic of Venezuela.**

<sup>6</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 1 (*Provisional Record*, 100th Session, ILC, 2011). See also information on article 22 reports requested and received on the NORMLEX database.

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

### **Supply of first reports**

37. The Committee notes that **61** of the **105** first reports due on the application of ratified Conventions were received by the time the Committee's session ended, compared to last year when 76 of the 130 first reports due had been received. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received for a number of years from the following **11** member States:

<b>Failure to submit first reports on the application of ratified Conventions</b>	
Bahamas	– since 2010: Convention No. 185
Equatorial Guinea	– since 1998: Conventions Nos 68, 92
Guinea-Bissau	– since 2010: Convention No. 182
Kazakhstan	– since 2010 : Convention No. 167
Kyrgyzstan	– since 1994: Convention No. 111 – since 2006: Conventions Nos 17, 184 – since 2009: Conventions Nos 131, 144 – since 2010: Conventions Nos 97, 157
Nigeria	– since 2010: Convention No. 185
Sao Tome and Principe	– since 2007: Convention No. 184
Seychelles	– since 2007: Conventions Nos 147, 161, 180
United Kingdom (St Helena)	– since 2010: Convention No. 182
Vanuatu	– since 2008: Conventions Nos 87, 98, 100, 111, 182 – since 2010: Convention No. 185
Yemen	– since 2010: Convention No. 185

38. The failure of these countries to send the first reports due is raised in observations at the beginning of Part II (section I) of the present report. In general, the Committee, like the Conference Committee, emphasizes the particular importance of first reports, which provide the basis on which the Committee makes its initial assessment of the application of the specific Conventions concerned and, in certain cases, of all the Conventions ratified by the country. The Committee urges the governments concerned to make a special effort to supply the first reports due. The Committee also requests the Office to provide appropriate technical assistance, particularly since first reports are detailed reports and as such need to be prepared in light of the report form approved by the Governing Body for each Convention.<sup>7</sup>

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

39. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the Office has written to all the governments which failed to provide such replies requesting them to supply the necessary information. This year, only **five** of the governments which were contacted by the Office have provided the information requested.

<sup>7</sup> Detailed reports have to be drawn up in accordance with the report form approved by the Governing Body for each Convention. Detailed reports are requested in the year following the entry into force of a Convention or when the Committee of Experts or the Conference Committee specifically requests such a report. Simplified reports are then requested on a regular basis. See the Governing Body's decisions in this respect (GB.282/LILS/5 (November 2001) and GB.283/LILS/6 (March 2002)).

40. This year, there were 537 cases in which no reply was received to comments (concerning 43 countries). There were 669 such cases (concerning 51 countries) last year.

<b>Cases of failure to supply information in reply to comments made by the Committee of Experts</b>	
<b>State</b>	<b>Conventions Nos</b>
Angola	29, 81, 88, 100, 105, 111
Bahamas	87, 88, 95, 98, 100, 105, 111, 138, 144, 182
Barbados	26, 87, 94, 95, 98, 105, 108, 111, 115, 144, 147
Bulgaria	26, 77, 78, 87, 94, 95, 98, 113, 156, 173
Burkina Faso	6, 29, 81, 87, 95, 98, 100, 105, 111, 129, 131, 138, 141, 144, 159, 161, 170, 173, 182
Burundi	11, 14, 26, 52, 62, 81, 87, 89, 94, 98, 100, 101, 105, 111, 135, 138, 144
Chad	26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173, 182
Comoros	12, 13, 29, 77, 81, 98, 99, 100, 105, 138, 182
Croatia	87, 90, 100, 111, 113, 119, 122, 156
Democratic Republic of the Congo	26, 29, 95, 100, 105, 111, 135, 138, 144, 150, 158
Denmark: Greenland	5, 6, 122, 126
Djibouti	9, 16, 19, 23, 26, 29, 38, 63, 73, 81, 87, 88, 94, 95, 96, 98, 99, 100, 101, 105, 106, 111, 115, 120, 122, 125, 126, 138, 144, 182
Equatorial Guinea	1, 29, 30, 87, 98, 103, 105, 111, 138, 182
Eritrea	87, 98, 100, 111
France: French Polynesia	94, 95, 100, 111, 115, 122, 125, 126, 131, 144
Ghana	26, 59, 81, 87, 92, 94, 98, 100, 105, 111
Greece	17, 42, 87, 95, 98, 100, 102, 111, 122, 126, 150, 154, 156
Grenada	26, 81, 87, 94, 95, 99, 100, 105, 111, 138, 144, 182
Guinea	3, 13, 16, 26, 29, 62, 81, 87, 89, 90, 94, 95, 98, 100, 105, 111, 113, 114, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 152, 156, 159, 182
Guyana	2, 19, 29, 42, 45, 81, 87, 94, 95, 97, 98, 100, 111, 115, 129, 131, 136, 137, 138, 139, 140, 142, 144, 149, 150, 166, 172, 175, 182
Haiti	87, 98, 100, 111, 182
Iceland	98, 100, 111, 122, 144, 156
Ireland	14, 26, 29, 62, 96, 98, 99, 100, 102, 111, 122, 132, 138, 139, 144, 155, 159, 160, 176, 177, 179, 180, 182
Kazakhstan	29, 100, 105, 111, 122, 144
Kenya	17, 19, 29, 81, 105, 129, 182
Kiribati	29, 87, 98, 105
Kyrgyzstan	11, 29, 77, 78, 79, 81, 87, 95, 98, 100, 105, 113, 115, 119, 120, 122, 124, 126, 138, 148, 149, 150, 154, 159, 160, 182
Lebanon	17, 19, 29, 81, 105, 122, 138, 182
Liberia	29, 81, 87, 98, 105, 111, 112, 113, 114, 150, 182
Libya	81, 88, 102, 105, 122, 182

Cases of failure to supply information in reply to comments made by the Committee of Experts	
State	Conventions Nos
Mongolia	29, 105, 111, 138, 144, 182
Nepal	29, 105, 138, 182
Nigeria	19, 29, 32, 45, 87, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182
Pakistan	11, 18, 29, 81, 87, 96, 105, 138, 159, 182
Rwanda	11, 12, 17, 29, 62, 81, 87, 94, 98, 100, 105, 111, 118, 138, 182
San Marino	100, 111, 148, 150, 156, 160, 182
Sao Tome and Principe	17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 106, 111, 138, 144, 159, 182
Sierra Leone	17, 26, 29, 45, 59, 81, 87, 88, 94, 95, 98, 100, 101, 105, 111, 119, 125, 126, 144
Slovakia	17, 42, 102, 105, 120, 122, 128, 130, 139, 148, 156, 161, 163, 164, 167, 176, 182
Slovenia	81, 113, 114, 121, 126, 158, 182
Thailand	105, 138, 182
Uganda	17, 29, 87, 94, 95, 98, 100, 105, 111, 123, 124, 143, 144, 154, 158, 182
Yemen	16, 19, 29, 87, 98, 100, 105, 111, 122, 138, 144, 156, 158, 182

41. The Committee has made observations to 13 of the countries concerned on compliance with their reporting and other standards-related obligations. These cases of comments to which replies have not been received may be classified as follows:

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

42. The Committee notes with *concern* that the number of comments to which replies have not been received remains significantly high. This has led the Conference Committee and the Committee, with the support of the Office, to pay more sustained attention to cases of failure to comply with the obligation to provide information in reply to the Committee's comments. Moreover, the Committee recalls that, for the past six years, with a view to helping the countries to provide the required information, it has made the requests addressed to them in this respect more visible in its comments. The Committee underlines that the value attached by ILO constituents to the dialogue with the supervisory bodies on the application of ratified Conventions is considerably diminished by the failure of governments to fulfil their obligations in this respect. The Committee urges the countries concerned to provide all the information due and to have recourse to the assistance of the Office where necessary. In this respect, it requests the Office to give the highest priority to reinforcing the measures already taken and to the provision of specific assistance to the countries concerned so that they can provide the information requested on the application of ratified Conventions.

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

43. 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**

44. In certain cases, the Committee has found that no comment is called for regarding the manner in which a ratified Convention has been implemented.<sup>8</sup> In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form of either “observations”, which are reproduced in the report of the Committee, or “direct requests”, which are not published in the Committee’s report, but are communicated directly to the governments concerned.<sup>9</sup>

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

### **Follow-up of procedures for the examination of representations under article 24 of the Constitution and complaints under article 26 of the Constitution**

46. In accordance with the established practice, the Committee examines the measures taken by governments pursuant to the recommendations of tripartite committees (established to examine representations under article 24 of the Constitution) and commissions of inquiry (established to examine complaints under article 26 of the Constitution), after they have been approved (tripartite committees) or noted (commissions of inquiry) by the Governing Body. The corresponding information is examined by the Committee and forms an integral part of its dialogue with the governments concerned in the context of the examination of the reports submitted on the application of the respective Conventions, as well as any comments submitted by employers’ and workers’ organizations. The Committee considers it useful to indicate more clearly the cases in which it follows up on the effect given to the recommendations made under other constitutional supervisory procedures, as indicated in the following table.

List of cases in which the Committee has examined the <b>measures taken by governments to give effect to the recommendations of tripartite committees</b> (representations under article 24) and <b>commissions of inquiry</b> (complaints under article 26)	
State	Conventions Nos
Argentina	169
Belarus	87, 98
Brazil	169
Chile	29
China (Hong Kong Special Administrative Region)	97
Ethiopia	111
Guatemala	169
Japan	159
Mexico	150, 155, 169
Myanmar	29
Russian Federation	179
Zimbabwe	87

<sup>8</sup> 291 reports.

<sup>9</sup> ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. Observations and direct requests are accessible through the NORMLEX database.

***Follow-up given to the conclusions of the individual cases as adopted by the Conference Committee (June 2011)***

List of cases in which the Committee has examined the measures taken by governments to give effect to the conclusions of the Conference Committee (International Labour Conference, 100th Session, June 2011)		
State	Conventions Nos	Pages Nos
Azerbaijan	138	296
Belarus	98	75
Cambodia	87	91
Canada	162	812
Democratic Republic of the Congo	29	259
Fiji	111	507
Greece	98	160
Guatemala	87	165
Honduras	122	711
Malaysia – Peninsular Malaysia	19	871
Mexico	155	844
Myanmar	87	200
Nigeria	87	204
Pakistan	87	209
Panama	87	215
Paraguay	182	409
Romania	98	219
Saudi Arabia	81	670
Sri Lanka	103	902
Swaziland	87	225
Turkey	87	228
Uruguay	98	233
Uzbekistan	182	460
Zimbabwe	87	239

***Special notes***

47. As in the past, the Committee has indicated by special notes at the end of the observations (traditionally known as footnotes) the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2012.

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

has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to “double footnotes” in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

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

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

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

51. 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.

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

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years	
State	Conventions Nos
Algeria	32, 120, 127, 155, 181
Antigua and Barbuda	122, 158
Argentina	87, 96, 184
Australia	158
Barbados	115, 144
Belarus	87, 144
Plurinational State of Bolivia	136, 162
Brazil	94
Bulgaria	181
Cambodia	150
Canada	88, 162
Central African Republic	88
Chile	115
Colombia	144, 162, 169
Costa Rica	88, 122
Côte d’Ivoire	159
Cuba	87
Czech Republic	88, 128
Democratic Republic of the Congo	144

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years	
<b>State</b>	<b>Conventions Nos</b>
Dominican Republic	144, 167
Ecuador	115, 119, 136, 139, 148, 159, 162
El Salvador	155
Ethiopia	88, 158, 181
France	96
France (New Caledonia)	115
Greece	81, 87, 88, 95, 98, 100, 102, 111, 122, 150, 154, 156
Guinea-Bissau	88
Iraq	119, 120, 167
Ireland	88, 144
Italy	159, 181
Japan	131, 159
Republic of Korea	19
Kuwait	136
Lebanon	71
Luxembourg	159
Madagascar	19
Malawi	158
Malaysia – Peninsular Malaysia	19
Malaysia – Sarawak	19
Mauritania	122
Mauritius	19
Mexico	150, 155
Morocco	158
Myanmar	19
Netherlands	181
Nicaragua	111
Niger	81, 155, 161, 187
Pakistan	96, 159
Panama	42, 88
Papua New Guinea	158
Paraguay	95
Romania	1
Russian Federation	92, 119, 133, 150, 162
Saint Lucia	19, 158
Serbia	131, 144, 158

List of the cases in which the Committee has requested <b>early reports</b> after an interval of either one, two or three years	
State	Conventions Nos
Spain	114, 158
Sri Lanka	81
Suriname	17, 42
Syrian Arab Republic	155, 170
Thailand	19
Trinidad and Tobago	144
Tunisia	88
Uganda	26, 81
Ukraine	81, 129
United Kingdom – British Virgin Islands	82
United States	55
Uruguay	121
Bolivarian Republic of Venezuela	81

53. The Committee has also requested governments to supply full particulars to the Conference at its next session of 2012 in the following cases:

List of the cases in which the Committee has requested governments to <b>supply full particulars to the Conference</b> at its next session in June 2012:	
State	Conventions Nos
Dominican Republic	111
Fiji	87
Guatemala	87
Mauritania	81
Senegal	182

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

List of the cases in which the Committee has requested governments to <b>supply detailed reports</b> when simplified reports would otherwise be due	
State	Convention Nos
Algeria	119
Azerbaijan	120
Belize	115, 155
Cameroon	162
Colombia	174
Dominican Republic	170

List of the cases in which the Committee has requested governments to <b>supply detailed reports</b> when simplified reports would otherwise be due	
State	Convention Nos
France – New Caledonia	120
Mexico	102
Myanmar	17, 87
Peru	176
Russian Federation	152
Seychelles	148, 155
Tajikistan	115
Uganda	162
Uruguay	167
Bolivarian Republic of Venezuela	155

### ***Practical application***

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

56. The Committee notes that **576** reports received this year contain information on the practical application of Conventions. Of these, **126** reports contain information on national jurisprudence. The Committee also notes that **450** of the reports contain information on statistics and labour inspection.

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

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

58. 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.

59. At its 80th Session (November–December 2009) and at its present session, the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

60. Since first identifying cases of **satisfaction** in its report in 1964,<sup>10</sup> the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

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

61. Details concerning these cases of progress are to be found in Part II of this report and cover **72** instances in which measures of this kind have been taken in **54** countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries	
State	Conventions Nos
Algeria	182
Angola	17
Antigua and Barbuda	138
Azerbaijan	138
Belize	98
Benin	6, 161
Botswana	182
Brazil	138, 155, 161
Bulgaria	120
Burundi	29, 182
Central African Republic	105
China – Macau Special Administrative Region	115
Costa Rica	102, 111
Croatia	155
Cyprus	95, 182
Democratic Republic of the Congo	119
Dominica	138
El Salvador	138, 182
Ethiopia	155
France	166
France – New Caledonia	127
Gabon	123
Guatemala	182
Iraq	115
Italy	139

<sup>10</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

List of the cases in which the Committee has been able to <b>express its satisfaction</b> at certain measures taken by the governments of the following countries	
State	Conventions Nos
Japan	98
Republic of Korea	150
Kuwait	138
Lao People's Democratic Republic	29
Lesotho	138, 182
Luxembourg	155
Malaysia	138
Mauritius	160
Republic of Moldova	105
Morocco	182
Namibia	182
Netherlands	182
New Zealand	160
Nicaragua	138
Oman	182
Pakistan	98
Panama	87
Peru	138, 169
Romania	98, 138
South Africa	138, 182
Spain	44, 182
Sri Lanka	138, 182
Suriname	182
Swaziland	87
Sweden	129
The former Yugoslav Republic of Macedonia	182
Tunisia	118
Uganda	138
United Kingdom – British Virgin Islands	94, 98
United Kingdom – St Helena	17
Uruguay	111, 155, 182

62. 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 **2,875** since the Committee began listing them in its report.

63. Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.<sup>11</sup> In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners**. In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

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

64. 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 **325** instances in which measures of this kind have been adopted in **130** countries. The full list is as follows:

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries	
State	Conventions Nos
Albania	77, 81, 111, 129
Algeria	29, 81, 150
Argentina	29, 81, 87, 95, 184
Armenia	95, 143, 173
Australia	29, 111, 112, 123
Austria	156
Azerbaijan	138
Bahrain	155
Bangladesh	59
Barbados	182
Belarus	77, 81, 115
Belgium	55, 56, 81, 94, 182
Belize	26, 81, 111, 156
Benin	98, 144, 161
Plurinational State of Bolivia	103, 111
Bosnia and Herzegovina	87, 90, 159
Botswana	182
Brazil	136, 139, 148, 155, 167, 170, 182

<sup>11</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

List of the cases in which the Committee has been able to <b>note with interest</b> various measures taken by the governments of the following countries	
State	Conventions Nos
Bulgaria	8, 53, 55, 56, 81, 111, 182
Burundi	182
Cambodia	13, 138, 182
Canada	26
Cape Verde	98, 111
Central African Republic	111, 182
Chile	6, 29, 131, 156
Colombia	6, 87
Congo	29, 111
Costa Rica	1, 81, 95, 114
Croatia	8, 53, 74, 81, 91, 129, 139, 147, 155, 179
Cuba	81
Cyprus	81, 94, 122, 187
Czech Republic	29, 77, 150, 160
Democratic Republic of the Congo	62
Denmark	139
Dominican Republic	167
Ecuador	100, 112, 121
Egypt	81, 87, 98
El Salvador	77, 87, 155, 182
Estonia	81, 122
Ethiopia	111, 182
Fiji	111, 178, 182
Finland	81
France	115, 131, 164, 166, 178
France – French Polynesia	81, 129
France – French Southern and Antarctic Territories	53, 68, 69, 92, 133
France – New Caledonia	115, 120
Gabon	81, 100, 158
Gambia	182
Georgia	111
Germany	81, 162, 167
Ghana	148
Greece	62, 81
Guatemala	29, 94, 138, 163, 169, 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
Honduras	29, 78, 95, 138
Hungary	139
Iceland	159
India	5, 26, 29, 144
Indonesia	29, 81
Iraq	167
Israel	77
Italy	139, 167
Jamaica	111
Japan	87, 139
Jordan	98, 100, 144
Kazakhstan	111
Kenya	111
Republic of Korea	81, 156, 182
Kuwait	1
Lao People's Democratic Republic	182
Latvia	129, 138
Lebanon	81, 150
Lesotho	138, 182
Liberia	53, 55
Lithuania	100, 111, 122, 156
Luxembourg	8, 55, 56, 81, 139, 147, 161
Madagascar	182
Malaysia	138
Mali	182
Malta	111
Mauritania	53, 81
Mauritius	29, 81
Mexico	53, 118, 150, 160
Mongolia	155
Morocco	129, 138, 150, 182
Mozambique	18, 81
Myanmar	87
Namibia	138, 150
Nepal	111

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
Netherlands	160
New Zealand	81
Nicaragua	111, 138, 182
Niger	111
Norway	8, 53
Panama	29, 53, 74, 138, 167
Papua New Guinea	87, 182
Paraguay	138, 182
Peru	102, 127, 152, 182
Philippines	118, 122, 182
Poland	160, 182
Portugal	111, 138, 160
Qatar	81, 111
Romania	100
Russian Federation	16, 73, 160
Saint Kitts and Nevis	182
Saint Lucia	182
Saint Vincent and the Grenadines	182
Saudi Arabia	81
Senegal	29
Seychelles	73, 155
Singapore	8, 16, 22
Slovakia	129
Slovenia	97, 143
South Africa	111
Spain	8, 53, 55, 74, 113, 134, 145, 156, 158, 164, 165, 180, 187
Sri Lanka	81
Sudan	138
Suriname	182
Sweden	81, 100
Switzerland	100, 163
Syrian Arab Republic	63, 170
United Republic of Tanzania	81, 182
United Republic of Tanzania – Zanzibar	100
Thailand	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
The former Yugoslav Republic of Macedonia	111, 139, 182
Uganda	122, 138, 162
Ukraine	95, 153
United Arab Emirates	182
United Kingdom	29, 111
United Kingdom – Bermuda	17
United Kingdom – Isle of Man	150
Uruguay	81, 111, 134, 136, 148, 150, 155, 167
Uzbekistan	122
Bolivarian Republic of Venezuela	81
Viet Nam	100, 182
Zambia	138, 148
Zimbabwe	81

### **Cases of good practice**

65. In accordance with the decision taken at its 78th Session (November–December 2007), the Committee highlights cases of **good practice** to express its appreciation of the special efforts made in applying a Convention, and so that they might where appropriate serve as a model for other countries to assist in the implementation of ratified Conventions and the furtherance of social progress. At its 79th Session (November–December 2008), the Committee agreed on the general criteria that it would apply to identify cases of good practice. The Committee further agreed that it would continue to follow a two-stage process for the identification of cases of good practice: first, the expert initially responsible for a particular group of Conventions recommends to the Committee that a measure or measures should be identified as a case of good practice; second, in light of all the recommendations made, the Committee will, after discussion, take a final collegial decision once it has reviewed the application of all the Conventions.<sup>12</sup>

66. At its 80th Session (November–December 2009), the Committee focused, in particular, on clarifying the distinction between cases of good practice and cases of progress. In this respect, the Committee wishes to underline at the outset that cases of good practice are necessarily also cases of progress, although the reverse is not always true. The Committee wishes to point out that the identification of a case of good practice **does not in any way imply additional obligations for member States under the Conventions that they have ratified**. This identification also does not imply that the concerned member State is in conformity with other ratified Conventions. Moreover, mere compliance with the requirements of a Convention is not sufficient for the identification of a case of good practice, as compliance is a basic requirement deriving from ratification of the Convention. Cases of good practice are therefore of an informative rather than of a prescriptive nature. Their identification forms part of the ongoing dialogue with the government concerned on the application of a ratified Convention and can relate to any measure taken in national legislation, policy or practice. A certain caution must clearly be exercised in the identification of cases of good practice so as to minimize the possibility that such practices may with hindsight come to be viewed as unsatisfactory.

67. Bearing in mind these aspects, the Committee wishes to confirm the following three criteria, which were identified at its 79th Session (November–December 2008), on the understanding that they are indicative, but not exhaustive.

- (1) A case of good practice may consist of a **new approach** to achieving or improving compliance with the Convention and could therefore be useful as a **model** for other countries in implementing that Convention.
- (2) The practice may reflect an **innovative or creative way** of either implementing the Convention, or of addressing difficulties which arise in its application.

<sup>12</sup> It will be recalled that this two-stage process is also used for the so-called “double footnotes”: see para. 51 above.

- (3) Recognizing that Conventions lay down minimum standards, the practice may offer an **example** of a country extending the application or coverage of the Convention to enhance the achievement of its objectives, particularly in cases where the Convention contains flexibility clauses.

### ***Cases in which the need for technical assistance has been highlighted***

68. The combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation and assistance has always been one of the key dimensions of the ILO supervisory system. Further, since 2005, at the initiative of the Conference Committee, heightened attention has been given to the complementarity between examination by the ILO supervisory bodies and the Office's technical assistance. As pointed out in paragraphs 18–22, this has led to enhanced follow-up of cases of serious failure by member States to fulfil reporting and other standards-related obligations. In addition, the Conference Committee has made more systematic references to technical assistance in its conclusions regarding individual cases concerning the application of ratified Conventions. The aim of this strengthened combination between the work of the supervisory bodies and the Office's technical assistance is to provide an effective framework to member States for full compliance with their standards-related obligations, including the implementation of the Conventions which they have ratified.

69. In this context, the Committee decided at its 79th Session (November–December 2008) to highlight the cases for which, in the Committee's view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions. These cases are highlighted in the following table and details can be found in Part II of the report of the Committee of Experts. The Committee also examined a certain number of cases in relation to which the Conference Committee emphasized the need for technical assistance at the last session of the Conference.

List of the cases for which, <b>technical assistance</b> would be particularly useful in helping member States	
<b>State</b>	<b>Conventions Nos</b>
Albania	98
Algeria	32, 120, 155
Angola	45
Antigua and Barbuda	94
Argentina	81, 129
Armenia	94, 173
Azerbaijan	98
Bangladesh	87
Benin	161
Plurinational State of Bolivia	81, 98, 136, 162
Botswana	87, 151, 176
Cambodia	13, 100
Cameroon	162
Cape Verde	87, 111
Central African Republic	155
Chile	87
Congo	81, 87
Costa Rica	87, 94, 95, 111, 120
Côte d'Ivoire	100
Cuba	87
Democratic Republic of the Congo	81

List of the cases for which, <b>technical assistance</b> would be particularly useful in helping member States	
Dominica	138, 182
Dominican Republic	167
Ecuador	115, 119, 136, 139, 148, 162
El Salvador	155
Equatorial Guinea	98
Ethiopia	87, 155
Fiji	87, 98
Gabon	87
Georgia	87
Guatemala	87, 100, 148, 167
Guinea-Bissau	45, 81, 98, 100
Guyana	42
Haiti	87, 98
Honduras	98
India	107
Indonesia	81, 87
Iraq	150
Kenya	63
Kuwait	81
Lao People's Democratic Republic	138
Lebanon	150
Lesotho	150
Malaysia – Peninsular Malaysia	19
Mauritania	81, 100, 111
Mauritius	100
Mozambique	138, 144
Netherlands – Aruba	87, 138
Nicaragua	12
Niger	81
Pakistan	100
Panama	167
Papua New Guinea	138
Paraguay	182
Saint Kitts and Nevis	138
Saint Lucia	17
Saudi Arabia	81, 111
Senegal	138

List of the cases for which, <b>technical assistance</b> would be particularly useful in helping member States	
Solomon Islands	45
South Africa	155
Sri Lanka	81, 103
Sudan	122
Suriname	81
Tajikistan	115
Togo	111
Tunisia	87, 118
Uganda	162
Ukraine	138
United Arab Emirates	138
Uzbekistan	138
Viet Nam	100
Zambia	103, 148
Zimbabwe	81

70. The Committee notes that since its last session, a certain number of countries from North Africa and the Middle East have started a transition process towards democracy. The Committee is of the view that such a process offers the opportunity to undertake necessary reforms in view to put the national legislation into conformity with ILO Conventions, and particularly with those relating to fundamental rights at work. In this regard, the Committee recalls that governments can avail themselves of ILO technical assistance.

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

71. The Committee notes the final report of the Tripartite Meeting of Experts to Examine the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166), held in Geneva from 18–21 April 2011. The purpose of the Meeting was to examine Convention No. 158 and Recommendation No. 166 and to identify obstacles to ratification and implementation as well as other relevant current trends in law and practice. The Committee also takes note of the background document prepared by the Office for the Meeting, the *Way forward of the Tripartite Meeting of Experts of the Government and the Worker Experts* and the *Outcome of the Employer Experts*, as well as of the discussions that took place in the LILS Section of the Governing Body and the decision made by the Governing Body (GB.312/LILS/PR, November 2011).

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

72. 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(2) of the Constitution, they have communicated copies of the reports supplied to the Office. The Committee recalls that, in accordance with the tripartite nature of the ILO, compliance with this constitutional obligation is intended to enable representative organizations of employers and workers to participate fully in supervision of the application of international labour standards. It should be recalled that if a government fails to comply with this obligation, these organizations are denied their opportunity to comment and an essential element of tripartism is lost. The Committee calls on all member States to discharge their obligation under article 23(2) of the Constitution. The Committee also requests governments to provide copies of reports to representative employers' and workers' organizations so that they have enough time to send any comments that they may wish to make.

73. Since its last session, the Committee has received **1,051** comments (compared to 794 last year), **129** of which (compared to 119 last year) were communicated by employers' organizations and **922** (compared to 675 last year) by workers' organizations. The Committee recalls the importance it attaches to this contribution by employers' and workers'

organizations to the work of the supervisory bodies. This contribution is essential for the Committee's evaluation of the application of ratified Conventions in national law and in practice.

74. The majority of the comments received (798) relate to the application of ratified Conventions (see Appendix III).<sup>13</sup> Some 506 of these comments relate to the application of fundamental Conventions, 81 relate to governance Conventions and 211 concern the application of other Conventions. Moreover, 253 comments concern reports provided under article 19 of the Constitution on fundamental Conventions.<sup>14</sup>

75. The Committee notes that, of the comments received this year, 738 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 313 cases, the governments transmitted the comments made by employers' and workers' organizations with their reports, sometimes adding their own comments.

76. 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.

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

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

78. The Committee recalls that at its 77th Session (November–December 2006), it gave guidance to the Office as to the procedure to be followed in determining the treatment of comments received from employers' and workers' organizations concerning the application of a ratified Convention in a non-reporting year. At its 80th Session (November–December 2009), the Committee examined this procedure in light of the decision by the Governing Body to extend the cycle for the submission of reports from two to three years for the fundamental and governance Conventions. In this respect, the Committee is fully aware of the need to apply in a fair and judicious manner the decisions taken by the Governing Body to extend the reporting cycle and to ensure that employers' and workers' organizations comments may effectively draw its attention to areas of concern, even when no report on the Convention in question is due from the government that year.

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

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

81. The Committee emphasizes that the procedure set out above aims at giving effect to decisions taken by the Governing Body which have both extended the reporting cycle and provided for safeguards in that context to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving

<sup>13</sup> An indication of the observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the NORMLEX database.

<sup>14</sup> See Report III (Part 1B), ILC, 101th Session, Geneva, 2012.

due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due; in such cases, comments received directly by the Office are communicated to the governments concerned in a timely fashion so as to ensure respect for due process. The Committee will continue to give full and careful consideration to all the elements made available to it in order to ensure the effective, up to date and regular monitoring of the application of ratified Conventions in the context of the new extended reporting cycle for the fundamental and governance Conventions.

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

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

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

- (a) additional information on measures taken to submit to the competent authorities the instruments adopted by the Conference from 1967 (51st Session) to June 2010 (99th Session) (Conventions Nos 128 to 188, Recommendations Nos 132 to 200 and Protocols);
- (b) replies to the observations and direct requests made by the Committee at its 81st Session (November–December 2010).

84. Appendix IV of Part II of the report contains a summary indicating the competent authority to which the instruments adopted by the Conference at its 99th Session were submitted and the date of submission. In addition, Appendix IV summarizes the information supplied by governments with respect to earlier adopted instruments submitted to the competent authority in 2011.

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

#### 99th Session of the Conference

86. At its 99th Session in June 2010, the Conference adopted the HIV and AIDs Recommendation, 2010 (No. 200). The 12-month period for submission to the competent authorities of Recommendation No. 200 ended on 17 June 2010, and the 18-month period on 17 December 2010. In all, 31 governments out of the 183 member States have already submitted the Recommendation adopted at the 99th Session. At this session, the Committee examined new information on the steps taken regarding Recommendation No. 200 by the following governments: **Argentina, Armenia, Australia, Barbados, Belgium, Cape Verde, Costa Rica, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Greece, Indonesia, Islamic Republic of Iran, Israel, Italy, Japan, Jordan, Republic of Korea, Lao People's Democratic Republic, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Philippines, Poland, Qatar, Romania, Serbia, Slovakia, Slovenia, Spain, Swaziland, Tajikistan, Turkey, Bolivarian Republic of Venezuela and Viet Nam.**

#### Cases of progress

87. The Committee notes with *interest* the information sent in the course of the period concerned by the governments of the following countries: **Cape Verde, Central African Republic, Kenya, Mongolia and Qatar.** It welcomes the efforts made by these governments to recognize the significant delay in submission and to take important steps toward fulfilling their obligation to submit to their parliamentary bodies the instruments adopted by the Conference over a number of years.

#### Special problems

88. To facilitate the work of the Committee on the Application of Standards, this report only mentions those governments that have not submitted to the competent authorities the instruments adopted by the Conference for at least seven sessions. This time frame begins on the 90th (2002) Session and concludes on the 99th (2010) Session because the Conference did not adopt any Conventions or Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Session. Thus, this time frame was deemed long enough to warrant inviting the governments concerned to a special sitting of the Conference Committee so that they could account for the delays in submission.

89. The Committee notes that at the closure of its 82nd Session, on 9 December 2011, the following 39 countries were in this situation: **Bahrain, Bangladesh, Belize, Cambodia, Colombia, Comoros, Congo, Côte d'Ivoire,**

**Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, Fiji, Georgia, Guinea, Haiti, Iraq, Ireland, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda and Uzbekistan.**

90. The Committee is constantly aware of the exceptional circumstances that have affected some of these countries for years, as a result of which they have been deprived of the institutions needed to fulfil the obligation to submit instruments. At the 100th Session of the Conference (June 2011), the Government representatives of seven delegations supplied information explaining why their countries had been unable to meet the constitutional obligation to submit Conventions, Recommendations and Protocols to national parliaments. As the Committee of Experts had done previously, the Conference Committee expressed great concern at the failure to respect this obligation. It pointed out that compliance with this constitutional obligation, which means submitting the instruments adopted by the Conference to national parliaments, is of the utmost importance in ensuring the effectiveness of the Organization's standards-related activities.

91. The abovementioned countries have been identified in observations published in this report, and the Conventions, Recommendations and Protocols that have not been submitted are indicated in the statistical appendices. The Committee considers it worthwhile to alert the governments concerned so as to enable them immediately and as a matter of urgency to take appropriate steps to bring themselves up to date. This notice also allows the governments to benefit from the measures the Office is prepared to take, upon their request, to assist them in the steps required for the rapid submission to parliament of the pending instruments.

### **Comments of the Committee and replies from governments**

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

93. The Committee hopes that the 71 observations and the 81 direct requests that it is addressing this year to governments will enable them better to discharge their constitutional obligation of submission, thereby contributing to the promotion of the standards adopted by the Conference.

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

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

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

96. The Committee recalls that at its 303rd Session (November 2008), the Governing Body decided to align the subjects of General Surveys with those of the annual recurrent discussions in the Conference under the follow-up to the Social Justice Declaration. This year, in accordance with the decision taken by the Governing Body at its 307 Session (March 2010),<sup>15</sup> governments were requested to supply reports under article 19 of the Constitution as a basis for the General Survey on the following instruments: the Forced Labour Convention, 1930 (No. 29), 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 Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

97. A total of **282** reports were requested from member States, under article 19 of the Constitution, on the fundamental Conventions. This figure includes **147** reports requested from the member States which have not yet ratified all the fundamental Conventions and **135** reports (mandatory section – questions 32 to 37 of the report form) to member States which have ratified all the fundamental Conventions. **160** reports were received and this represents **56.23** per cent of the reports requested.

98. The Committee notes with *regret* that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the Constitution have been received from the following **ten** countries:

<sup>15</sup> GB.304/LILS/5 and GB.304/9/2, para. 73.

**Afghanistan, Cape Verde, Guinea-Bissau, Kenya, Samoa, Sierra Leone, Somalia, Turkmenistan, Uzbekistan and Vanuatu.**

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

**100.** Part III of this report (issued separately as Part 1B) contains the General Survey concerning fundamental Conventions.<sup>16</sup> In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising eight members of the Committee.

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<sup>16</sup> See Report III (Part 1B), International Labour Conference, 101st Session, Geneva, 20112.

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

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

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

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

**102.** The Committee also notes that the ILO has continued to develop its relations with the International Maritime Organization (IMO). The two organizations have complementary mandates in respect of merchant shipping: the ILO is responsible for social issues and those to do with labour, while the IMO addresses other aspects. The IMO has officially recognized the MLC, 2006 as the fourth pillar of international maritime law, alongside the three IMO Conventions for Safety of Life at Sea, Standards of Training, Certification and Watch keeping for Seafarers; and Prevention of Pollution from Ships. The IMO also encourages ratification of the MLC, 2006 by its States members. The ILO is also working together with the International Civil Aviation Organization (ICAO) in respect of the drafting and implementation of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), which provides that seafarers' identity documents must be in line with certain specifications established by the ICAO. Finally, the ILO is also contributing to the Universal Periodic Review (UPR) of the Human Rights Council.

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

**103.** The Committee recalls that international labour standards and the provisions of the United Nations human rights treaties related to them are complementary and mutually reinforcing. Close cooperation between the ILO and the United Nations in relation to its human rights treaties is therefore an important strategy to enhance the influence of ILO standards and to ensure consistency and coherence within the United Nations system with regard to human rights at work.

**104.** The Committee welcomes the fact that the Office has continued to regularly submit reports to the different treaty bodies containing standards-related information regarding the countries examined by them. These ILO reports include information on the ratification of ILO Conventions relevant to the provisions of the respective United Nations human rights treaties, summaries of the findings and recommendations of the ILO supervisory bodies and information on ILO technical assistance, as appropriate. In addition, Office representatives participate in the sessions of the treaty bodies and provide oral advice and information on specific countries or particular subjects. The Office also contributes to the general observations by these supervisory bodies concerning issues that come within the ILO's remit.

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

**105.** In accordance with the supervisory procedure established under Article 74(4) of the European Code of Social Security, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 20 reports on the application of the Code and, as appropriate, its Protocol. The Committee's conclusions on these reports will be sent to the Council of Europe for examination by its Committee of Experts on Social Security. Once approved, the Committee's comments should lead to the adoption of resolutions by the Committee of Ministers of the Council of Europe on the application of the Code and the Protocol by the countries concerned.

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

\* \* \*

**107.** 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, 9 December 2011

*(Signed)* Yozo Yokota  
Chairperson

Denys Barrow  
Reporter

## Appendix to the General Report

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

**Mr Mario ACKERMAN** (Argentina)

Professor of Labour Law, Director of the Labour Law and Social Security Department and Director of Specialist Postgraduate Labour Law Studies at the Faculty of Law of the University of Buenos Aires; Director of the *Revista de Derecho Laboral*; former adviser to the Parliament of the Republic of Argentina; former National Director of the Labour Inspectorate of the Ministry of Labour and Social Security of the Republic of Argentina.

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

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

**Mr Lelio BENTES CORRÊA** (Brazil)

Judge at the Labour Superior Court (*Tribunal Superior do Trabalho*) of Brazil, former Labour Public Prosecutor of Brazil, LL M of the University of Essex, United Kingdom; Professor (Labour Team and Human Rights Centre) at the *Instituto de Ensino Superior de Brasilia*. Professor at the National School for Labour Judges and at the Superior School for Prosecutors.

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

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

**Mr Halton CHEADLE** (South Africa)

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

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

Justice of the High Court, Queen's Bench Division and Judge of the Employment Appeal Tribunal; LL B, LL M of the University of London; previously a barrister specializing in employment law, discrimination and human rights; Head of Cloisters Chambers, Temple (1995–2002); Chairperson of the Bar Council Sex Discrimination Committee (1995–99) and Equal Opportunities Committee (1999–2002); Bencher of the Inner Temple; member of Justice, an independent human rights organization (former Council member) and

one of the founding lawyers of Liberty (the National Council for Civil Liberties); previously a Vice-President of the Institute of Employment Rights and member of the Panel of Experts advising the Cambridge University Independent Review of Discrimination Legislation; Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights (2001–04) and Chairperson of the Equality and Diversity Advisory Committee of the Judicial Studies Board (2003–11); appointed Honorary Fellow of Queen Mary College, London University (2005); member of Council of the University of London (2003–06); Honorary President of the Association of Women Barristers and Vice-President of the United Kingdom Association of Women Judges.

**Ms Graciela DIXON CATON** (Panama)

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

**Mr Rachid FILALI MEKNASSI** (Morocco)

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

**Mr Abdul G. KOROMA** (Sierra Leone)

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

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

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

**Ms Elena MACHULSKAYA** (Russian Federation)

Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Professor of Law, Department of Civil Proceedings and Social Law, Russian State University of Oil and Gas; Secretary, Russian Association for Labour and Social Security Law; member of Non-State Expert Committee on Human Rights; member of the European Committee of Social Rights.

**Mr Vitit MUNTARBHORN** (Thailand)

Professor of Law, Chulalongkorn University, Bangkok; former United Nations Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea; former United Nations Special Rapporteur on the sale of children, child prostitution and child pornography; former Chairperson of the National Subcommittee on Child Rights (Thailand); Commissioner of the International Commission of Jurists; member of the Advisory Council of Jurists, Asia Pacific Forum of National Human Rights Institutions; Co-Chairperson, Civil Society Working Group for an ASEAN Human Rights Body; member, Advisory Group of Experts on International Protection (UNHCR); Chairperson of the UN Commission of Inquiry on the Ivory Coast 2011.

**Ms Rosemary OWENS** (Australia)

Professor of Law, Adelaide Law School, University of Adelaide; former Dean of Law (2007–11); former Editor and currently member of the editorial board of the Australian Journal of Labour Law; International Reader for the Australian Research Council; Chairperson of the South Australian Governments’ Ministerial Advisory Committee on Work/Life Balance; former Chairperson and current member of the Board of Management of the Working Women’s Center (SA).

**Ms Ruma PAL** (India)

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

**Mr Paul-Gérard POUGOUÉ** (Cameroon)

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

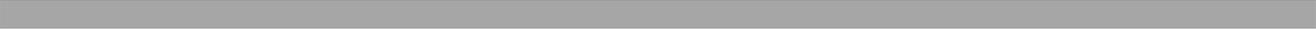
**Mr Raymond RANJEVA** (Madagascar)

Member of the International Court of Justice (1991–2009); Vice-President (2003–06), President (2005) of the Chamber formed by the International Court of Justice to deal with the case concerning the Frontier Dispute Benin/Niger; senior judge of the Court (2006); Bachelor's degree in law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux–Montesquieu. Professor at the University of Madagascar (1981–91) and other institutions; a number of administrative posts held, including First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegations to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties, Vienna (1976–77); first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration for Sport; member of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of Pontifical Council for Justice and Peace.

**Mr Yozo YOKOTA** (Japan)

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




## ***Part II. Observations concerning particular countries \****

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\* In accordance with the decision taken at its 81st Session (November–December 2010), the Committee recalls that it follows a specific approach in identifying in its comments cases of progress. This approach is described in paragraphs 58 to 64, Part I (General Report) of the present report. In particular, the Committee recalls that the identification of a case of progress does not mean that it considers the country in question to be in general conformity with the Convention. Further, an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.



## **I. Observations concerning reports on ratified Conventions** (articles 22, 23, paragraph 2, and 35, paragraphs 6 and 8, of the Constitution)

### **General observation**

The Committee recalls that the obligation to communicate copies of the reports on ratified Conventions to the representative organizations of employers and workers, set out in article 23, paragraph 2, of the Constitution, is intended to enable these organizations to make their own comments on the application of ratified Conventions. The Committee emphasizes that communications received from employers' and workers' organizations attest to their participation in the reporting process and information from these sources has often resulted in a better knowledge and understanding of the difficulties experienced by countries. The Committee notes that none of the reports provided by the following countries indicates the employers' and workers' organizations to which copies of the reports have been communicated: **Afghanistan** (2010 and 2011), **Comoros** (2011), **Côte d'Ivoire** (2011), **Gambia** (2011), **Qatar** (2011), **South Africa** (2011) and **United Kingdom** (Gibraltar) (2011). In the case of the following countries, the Committee notes that a majority of the reports received do not indicate the representative organizations of employers and workers to which copies of the reports were communicated: **Algeria** (2011), **Cambodia** (2011), **Iraq** (2010 and 2011), **Kazakhstan** (2011), **Pakistan** (2010 and 2011) and **United Kingdom** (St Helena) (2011). The Committee requests these governments to fulfil this constitutional obligation without further delay.

### **General observations**

#### **Bahamas**

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received and that 12 reports are now due: a first report on the application of Convention No. 185 (since 2010) and 11 other reports (Conventions Nos 11, 87, 88, 95, 98, 100, 105, 111, 138, 144 and 182), most of which should include information in reply to comments made by the Committee. The Committee further notes that an official of the Ministry of Labour and Social Development received training in 2009. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any necessary assistance. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

#### **Chad**

The Committee notes that, for the second year in succession, the reports due on the application of ratified Conventions have not been received and that 16 reports are now due (Conventions Nos 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173 and 182), most of which should include information in reply to comments made by the Committee. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide further assistance as needed. The Committee requests the Government to take without delay the necessary measures to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Djibouti

The Committee notes that for the third year in succession, the reports due on the application of ratified Conventions have not been received and that 43 reports are now due (Conventions Nos 1, 9, 11, 13, 16, 19, 22, 23, 26, 29, 38, 53, 55, 56, 63, 69, 71, 73, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 101, 105, 106, 108, 111, 115, 120, 122, 124, 125, 126, 138, 144 and 182) and should, for the most part, include information in reply to comments made by the Committee. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any assistance needed. The Committee requests the Government to take the necessary steps without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Equatorial Guinea

The Committee notes that for the fifth year in succession, apart from a report sent in 2008, the reports due on the application of ratified Conventions have not been received and that 14 reports are now due: the first reports on the application of Conventions Nos 68 and 92 (due since 1998) and 12 other reports (Conventions Nos 1, 14, 29, 30, 87, 98, 100, 103, 105, 111, 138 and 182), most of which should include information in reply to comments made by the Committee. It notes that, apart from a report submitted in 2008, the Government has not provided reports since 2006. The Committee is accordingly bound to express its *deep concern* that such a situation has persisted despite numerous initiatives taken by the Office to afford technical assistance. It urges the Government to take the necessary measures without delay, including through further recourse to technical assistance (as mentioned in the Office's letter of 5 September 2011 further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference in June 2011), to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Grenada

The Committee notes that for the second year in succession the reports due on the application of ratified Conventions have not been received and that 17 reports are now due (Conventions Nos 11, 16, 26, 29, 81, 87, 94, 95, 98, 99, 100, 105, 108, 111, 138, 144 and 182) and should, for the most part, include information in reply to comments made by the Committee. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any assistance needed. The Committee requests the Government to take the necessary steps without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Guinea

The Committee notes with *deep concern* that for the fifth year in succession the reports due on the application of ratified Conventions have not been received, and that 48 reports are now due (Conventions Nos 3, 11, 13, 14, 16, 26, 29, 45, 62, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 114, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 135, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159 and 182) and should, for the most part, include information in reply to comments made by the Committee. The Office again drew the Government's attention to this worrying situation in the letter it wrote on 5 September 2011 further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011). In that letter, the Office also informed the Government that it was ready to provide any necessary assistance. The Committee again emphasizes that the Government received a scholarship for training in international labour standards in May 2010. It asks the Government without delay to take the necessary measures, including recourse to further technical assistance from the Office, to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation. The Committee notes in this connection that, from 24 to 28 October 2011, Guinea received training in the drafting of reports for submission under article 22 and that some reports were thus drafted. It accordingly trusts that the Government will soon be in a position gradually to submit the 48 reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Guinea-Bissau

The Committee notes that the first report on the application of Convention No. 182, due since 2010, has not been received. While emphasizing the effort the Government made to send 26 reports this year out of the 29 requested, the Committee hopes that the Government will soon submit the abovementioned first report. It notes in this connection that the Government has asked the Office to provide technical assistance enabling the reports on the application of Conventions Nos 138 and 182 to be prepared in a tripartite and participatory manner. The Committee also notes that a three day workshop, devoted to the drafting of these two reports, took place in November this year. The Committee notes

the Government's intention to send the two reports before the end of 2011 and hopes that it will soon submit all the reports due, in accordance with its constitutional obligation.

## Guyana

The Committee notes with *deep concern* that for the fourth year in succession the reports due on the application of ratified Conventions have not been received and that 36 reports are now due (Conventions Nos 2, 11, 12, 19, 29, 42, 45, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111, 115, 129, 131, 135, 136, 137, 138, 139, 140, 141, 142, 144, 149, 150, 151, 166, 172, 175 and 182), most of which should include information in reply to comments made by the Committee. The Office again drew the Government's attention to this worrying situation in the letter it wrote on 5 September 2011 further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011). In the same letter, the Committee informed the Government that it was ready to provide all necessary assistance. The Committee points out that the officials responsible for preparing the reports received training in July 2010 and that, at the time, the Government stated its commitment to communicating the reports. The Committee notes with *regret* that, despite the Government's assurances and regular follow up by the Office, the communication of reports has not resumed. The Committee urges the Government to take the necessary measures without delay to submit the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Ireland

The Committee notes that the reports due on the application of ratified Conventions have not been received and that 36 reports are now due (Conventions Nos 6, 11, 12, 14, 19, 26, 27, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 111, 118, 121, 122, 124, 132, 138, 139, 142, 144, 155, 159, 160, 176, 177, 179, 180 and 182), most of which should include information in reply to comments made by the Committee. While noting that reports and information were submitted in 2010, the Committee again points out that there is now a significant backlog of overdue reports. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide all necessary assistance. The Committee takes due note of the explanations given in the Government's letter of 10 November 2011 to the effect that, in view of the limited resources available, it is difficult for the Ministry to meet its reporting obligations. The Committee also notes that the Government will endeavour to submit the reports due, as early in 2012 as is possible, in accordance with its constitutional obligation.

## Kazakhstan

The Committee notes that the first report on the application of Convention No. 167 (due since 2010) and another on the application of Convention No. 185 have not been received. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any necessary assistance. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Kyrgyzstan

The Committee notes with *deep concern* that, for the second year in succession, the reports due on the application of ratified Conventions have not been received. It notes that 42 reports are now due: the first reports on the application of Convention No. 111 (due since 1994), Conventions Nos 17 and 184 (due since 2006), Conventions Nos 131 and 144 (due since 2009), Conventions Nos 97 and 157 (due since 2010) as well as 35 other reports (Conventions Nos 11, 16, 23, 29, 69, 73, 77, 78, 79, 81, 87, 92, 95, 98, 100, 105, 108, 113, 115, 119, 120, 122, 124, 126, 133, 134, 138, 147, 148, 149, 150, 154, 159, 160 and 182), most of which should include information in reply to comments made by the Committee. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office again informed the Government that it was ready to provide any necessary assistance. The Committee expresses the firm hope that the Government will respond to that offer in order to clear the large backlog of reports. It urges the Government to take the necessary measures to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Libya

The Committee notes that Libya is now in a transitional phase following the changes that have taken place there. It is accordingly aware of the exceptional circumstances that are affecting the country and depriving it of the institutions necessary to the fulfilment of its reporting obligations under article 22 of the ILO Constitution. It has, therefore, decided to postpone until its next session the examination of the extent to which Libya applies the Conventions it has ratified and the reports on which are due for the period under consideration.

The Committee refers to the high-level discussion that the Office organized on “Challenges and Change in the Arab World” during the 310th Session of the Governing Body in March 2011, one aim of which was to highlight the role the ILO has in the renewal process in the interests of ensuring that the resulting changes respond to the fundamental concerns about decent work shared by governments, employers and workers, and by society as a whole. In that context the Office advocated strategies that seek, among other goals, to enhance social justice, to promote rights and in particular freedom of association and collective bargaining, and to reinforce democratic governance. Pointing out that the ILO affords support in these areas, the Committee encourages the Government to request technical assistance from the Office with that in mind

## Netherlands

### Netherlands Antilles

The Committee has been informed that the Government sent the Director-General a declaration indicating that, from 10 October 2010, the Netherlands Antilles would cease to exist as part of the Kingdom of the Netherlands. The declaration also indicated that from the same date, the Kingdom would consist of the Netherlands, Aruba, Curaçao and Sint Maarten. The other territories that likewise formed part of the Netherlands Antilles until 10 October 2010, namely Bonaire, Sint Eustatius and Saba, would be treated as the Caribbean part of the Netherlands.

The Committee has also been informed that on 2 September 2010, the Office sent a communication to the Government requesting further information on the applicability of Conventions ratified by the Netherlands to the territories concerned. In a communication of 4 March 2011, the Government specified that Curaçao and Sint Maarten would have the same internal autonomy as Aruba and that the Conventions declared applicable to the Netherlands Antilles would henceforth apply to these two non-metropolitan territories. Consequently, the Committee has this year examined the reports submitted.

The Committee has been informed that the Office has asked the Government to provide further information on the islands of Bonaire, Sint Eustatius and Saba.

## Nigeria

The Committee notes that for the second year in succession the reports due on the application ratified Conventions have not been received and that 26 reports are now due: the first report on the application of Convention No. 185 (due since 2010), and 25 other reports (Conventions Nos 8, 11, 16, 19, 29, 32, 45, 81, 87, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179 and 182). Most of them should include information in reply to comments made by the Committee. The Committee also notes that two officials of the Ministry of Labour received training in early 2011. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office again informed the Government that it was ready to provide any assistance needed. It requests the Government to take the necessary steps without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Sao Tome and Principe

The Committee notes that the reports due on the application of ratified Conventions have not been received and that 17 reports are now due: the first report on the application of Convention No. 184 (due since 2007) and 16 others (Conventions Nos 17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 106, 111, 138, 144, 159 and 182). Some of these reports should include information in reply to comments made by the Committee. It also notes that two officials of the Ministry of Labour received training in May 2010 at the ILO International Training Centre in Turin. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any necessary assistance. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Seychelles

The Committee notes that the first reports on the application of Conventions Nos 147, 161 and 180 (due since 2007) have not been received. While fully aware of the effort the Government made to send the first report on the application of Convention No. 73 (due since 2007), the Committee hopes that the Government will soon submit the other first reports, in accordance with its constitutional obligation.

## Sierra Leone

The Committee notes with *deep concern* that, for the sixth year in succession, the reports due on the application of ratified Conventions have not been received. It notes that 26 reports are now due (Conventions Nos 8, 16, 17, 19, 22, 26,

29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126 and 144), most of which should include information in reply to comments made by the Committee. In its letter of 5 September 2011, further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Office informed the Government that it was ready to provide any necessary assistance. The Committee expresses the firm hope that the Government will take the necessary measures without delay to submit all the reports and information due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Somalia

The Committee is aware of the exceptional circumstances that affected this country and notes that, for the sixth year in succession, the reports due on the application of ratified Conventions have not been received and that 13 reports are now due (Conventions Nos 16, 17, 19, 22, 23, 29, 45, 84, 85, 94, 95, 105 and 111). As the Office indicated in the letter of 5 September 2011 that it sent further to the conclusions adopted by the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), the Committee hopes that as soon as the situation in the country allows, the Office will be able to provide all necessary assistance to allow the Government to submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## United Kingdom

### St Helena

The Committee notes that the first report on the application of Convention No. 182 (due since 2010) has not been received. While fully conscious of the effort the Government made to send 17 reports this year out of the 21 reports requested, the Committee hopes that the Government will soon send the abovementioned first report, in accordance with its constitutional obligation.

## Vanuatu

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received and that 5 reports have been due since 2008 (Conventions Nos 87, 98, 100, 111 and 182), and one since 2010 (Convention No. 185). The Committee notes the effort the Government made to send the first reports on the application of Conventions Nos 29 and 105. It also notes that an official of the Ministry of Internal Affairs received training in May 2010 at the ILO International Training Centre in Turin. The Committee hopes that the Government will soon submit these reports, in accordance with its constitutional obligation.

## Yemen

The Committee notes that, for the second year in succession, the reports due on the application of ratified Conventions have not been received. It notes that 17 reports are now due: the first report on the application of Convention No. 185 (due since 2010) and 16 other reports (Conventions Nos 16, 19, 29, 58, 81, 87, 98, 100, 105, 111, 122, 138, 144, 156, 158 and 182) and should, for the most part, include information in reply to comments made by the Committee. It notes the statement made by the Government representative to the Committee on the Application of Standards at the 100th Session of the International Labour Conference (June 2011), who pointed out that in view of the situation prevailing in the country and the absence of any specialized technical personnel, it was impossible to meet the reporting obligations. The Committee hopes that as soon as the situation in the country allows, the Office will be able to provide all necessary assistance to allow the Government to submit expeditiously the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Barbados, Bulgaria, Burkina Faso, Burundi, Comoros, Croatia, Denmark: Greenland, Eritrea, France: French Polynesia, Ghana, Greece, Haiti, Iceland, Kiribati, Lebanon, Liberia, Luxembourg, Mongolia, Nepal, Pakistan, Rwanda, San Marino, Slovakia, Slovenia, United Republic of Tanzania: Tanganyika, Thailand, Timor-Leste, Uganda.*



## Freedom of association, collective bargaining and industrial relations

### Afghanistan

#### **Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1979)**

The Committee notes that in its report, the Government indicates that the Labour Code of the Islamic Republic of Afghanistan has been enacted. The Committee further notes the Government's indication that the new Code applies to the rural workers. The Committee observes, however, that section 1 of the Labour Code "regulates the obligations, rights, privileges and social needs of workers", and that section 3(2) of the Code defines workers as "government employees, workers and contractors". The Committee recalls that under *Article 2(1)* of the Convention the term "rural workers" means any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or as a self-employed person such as a tenant, sharecropper or small owner-occupier. ***The Committee therefore requests the Government to clarify whether self-employed workers in the agriculture sector enjoy the rights under the Convention.***

The Committee previously requested the Government to provide statistical information concerning the number of rural workers' organizations in the country and to indicate the number of workers who are members of such organizations. The Committee notes the Government's indication that, currently there are about 45,000 rural organizations working for the development and socio-economic uplift of local areas/their own communities, as well as dispute resolution through elected representatives. The Government indicates, however, that workers in rural areas as well as those in agriculture have not formed unions although they are allowed by law to do so. The Government adds that it is largely attributed to the peculiar situation confronting Afghanistan and, in particular, the security situation. ***In the light of this information, the Committee requests the Government to provide information on any policy it had adopted or carried out and steps it had taken pursuant to Articles 5 and 6 of the Convention to eliminate obstacles to the establishment of an organization of rural workers, their growth and the pursuit of their lawful activities, as well as to promote the widest possible understanding of the need to further the development of rural workers' organisations and of the contribution they can make to improving employment opportunities and general conditions of work and life in rural areas, as well as to increasing the national income and achieving a better distribution thereof.***

### Albania

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

The Committee notes the Government's reply to the 2009 observations made by the Confederation of Trade Unions of Albania (CTUA). Furthermore, the Committee notes the observations made by the International Trade Union Confederation (ITUC) in its communication dated 4 August 2011 on matters already examined by the Committee.

*Article 2 of the Convention. Right to organize of foreign citizens.* The Committee had previously requested the Government to take the required measures, where necessary through an amendment to the legislation, to ensure that all workers, including foreign workers without a residence permit, can exercise trade union rights, and particularly the right to join organizations which defend their interests as workers. The Committee notes the Government's indication that the Committee's recommendation will be taken into consideration when the Act on Foreigners will be reviewed. ***The Committee hopes that the Government's next report will contain information on the amendment of section 5(4) of the Act on Foreigners, in order to ensure that foreign workers enjoy the right to organize as required by Article 2 of the Convention.***

*Article 3. Right of organizations to freely organize their activities and to formulate their programmes.* The Committee has been commenting for many years on the need to ensure that public servants who do not exercise authority in the name of the State are able to exercise the right to strike. The Committee notes that the Government refers in its report to a conceptual draft paper on the new Law "On civil service" in Albania stipulating that civil servants will be entitled to the right to strike but with a number of restrictions, which have to be clearly defined in the law. ***The Committee firmly expects that the Government will take the necessary measures to amend the Act on the conditions of service of civil employees without further delay, so as to allow public servants who do not exercise authority in the name of the State to exercise the right to strike in conformity with Article 3 of the Convention. It requests the Government to submit copies of the revised legislation as soon as adopted.***

In its previous observations, the Committee requested the Government to indicate the measures taken to amend section 197/7(4) of the Labour Code, under the terms of which a sympathy strike is lawful if it is organized in support of a lawful strike against an employer who is actively supported by the employer of the sympathy strikers. The Committee recalled that workers should be able to stage sympathy strikes provided that the initial strike that they are supporting is itself lawful. The Committee notes that the Government again indicates that solidarity strikes will be defined in compliance with ILO recommendations when the Labour Code will be reviewed. ***The Committee firmly expects that the***

*necessary action will be taken in the near future to amend section 197/7(4) of the Labour Code so as to bring it into conformity with the Convention.*

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

The Committee notes the Government's reply to the 2009 comments made by the Confederation of Trade Unions of Albania (CTUA). Furthermore, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in its communication dated 4 August 2011.

*Article 1 of the Convention. Protection of workers against acts of anti-union discrimination.* In its previous comments, the Committee, noting the CTUA comments regarding cases of anti-union dismissals and related legislative shortcomings, reminded the Government that the Convention prescribes adequate protection against acts of anti-union discrimination and invited the Government to join forces with the social partners to examine the matter of remedies for anti-union dismissals. The Committee notes that the Government refers in its report to several provisions of the Labour Code setting forth measures concerning protection of trade union rights. The Committee observes that section 146(3) of the Labour Code provides, in cases of anti-union discrimination, for compensation of up to the wage of one year, and section 202(1) for a fine of up to 50 times the minimum wage; that the termination of a union official requires the prior consent of the relevant workers' organization (section 181(4)); but that the remedy of reinstatement is only made available to public administration employees (section 146(3)). The Committee also notes that the ITUC reports that, according to the CTUA, anti-union behaviour is widespread and includes dismissals, transfers, demotions and wage cuts and the law does not allow the victims to obtain reinstatement in their jobs. While it is understood that systems providing for preventive measures (such as prior authorization), sufficiently dissuasive sanctions or reinstatement, are deemed to be compatible with the Convention, the Committee notes with *regret* that, although it had previously urged the Government to take all necessary steps without delay to establish the arbitration tribunal and labour court provided for in the Labour Code, the Government indicates that arbitration tribunals have not yet become operational in practice. The Committee notes the Government's statement that the Ministry of Justice has planned to undertake the legal initiative of drafting the new law on arbitration, which will be accompanied by the relevant procedures of the Civil Procedure Code, and that work has started for drafting this initiative. The Committee also notes that the ITUC reports that, according to Albanian trade unions, courts are overloaded and that it takes around three years to review cases of anti-union harassment. ***Recalling once again that the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough unless they are accompanied by effective and rapid procedures to ensure their application in practice, and highlighting that justice delayed is justice denied, the Committee urges the Government to take all necessary measures to establish the arbitration tribunal and labour court provided for in the Labour Code without further delay so as to provide for expeditious means to protect against and effectively redress acts of anti-union discrimination. The Committee requests the Government to supply information with regard to the status of the legal initiative concerning a new law on arbitration as well as copies of the relevant text as soon as adopted.***

*Article 4. Promotion of collective bargaining.* Noting in its previous comments that under section 161 of the Labour Code, collective agreements may only be concluded at enterprise or branch level, and that according to the Government no collective agreements at national level had yet been concluded, the Committee had asked the Government to submit to the National Labour Council the matter of promoting collective bargaining in the public and private sectors, including the possibility of bargaining at national level, and to supply information on developments in collective bargaining in practice. The Committee notes that in referring to collective bargaining at national level, the Government reiterates that no collective agreements have, as yet, been negotiated or entered into, but that a social memorandum of understanding was concluded in February 2011 between the Council of Ministers, the employers' and workers' organizations and the members of the National Labour Council (however, not all parties have yet signed, with the exception of the CTUA). ***The Committee requests the Government to continue to make efforts, as required by Article 4, to encourage and promote voluntary collective bargaining in the public and private sectors, including the possibility of bargaining at national level, in particular by mobilizing tripartite forums such as the National Labour Council. The Committee hopes that the Government's next report will contain information on positive developments in this respect.***

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

## **Algeria**

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

The Committee notes the Government's reply to the observations of the International Trade Union Confederation (ITUC) which concerned the prosecution of members of teachers' trade unions for taking strike action. The Committee notes the ITUC's new observations, dated 4 August 2011, which address points already raised by the Committee and among other matters report instances of repression and harassment of strikers. It also notes the Government's indication in reply to these latter comments that in two cases police executed court orders of eviction. In this respect, the Committee

recalls that police intervention to enforce the execution of a court decision affecting strikers should observe the elementary guarantees applicable in any system that respects civil rights and fundamental freedoms. The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances. Governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive use of force in trying to control demonstrations that might undermine public order.

The Committee also takes note of the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2701 (its June 2010 meeting) urging the Government to register without delay the National Union of Vocational Training Workers (SNTFP), whose application to register has been awaiting approval since 2002. The Committee notes the Government's indication that the application is being re-examined.

*Article 2 of the Convention. Right to establish trade unions.* The Committee noted previously that section 6 of Act No. 90-14 of 2 June 1990 restricts the right to establish a trade union organization to persons who are Algerian by birth or who have had Algerian nationality for at least ten years. Pointing out that the right to organize must be guaranteed to workers and employers without distinction or discrimination whatsoever, with the exception of those categories specified in *Article 9* of the Convention, and that foreign workers too must have the right to establish organizations, the Committee requested the Government to take the necessary steps to amend section 6 of Act No. 90-14 so as to grant all workers, without distinction as to nationality, the right to establish a trade union organization. The Committee notes that in its report, the Government states that foreign workers may join one of the existing trade unions, and are thus able to exercise the right to organize as soon as they become members. The Government confirms that they are able to participate in the trade union activities carried on by their organizations and may stand for election to executive office. Noting the amendment requested by the Committee, the Government replies that it will be undertaken in the context of the Labour Code reform. ***The Committee hopes that the legislative reform will be undertaken in the near future and requests the Government to provide information on developments in this regard, particularly on any amendment of section 6 of Act No. 90-14 providing for all workers, without distinction as to nationality, the right to form a trade union organization.***

*Articles 2 and 5. Right of workers to establish and join organizations of their own choosing without previous authorization and to establish federations and confederations.* In its previous comments, the Committee requested the Government to take specific measures to amend the legislative provisions that prevent workers' organizations, irrespective of the sector to which they belong, from forming federations and confederations of their own choosing (sections 2 and 4 of Act No. 90-14). The Committee notes that the Government repeats its previous response, namely that it is aware of the need to word this provision more clearly so as to allow workers' organizations, irrespective of the sector to which they belong, to form federations and confederations. ***The Committee again urges the Government to report any developments regarding the amendment of section 4 of Act No. 90-14 so as to remove all obstacles preventing workers, regardless of the sector to which they belong, from establishing federations and confederations of their own choosing.***

*Article 3. Right of organizations to carry on their activities in full freedom and formulate their programmes.* In its previous comments the Committee drew attention to section 43 of Act No. 90-02 under which strikes are forbidden not only essential services the interruption of which may endanger the life, personal safety or health of the population, but also where the strike "is liable to give rise to a serious economic crisis". The Committee requested the Government to take steps to amend the Act or to adopt a regulatory text that would clarify this point along the lines indicated by the Government, namely that the wording of section 43 should be similar to that used by the Committee, which refers to "strikes which, by reason of their scope and duration, are liable to cause an acute national crisis". The Committee notes that in its report, the Government repeats that the wording of section 43 allows no interpretation other than that of the Committee. ***In order to avoid all ambiguity, the Committee is bound once again to ask the Government to adopt a text amending section 43 of Act No. 90-02 or a regulatory text stating expressly that strikes are forbidden in essential services the interruption of which may endanger the life, personal safety or health of whole or part of the population, or where the strike, by reason of its scope and duration, is liable to cause an acute national or local crisis.***

Lastly, the Committee commented previously on section 48 of Act No. 90-02 which empowers the Minister or the competent authority, where the strike persists and mediation has failed, or where imperative economic or social need so require, to refer the dispute to the National Arbitration Commission after consulting the employers' and workers' representatives. The Committee requested the Government to take measures without delay to ensure that the National Arbitration Commission may be called upon to end a collective labour dispute only at the request of both parties and/or in the event of a strike in essential services in the strict sense of the term, or in the event of a strike the scope and duration of which are liable to cause an acute national or local crisis, or in the event of a dispute in the public service involving public servants exercising authority in the name of the State. The Committee notes that in its report the Government provides further details of the arbitration procedure, indicating in particular that pursuant to section 11 of Executive Decree No. 90-148 of 22 December 1990, the application to the National Arbitration Commission must include a submission setting out the imperative economic and social needs requiring referral of the dispute, and it must also set out the arguments as to the advisability of referral put forward by the employer and the representatives of the workers concerned by the dispute. It further notes that in its last report, the Government states that the amendment to section 48 of Act No. 90-02 requested by the Committee will be dealt with in the context of the draft Labour Code. ***The Committee requests the Government to provide information on developments in this regard, in particular on any amendments, introduced***

*in the context of the planned legislative reform, to section 48 of Act No. 90-08 to ensure that recourse may be had to the National Arbitration Commission only in the instances set out above.*

## Angola

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

The Committee takes note of the Government's reply to the comments made by the International Trade Union Confederation (ITUC), the National Union of Angolan Workers – Trade Union Confederation (UNTA–CS) and the General Federation of Independent and Free Trade Unions of Angola (CGSILA). The Committee also notes the comments of the ITUC dated 4 August 2011 on matters already dealt with by the Committee, in particular those concerning restrictions on collective bargaining.

*New Constitution.* The Committee notes the adoption on 21 January 2010 of the new Constitution of the Republic, which recognizes: (1) freedom of assembly, demonstration and association of all citizens (sections 47 and 48); (2) freedom of occupational association of all workers in independent or liberal professions and all self-employed workers as a whole (section 49); and (3) workers' right to organize and strike (sections 50 and 51).

*Legislative reforms.* In its previous comments, the Committee noted new Bills to revise the Collective Bargaining Act No. 21-A/92, the Trade Union Act No. 21-C/92 and the Strike Act No. 23/91, which contained some of the amendments it had suggested and underlined as necessary. The Committee had requested the Government:

- to indicate whether the legislation guarantees the right to collective bargaining of public employees who are not engaged in the administration of the State and, if so, to indicate the relevant provisions. The Committee had also requested the Government to specify which public services were not organized in the form of an establishment whose employees were excluded from the scope of Act No. 20-A/92 by virtue of section 2 of this instrument. The Committee notes that, in its recent comment, the ITUC points out that collective bargaining is restricted in the public sector.
- to send information on the collective wage bargaining of public employees who were not engaged in the administration of the State. The Committee takes note of the information provided by the Government stating that: (1) wages increases are negotiated within the Council for Social Dialogue which is a tripartite body; (2) there are difficulties in the area of collective bargaining in the country, and the Government has requested ILO technical assistance to cope with this problem. The Committee recalls that according to *Article 4* of the Convention, all public servants other than those engaged in the administration of the State should enjoy the right to collective bargaining. ***The Committee hopes that the technical assistance requested will be provided in the near future and requests the Government to indicate whether the trade union organizations of public servants who are not engaged in the administration of the State have, under the new Constitution, the right to negotiate with their public employers on working conditions other than wages.***
- to amend sections 20 and 28 of the Collective Bargaining Act No. 20-A/92 which provide that collective labour disputes in public utility enterprises may be settled through compulsory arbitration by the Ministry of Labour, Public Administration and Social Security after the parties have been heard. The Committee had noted that the list of public utility activities (section 1.3) was much broader than the concept of essential services in the strict sense of the term (namely, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). ***The Committee requests the Government to indicate whether the adoption of the new Constitution has had an impact on the validity of the provisions of Act No. 20-A/92. If not, the Committee requests the Government to take the necessary measures to amend – within the framework of the technical assistance requested by the Government – sections 20 and 28 of the Act in question so that compulsory arbitration may be imposed only in cases involving essential services in the strict sense of the term.***

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

***The Committee hopes that the Government will take account of all the comments made in order to bring the current legislation fully in line with the Convention. The Committee requests the Government once again to enclose a copy of the Bill revising the Collective Bargaining Act No. 20-A/92 with its next report, or the text that might have been adopted meanwhile.***

## Antigua and Barbuda

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

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes. Compulsory arbitration.* In its previous comments, the Committee had requested the Government to take the necessary steps to amend section 19 of the Industrial Court Act 1976, which permits the referral of a dispute to the

court by the minister or at the request of one party with the consequent effect of prohibiting strike action. The Committee notes that, while the Government indicates that efforts will continue to bring the Industrial Court Act 1976 into conformity with the Convention, and that section 19 is being considered, it reiterates in its report that it has no intention to change its position as regards the power of the minister to refer a dispute to binding arbitration resulting in a ban on strike action. In this regard, the Committee recalls that compulsory arbitration resulting in a ban on strike action should be limited to strikes in essential services in the strict sense of the term, to public servants exercising authority in the name of the State or to cases of acute national or local crisis, or at the request of both parties. ***The Committee once again requests the Government to take the necessary measures to amend section 19 of the Industrial Court Act 1976 taking into account the abovementioned principles.***

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

***Essential services.*** The Committee had also requested the Government to take the necessary steps to amend the overly broad list of essential services in the Labour Code, in particular with respect to the government printing office and the port authority. In this regard, it had noted the comments of the Government that the government printing office could be excluded from the list of essential services, and that strikes at the port should not be banned, but should be controlled. In this regard, the Committee had recalled that the implementation of a minimum service for workers at the port authority would be in conformity with the Convention. The Committee had further noted that the Government indicated that it had amended the list of essential services in the Labour Code. The Committee notes that the Government indicates in its latest report that amendments to the Labour Code are still being considered by the Cabinet. ***The Committee expresses the hope that the announced amendments to the list of essential services will be adopted in the near future, so as to eliminate from this list the government printing office and the port authority, which are not essential services in the strict sense of the term, and requests the Government to provide, with its next report, details of these legislative amendments, as well as a copy of the current list of essential services.***

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

## Argentina

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

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) and those of 31 August 2010 by the Confederation of Workers of Argentina (CTA), which refer to legislative matters already raised by the Committee and which allege violations of trade union rights in practice (including the death of a demonstrator and an armed attack on the home of a trade union leader). The Committee notes the Government's reply to these comments but observes that it contains no mention of the alleged acts of violence. ***The Committee draws attention to the seriousness of the allegations and requests the Government to send its observations thereon.***

The Committee also notes the comments of 31 August 2011 from the General Confederation of Labour (CGT), expressing the view that the legislation is not in breach of freedom of association.

The Committee recalls that in its last observation it noted the report of the mission undertaken in May 2010, which was exploratory in nature and which addressed pending issues pertaining to the application of the Convention.

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

The Committee has been noting in its observations since 2005 that the CTA's application for "trade union status" (a status which confers certain exclusive rights such as the conclusion of collective agreements, protection of union officials, payment of trade union dues through deductions from wages by the employer, etc.) (filed in August 2004) is pending. On several occasions the Committee of Experts, in the same way as the Conference Committee on the Application of

Standards and the Committee on Freedom of Association (in Case No. 2477), has urged the Government to secure a decision on this matter without delay. In its 2011 comments, the CTA states that the process has not advanced and that the Ministry of Labour is still undecided as regards the application for “trade union status”. The Committee notes from the report of the mission that visited the country in 2010, that draft resolutions have been submitted to the Chamber of Deputies and the Senate calling for “trade union status” to be granted to the CTA. The Committee notes that in its report the Government again indicates that there are doubts about what the law says regarding the possibility of the coexistence of trade union federations covering multiple sectors and that intervention in the proceedings by the Office of the Prosecutor General of the Ministry of Finance is being considered, and that these are complex situations in which a number of parties are involved and where, furthermore, there are many doubts as to whether the complainants’ claim is admissible, under the relevant legislation. While noting the fresh information sent by the Government, the Committee *deplores* the length of time that has elapsed (over seven years) without any decision from the administrative authority on the CTA’s application for “trade union status”. ***The Committee points out the importance of this matter and again urges the Government to ensure that an immediate decision is reached. It requests the Government to provide information on any developments in this regard.***

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

For many years the Committee has been referring in its comments to certain provisions of the Act on Trade Union Associations No. 23551 of 1988 and its enabling regulations issued by Decree No. 467/88, which are not in conformity with the Convention. The Committee notes that the Government reiterates the information provided in previous reports and indicates that: (1) as pointed out to the exploratory technical assistance mission undertaken in the country in 2010, the complexity of the situation is an obstacle to progress in amending the legislation since views on the need for amendment are not unanimous or convergent; (2) the ILO Mission noted this complexity and the attendant difficulties and its advice was that any reform of the legislation on trade unions – including the issue of “trade union status”, on which the Committee of Experts has also commented – must fully observe the principle of tripartism and that, in particular, in-depth tripartite consultations should be held in order to reach agreed solutions as far as possible; (3) the Mission saw that all parties, and especially the Government, were predisposed to dialogue, but unfortunately, it has not as yet been possible to consult more thoroughly because of an internal institutional dispute within the CTA, which has been ongoing since the middle of last year, so that progress along the path proposed by the ILO Mission and shared by the Government has not been possible; and (4) consequently, the Government hopes that on conclusion of this episode, which has lasted since the middle of last year, it will be able to meet the social partners in order to seek agreed solutions as far as possible with all social partners involved.

While appreciating this information, the Committee points out that the issues it has addressed in its comments are the following:

#### ***“Trade union status”***

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

#### ***Benefits deriving from “trade union status”***

- section 38 of the Act, under which the check-off of trade union dues is allowed only for associations with “trade union status”, and not for associations that are merely registered. The Committee points out that, as emphasized by the Supreme Court of Justice of the Nation, “most representative” status should not imply, for the union that obtains it, privileges other than priority of representation in collective bargaining, in consultations with the authorities and in the appointment of delegates to international bodies. The Committee therefore considers that this provision adversely affects and discriminates unduly against organizations that are merely registered;

- sections 48 and 52 of the Act which give special protection (trade union immunity) only to representatives of organizations that have “trade union status”. The Committee considers that sections 48 and 52 provide preferential treatment for representatives of organizations with “trade union status” in the event of acts of anti-union discrimination, and that this exceeds the privileges that may be granted to the most representative organizations by virtue of the principle set out in the previous paragraph.

### Court rulings

In its previous observations the Committee noted that the Supreme Court of Justice of the Nation found, in a number of different rulings, that sections 41(a) and 52 of the Act on Trade Union Associations to be unconstitutional, and that Chamber IV of the National Labour Appeal Court found section 29 of the same Act to be unconstitutional. The Committee notes with *interest* the final ruling of Chamber II of the National Labour Appeal Court in the case *Ministry of Labour v. Association of Airline Pilots*, finding section 29 of the Act on Trade Union Associations to be unconstitutional, and the ruling by the Supreme Court of Justice of the Province of Buenos Aires in the case *Sandes, Hugo Raúl v. Subppga SA* relating to compensation for dismissal, finding sections 48 and 52 of the Act on Trade Union Associations to be unconstitutional on the ground that they infringe the principle of freedom of association, enshrined in the Constitution.

The Committee notes that in its report the Government states that: (1) under the Constitution, any finding, even by the Supreme Court of Justice, that some rule (for example a provision of a law) is unconstitutional, applies solely to the specific instance or court case in which it was handed down, and on no account implies the repeal or invalidity of the rule itself, which will remain fully in force for as long as it is not repealed or amended either by the Legislature or by the Executive, whichever of the two is competent to do so; (2) in this way the system ensures observance of the principle of the separation of powers, so that the Judiciary does not impinge on the authority that the National Constitution confers on the other powers; (3) the two cases on which the Court ruled have no bearing on the observations made to the Argentine trade union system, because in the public administration – which is where both situations arose, it is established by Ministry of Labour, Employment and Social Security Resolution No. 255 that “trade union status” granted to representative associations in the public sector shall not replace pre-existing “trade union status” held by other associations.

***The Committee welcomes the fact that the rulings handed down by the Supreme Court of Justice of the Nation and other national and provincial courts contribute to overcoming a significant part of the problems pending and trusts that they will be taken into account in the tripartite dialogue process that the Government plans to pursue.*** As it did in its previous observation, the Committee points out that it has been making comments for many years without any specific measures being taken to make the amendments requested. The Committee reminds the Government that the Conference Committee on the Application of Standards asked the Government in 2007, together with all the social partners and with technical assistance from the ILO, to draft a bill to give full effect to the Convention. ***It firmly requests the Government, following a tripartite examination of the report of the Mission that visited the country in 2010 and taking account of the court rulings declaring unconstitutional a number of provisions of the Act on Trade Union Associations No. 23551, to take the necessary steps to bring the legislation into line with the Convention, and trusts that in its next report the Government will provide information on progress made in this respect.***

### Determination of minimum services

In its previous comments, the Committee noted that the CTA had referred to Decree No. 272/2006 issued under section 24 of Act No. 25877 on collective labour disputes, objecting specifically to the fact that, under section 2(b) of the Decree, the Guarantees Commission, which includes representation of workers’ and employers’ organizations and of other independent persons for the determination of minimum services, may act only in an advisory capacity, since the final decision on the determination of necessary minimum services lies with the Ministry of Labour where “the parties have not come to an agreement” or “when the agreements are inadequate”. The Committee noted in this connection Decree No. 362 of the National Executive Authority, establishing the Guarantees Commission and appointing its members (with representatives of the Argentine Industrial Union, the Argentine Federation of Law Societies, the National Inter-University Council, the Confederation of Workers of Argentina, the General Confederation of Labour of the Republic of Argentina and the Executive authority), and asked the Government to provide information on cases – in the period covered by the report – in which the Guarantees Commission has intervened regarding minimum services and whether the administrative authority has followed its recommendations in practice. The Committee notes that the Government states in this connection that the Guarantees Commission has intervened on two occasions: (1) in a collective dispute in the province of Mendoza involving the Association of Health Professionals of Mendoza; and (2) in a collective dispute in the province of Tierra del Fuego involving the Association of State Workers. The Committee takes note of this information.

***[The Government is asked to reply in detail to the present comments in 2012.]***

## Australia

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

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2011, and of the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 on the application of the Convention.

The Committee notes that the Government indicates that from 1 January 2010, all states other than Western Australia referred their industrial relations powers to the Commonwealth, essentially creating a new national industrial relations system for the private sector known as the national system. Pursuant to the Fair Work Act 2009, the Fair Work Regulations 2009, the Fair Work (Registered Organizations) Act 2009 and the Fair Work (Registered Organizations) Regulations 2009, the national system covers constitutional corporations, the Commonwealth and its authorities, employers who employ flight crews, maritime employees or waterside workers in connection with interstate or overseas trade and commerce, all employers in Victoria, the Northern Territory and the Australian Capital Territory, private sector employers in New South Wales, Queensland, South Australia and Tasmania and local government employers in Tasmania. The Committee notes that the following employers are not covered by the Fair Work Act: (1) state public sector or local government employment or employment by non-constitutional corporations in the private sector in Western Australia; (2) state public sector and local government employment in New South Wales, Queensland and South Australia; and (3) state public sector employment in Tasmania.

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous observation, the Committee had noted the concerns raised by the ACTU that most of the restrictions in place under the Workplace Relations Act, 1996, (WR Act) remained in place in the Fair Work Act and had requested the Government to review the following provisions in consultation with the social partners concerned, so as to bring them into conformity with the Convention:

- (i) absence of protection for industrial action aimed at achieving:
  - multiple business agreements (section 413(2));
  - “pattern bargaining” (sections 409(4), 412, 422, 437(2));
  - secondary boycotts and general sympathy strikes (sections 408–411 and Trade Practices Act 1974);
- (ii) negotiations over “unlawful terms” including: to extend unfair dismissal benefits to workers not yet employed for the statutory period; to provide strike pay; to pay bargaining fees to a trade union; and to create a union right to entry for compliance purposes that are different or superior to those contained within the Act (sections 172, 194, 353, 409(1) and (3) and sections 470–475); and
- (iii) provisions which allow for restrictions or prohibitions of industrial action, including through the introduction of compulsory arbitration at the initiative of the Minister, when industrial action is threatening to cause harm to the Australian economy or the life, personal safety or health, or the welfare of the population or a third party (sections 423, 424, 426 and 431).

As regards pattern bargaining, the Government reaffirms that industrial action taken in support of pattern bargaining is not protected under the Fair Work Act but that making common claims across multiple workplaces is not considered to be pattern bargaining if the bargaining representative is genuinely trying to reach an agreement and is willing to negotiate claims at each enterprise (section 412); relevant considerations under section 412(3) include whether the bargaining representative is: (1) demonstrating a preparedness to take into account the individual circumstances of the particular employer; (2) bargaining in a manner consistent with the terms of the agreement being determined as far as possible by agreement between that employer and its employees, and; (3) meeting the good faith bargaining requirements.

As regards industrial action in support of claims for unlawful terms, the Committee takes note of the decisions by Fair Work Australia (FWA) to refuse an application for a protected action ballot order on grounds that it was satisfied that the union’s proposed agreement included an unlawful term, with the result that the proposed industrial action would not have been protected and which led to the issuance of an order terminating the proposed action. The Committee further notes that the Government reaffirms that it is unlawful, under the Fair Work Act, for an employer to pay, or an employee to demand or request, strike pay and that this provision is consistent with the general common law rule that employees are not entitled to receive payment for employment services they do not perform. The Government nevertheless indicates that the Federal Magistrates Court dismissed an employer’s claim that the union had impermissibly asked the employer to pay strike pay, on the basis that expressing a view that employees “should” be paid did not constitute a “demand” for payment in the circumstances.

In respect of the prohibition of secondary boycotts and sympathy strikes, the Committee notes that the Government indicates that the Competition and Consumer Act 2010 has replaced the Trade Practices Act 1974 but that the secondary boycott provisions have not been amended and that it is not contemplating making such amendments. Furthermore, the Committee had previously noted the need to amend sections 30J and 30K of the Crimes Act, 1914, which respectively prohibit industrial action threatening trade or commerce with other countries or among states and 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. In addition, section 419 of the Fair Work Act requires FWA to suspend or terminate industrial action in non-national enterprises or by non-national employees, if the event will or would be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation. The Committee observes that the Government has taken note of its request to review sections 30J and 30K of the Crimes Act 1914 and further notes its indication that there has been one interim order made by FWA under section 419 of the Fair Work Act which was revoked shortly thereafter and no written decision has yet been published in relation to this matter. The Committee nevertheless notes with *regret* that the Government has not made any amendments to sections 30J and 30K of the Crimes Act 1914 and has maintained the prohibition of secondary boycotts in the Competition and Consumer Act 2010 despite the repeal of the Trade Practices Act 1974 and its long-standing comments in this regard.

As regards FWA authority to suspend or terminate protected industrial action where it causes or threatens to cause significant economic harm pursuant to section 423, the Committee notes the Government's indication that FWA must be satisfied that the threat of significant economic harm is imminent, that the industrial action is protracted and that the dispute will not be resolved in the reasonably foreseeable future as well as further factors listed in section 423(4). The Committee takes note that FWA has considered applications but had not, at the time of reporting, suspended or terminated protected industrial action under section 423 of the Fair Work Act. The Committee further notes that FWA declined to suspend or terminate a protected industrial action on the grounds that it was not convinced that the dispute would not be resolved in the foreseeable future and that FWA did not consider that an action which was causing considerable economic harm to the employer was significant enough in terms of it being exceptional in either its character or magnitude, and further considered that terminating the protected industrial action at that time would not assist in facilitating bargaining and resolving the dispute in the reasonably foreseeable future.

As regards FWA authority to suspend or terminate protected industrial action where it threatens to endanger the life, personal safety or health, or welfare, of the population or part of it or cause significant damage to the Australian economy or an important part of it under section 424 of the Fair Work Act, the Committee notes the Government's indication that applications have been received by FWA under this section and that, like under section 423, FWA has set a high threshold for ending industrial action on these grounds. The Committee however notes comments made by ACTU with regard to a decision of FWA, upheld in appeal, to suspend protected action for two weeks in the context of industrial action in the education sector, on the basis that a union ban on recording and transmitting exam results threatened the welfare of graduating students by prejudicing their ability to secure future employment. ACTU indicates that this decision was taken despite the union having taken steps to set up an exemptions committee to ensure that any student with a genuine need to obtain results could do so. The ACTU considers that a broad interpretation of section 424 unduly restricts the rights of workers to take industrial action. The Committee further notes that the Government indicates that FWA considered cases concerning actions causing damage to the Australian economy and started applying the decision of the High Court of Australia which ruled that there must be a rigorous basis for deciding that protected industrial action is causing significant damage to the Australian economy over and above "generalized predictions" as to the likely consequence of the industrial action in question.

As regards FWA authority to suspend protected industrial action where it is threatening to cause significant harm to a third party under section 426 of the Fair Work Act, the Committee notes the Government's indication that FWA may take into account the extent to which the protected action threatens to damage the ongoing viability of an enterprise carried on by a person, disrupt the supply of goods or services to an enterprise carried on by the person, reduce the person's capacity to fulfil a contractual obligation or cause other economic loss to the person. FWA must also be satisfied that the suspension is appropriate, taking into account whether the suspension would be contrary to the public interest or inconsistent with the objects of the Act. The Government indicates that section 426 was considered by FWA which concluded that the expression "significant harm" required the identification of harm that was exceptional in its character or magnitude, out of the ordinary and over and above harm of the sort that is commonly a consequence of protected industrial action.

The Committee takes due note of the detailed information provided by the Government concerning the limitations on the use of the abovementioned provisions. It also notes the Government's indications that it has not amended the abovementioned provisions as it considers that, overall, the industrial action provisions of the Fair Work Act strike the right balance between an employee's right to strike and the need to protect life and economic stability in a manner that is appropriate to Australia's national conditions and that FWA has set a high threshold for allowing for suspension or termination of protected industrial action in specific circumstances under sections 423, 424, 426 of the Fair Work Act.

The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2698 (357th Report, paragraphs 213–229) concerning the abovementioned provisions. The Committee recalls 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. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers (General Survey of 1994 on freedom of association and collective bargaining, paragraph 147). The Committee further recalls that the right to strike may only be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of

the State; or (2) in essential services in the strict sense of the term. The Committee recalls that a broad range of legitimate strike action could be impeded by linking restrictions on strike action to interference with trade and commerce. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service “essential” and thus do not justify restrictions on the right to strike. ***The Committee requests once again the Government to take all appropriate measures, in the light of its previous comments and in consultation with the social partners, to review the abovementioned provisions of the Fair Work Act, the Competition and Consumer Act 2010 and the Crimes Act 1914 with a view to bringing them into full conformity with the Convention. In the meantime, the Committee requests the Government to continue providing detailed information on the application of these provisions by the FWA.***

***Strike ballots.*** The Committee recalls the concerns raised by the ACTU that the ballot process could be used by employers to frustrate or delay the taking of protected industrial action. In this regard, the Committee recalls that under the Fair Work Act, industrial action must be authorized by a protected action ballot of employees except where employees are taking protected industrial action in response to industrial action taken by their employer. Section 459 of the Fair Work Act requires at least 50 per cent of employees on the roll of voters to vote, and of these, more than 50 per cent must approve the proposed action. The Committee notes that the Government indicates that for FWA to make a protected action ballot order where an application is made under section 437 it must be satisfied that each applicant has been, and is, genuinely trying to reach an agreement with an employer (section 443(1)). Whether an applicant has been genuinely trying to reach an agreement is a question of fact to be determined in the circumstances of the particular case. The Government further indicates that a substantial body of case law has developed about the meaning of “genuinely trying to reach an agreement” in the context of protected action ballot applications. The Committee takes note in particular of the general indicia set out by FWA including: (1) the length of negotiations, including the amount of explanation and detail exchanged between the applicant and other parties; (2) the extent of progress in negotiations and steps taken to try to reach an agreement; and (3) whether the applicant has articulated its claims and has provided responses to proposals made by other parties. The Committee further notes that the recent statistics provided by FWA indicate that in the December 2010 quarter, 189 protected application ballots were made and 184 granted and that in the March 2011 quarter, 134 applications were made and 115 granted.

***The Committee requests the Government to continue to take steps to ensure that the exercise of the right to strike in practice is not restricted by unduly challenging and complicated strike ballot procedures and to continue providing statistics on the number of protected action ballots authorized out of a total number of applications, as well as to any important or excessive delays resulting from this procedure.***

***Access to the workplace.*** The Committee recalls that it previously raised the need to amend the restrictive conditions set for granting a permit allowing trade union representatives to have entry to the workplace in order to meet with workers. In its previous observation, the Committee had noted that, under the Fair Work Act, a union official must hold a permit provided by FWA in order to have the right of entry for a certain workplace. In determining whether to grant an entry permit, FWA will consider any matter it considers relevant, including whether the applicant has ever been convicted of violating an industrial law or convicted of a crime involving fraud, entry into premises, or intentional use of violence or destruction of property (section 513). The Committee had further noted that the Fair Work Act permits union officials to hold discussions with employees who are members, or eligible to be members, of a union and to enter workplaces to investigate suspected breaches of the Act or an instrument made under the Act and had requested the Government to provide information on the practical application of this provision, including statistics relating thereto.

The Committee notes that the Government indicates that it considers that the Fair Work Act retains a fair and balanced framework for right of entry for officials of organizations and empowers FWA to deal with abuses of rights by officials, unreasonable requests by employers and disputes. The Government further indicates that FWA has reported in its quarterly reports that 1,079 applications for a right of entry permit have been received since July 2010 and 866 have been granted. ***The Committee requests the Government to continue providing information on the practical application and impact of these provisions concerning workers representatives’ access to the workplace in its next report, including on the delay in which entry permits are granted and the grounds provided for denying applications or revoking permits.***

***Building industry.*** The Committee recalls from previous comments that the Building and Construction Industry Improvement (BCII) Act of 2005: (i) renders virtually all forms of industrial action in the building and industrial sector unlawful (sections 36, 37 and 38 of the BCII Act 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) introduces severe financial penalties, injunctions and actions for uncapped damages in case of “unlawful industrial action” (sections 39, 40 and 48–50 of the BCII Act); (iii) gives the enforcement agency known as the Australian Building and Construction Commission (ABCC) wide-ranging coercive powers akin to an agency charged with investigating criminal matters, which have allegedly resulted in interference in the internal affairs of trade unions, including through the use of the power to impose a penalty of six months’ imprisonment for failure to comply with a notice to produce documents or give information (sections 52, 53, 55, 56 and 59 of the BCII Act); and (iv) grants the capacity to the Minister for Workplace Relations to regulate industrial affairs in the building and construction industry by ministerial decree through a device referred to as a building code which is inconsistent with the Convention on several points and is implicitly “enforced” through an “accreditation scheme” for contractors who wish to enter into contracts with the

Commonwealth. The Committee recalls that it previously requested the Government to indicate any progress made concerning the adoption of new legislation in respect of the building and construction industry in full conformity with the Convention.

The Committee notes that the Government indicates in its report that the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009, introduced into the Parliament on 17 June 2009, was not adopted before the Parliament was prorogued when the 2010 Federal election was called, and has been placed on the legislative agenda to be reintroduced in the 2011 spring sitting of Parliament. The Committee further notes the Government's indication that in early 2011, the ABCC Commissioner conducted a review of the practice and procedure relating to the use of powers under section 52 of the BCII Act and has, where possible, voluntarily adopted the Wilcox report recommendations and put in place some safeguards which should be respected before issuing a notice under section 52 of the BCII Act. The Government further indicates that the Commonwealth Ombudsman will be invited to conduct its own investigation on each occasion where section 52 powers are used as well as asked to review the way in which the ABCC Commissioner intends to use these powers.

The Committee notes with *regret* that the abovementioned restrictions remain unchanged in the construction and building industry and observes with *concern* the allegations made by the ITUC and the ACTU respectively that ABCC inspectors continue to harass trade union members and officials in the construction sector, including by conducting secret interrogations of individual workers, and that the ABCC investigations and prosecutions show a strong bias in targeting trade unions and workers. ***The Committee requests the Government to provide its observations on the ITUC and the ACTU comments and to take all necessary measures to ensure that trade union members and officials in the construction sector are not victim of harassment and targeting by the ABCC. The Committee further expresses once again the firm hope that the legislative reform undertaken in the building and construction industry will soon be completed and will bring the legislation into full conformity with the Convention. The Committee requests the Government to provide further information in this respect in its next report, including information related to the use of section 52 powers by the ABCC and to related investigations conducted by the Commonwealth Ombudsman.***

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

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2011 and the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 on the application of the Convention, in particular as regards: (1) the alleged intention of the Government of South Australia to unilaterally cut entitlements of public sector workers which had been agreed upon in good faith through collective agreements; and (2) the recommendations of the review of state industrial relations made by the Western Australian Government to give employers the power to insist their employees sign individual contracts and to remove unfair dismissal protections for employees in small businesses. ***The Committee requests the Government to provide its observations on these matters in its next report.***

The Committee notes that the Government indicates that from 1 January 2010, all States other than Western Australia referred their industrial relations powers to the Commonwealth, essentially creating a new national industrial relations system for the private sector known as the national system. Pursuant to the Fair Work Act 2009, the Fair Work Regulations 2009, the Fair Work (Registered Organizations) Act 2009 and the Fair Work (Registered Organizations) Regulations 2009, the national system covers constitutional corporations, the Commonwealth and its authorities, employers who employ flight crews, maritime employees or waterside workers in connection with interstate or overseas trade and commerce, all employers in Victoria, the Northern Territory and the Australian Capital Territory, private sector employers in New South Wales, Queensland, South Australia and Tasmania and local government employers in Tasmania. The Committee notes that the following employers are not covered by the Fair Work Act: (1) State public sector or local government employment or employment by non-constitutional corporations in the private sector in Western Australia; (2) State public sector and local government employment in New South Wales, Queensland and South Australia; and (3) State public sector employment in Tasmania.

*Article 1 of the Convention. Adequate protection against acts of anti-union discrimination in respect of employment.* In its previous comments, the Committee raised the need to ensure that workers are adequately protected against anti-union discrimination, especially against 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). Pursuant to sections 347 and 772 of the Fair Work Act, 2009, and to information provided by the Government, the Committee understood that protections against anti-union discrimination, including against dismissals, covered pattern bargaining to the extent that the parties were genuinely trying to reach an agreement. The Committee requested the Government to provide information on the manner in which industrial action related to pattern bargaining was protected in practice, including any relevant decisions from Fair Work Australia. The Committee further requested the Government to indicate the steps taken or envisaged to ensure protection against anti-union dismissals related to actions taken in respect of multiple business agreements.

The Committee notes that the Government indicates in its report that the industrial activity protection under Part 3-1 of the Fair Work Act only prohibits adverse action being taken against a person who engages in lawful activity and that industrial action related to pattern bargaining is not considered to be a lawful industrial activity under the Act unless the parties are genuinely trying to reach an agreement. ***As the Government has not provided any further information in relation to protection of industrial action related to pattern bargaining, the Committee once again requests the Government to provide information on any relevant decisions emanating from FWA and the steps taken to ensure protection in relation to action aimed at achieving multiple business agreements.***

*Article 4. Promotion of collective bargaining.* The Committee previously noted with satisfaction that individual statutory agreements were not part of the new system established under the Fair Work Act but that, in line with the Government's prior policy commitments, existing Australian Workplace Agreements (AWAs) would continue to apply until they are terminated. The Committee requested the Government to provide information on the application of these provisions in practice.

The Committee notes that the Government reiterates that the Fair Work Act does not allow for "employer greenfields agreements" and that the making of greenfields agreements between employers and relevant employee organizations is regulated by section 172(2)(b) of the Act. The Government indicates that as of 31 December 2010, greenfields agreements represented 6.1 per cent of all Fair Work Act agreements (551 out of 9,077) and reaffirmed that AWAs and Individual Transitional Employment Agreements (ITEAs) can no longer be made but AWAs lodged on or before 27 March 2008 and ITEAs lodged on or before 31 December 2009 continue to operate until they are terminated or replaced: they can be terminated by common agreement of the employer and employee at any time, or unilaterally when they reach their nominal expiry date and, once terminated, any new enterprise agreement that covers the employee will then apply. Unilateral conditional termination can also be made pending the making of a new enterprise agreement to enable the employee to participate in collective bargaining for an enterprise agreement.

The Committee draws the attention to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No 2698 (357th Report, paragraphs 213–229) regarding the possibility for employers pursuant to the Fair Work Act to enter into agreements directly with employees, even where a union exists. The Committee underlines that the Committee on Freedom of Association recalled that direct negotiation between an undertaking and its employees, bypassing representative organizations where these exist, might, in certain cases, be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, and requested the Government to ensure respect for this principle and to provide detailed information on the application of section 172 of the Fair Work Act in practice. ***The Committee requests the Government to continue to provide information on the application and impact of section 172 in practice, as well as, on the current situation with regard to AWAs and ITEAs, including further statistical data on the number of AWAs and ITEAs terminated since the entry into force of the Fair Work Act, the number of remaining AWAs and ITEAs applicable and their expected termination dates.***

In several of its previous comments, the Committee had raised the need to repeal or amend sections 151(1)(h), 152, 331(1)(a)(ii) and 332(3) of the Workplace Relations Act so as to ensure that multiple business agreements were not subject to a requirement of prior authorization at the discretion of the employment advocate. The Committee had noted that section 186 of the Fair Work Act requires that any enterprise agreement be authorized by the FWA and that FWA may only approve multi-employer agreements if it is satisfied that no person coerced, or threatened to coerce, any of the employers to make the agreement. The Committee had further noted that the Fair Work Act allowed employers who wish to voluntarily bargain together for a multi-enterprise agreement to do so with no public interest test and no requirement of FWA approval but that, in this instance, employers and employees would not have access to protected industrial action.

The Committee notes that the Government indicates in its report that during the period of 1 July 2009 to 31 December 2010, 56 per cent of the agreements approved by FWA were multi-enterprise agreements. The Committee further notes that the FWA provides a special stream of bargaining for multi-enterprise agreements for low paid workers who have not historically participated in enterprise level bargaining: FWA must make a low paid authorization if it is satisfied that making the authorization is in the public interest pursuant to section 243 of the Fair Work Act. The Committee observes that the Government states that the first low paid authorization was made by FWA on 5 May 2011 and will cover aged care employees. As regards pattern bargaining, the Committee notes that the Government reaffirms that the Fair Work Act does not prevent employer and employee representatives from engaging in discussions at the industry level and provides examples of cases in which parties have been involved in discussions at the industry level including in universities and independent schools, in the offshore oil and gas industry as well as in the metal and in the construction and building industries. The Committee notes that FWA took into account the factors listed under section 412(3) to determine whether a bargaining representative was genuinely trying to reach an agreement and was willing to negotiate claims at each enterprise.

The Committee further draws the attention to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2698 (357th Report, paragraphs 213–229) in this respect.

Finally, the Committee observes that the Government explains that the effect of terminating protected industrial action under sections 423, 424 or 431 is that bargaining representatives have a negotiating period of 21 days (extendable to 42 days by FWA) in which to resolve the matters at issue and that, if the parties are unable to reach agreement, FWA must make a binding industrial action related workplace determination which has effect as an enterprise agreement

(sections 266–268 of Part 2–5 of Division 3 of the Fair Work Act). The Committee notes that no such determination has yet been made. The Committee further observes that under section 240 of the Act, a bargaining representative may request FWA to deal with a dispute about a proposed enterprise agreement if the bargaining representatives are unable to resolve the dispute and that the application may be made by one bargaining representative, whether or not the other bargaining representatives for the agreement have agreed to the making of the application if the proposed agreement is a single-enterprise agreement or a multi-enterprise agreement in relation to which a low-paid authorization is in operation. 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 under the Convention, and thus the autonomy of bargaining partners and that, based on the premise that a negotiated agreement, however unsatisfactory, is to be preferred to an imposed solution, the parties should always retain the option of returning voluntarily to the bargaining table (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 257 and 259). ***The Committee requests the Government to clarify the role of FWA in case of continuing disagreement between the parties and whether the parties remain able to resume negotiations at any point.***

*Building industry.* The Committee recalls that it previously requested the Government to: (i) revise section 64 of the Building and Construction Industry Improvement (BCII) Act to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or the decision of the administrative authority; and (ii) promote collective bargaining, especially by ensuring that there are no financial penalties or incentives linked to undue restrictions on collective bargaining. The Committee had previously noted with interest the Government's indication that it has introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill, 2009 in order to amend the BCII Act and it would: (i) repeal section 64 of the BCII Act with the effect that the level of bargaining would be determined in accordance with the Fair Work Act; and (ii) retain the capacity currently for the Minister to issue a Building Code though, to date, the Government has not issued a Building Code under section 27 of the BCII Act.

The Committee notes that the Government indicates in its report that the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009, introduced into the Parliament on 17 June 2009, was not adopted before the Parliament was prorogued when the 2010 federal election was called, and has been placed on the legislative agenda to be reintroduced in the 2011 spring sitting of Parliament. The Committee further notes the Government's indication that the ABC Commissioner is engaged with the social partners about the content and production of a Guide to Good Faith Collective Bargaining in the Building and Construction Industry to be published in 2011. ***The Committee takes note of the information and expresses once again the firm hope that the undertaken legislative reform in the building and construction industry will soon be completed in full conformity with the Convention. The Committee requests the Government to provide information in this respect in its next report as well as information on the progress made in the development of the Guide to Good Faith Collective Bargaining in the building and construction industry.***

## Azerbaijan

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

*Article 3 of the Convention.* The Committee had previously requested the Government to amend section 281 of the Labour Code, which, according to the Government, prohibits strikes in the railway and air transport sectors, and section 233 of the Criminal Code, which penalizes strikes in public transport with penalties of up to three years of imprisonment, so as to ensure that workers of public transport, including those employed in air and railway transport, can exercise the right to strike, and to provide information on any measures taken or envisaged in this respect. The Committee notes that in its report, the Government indicates that the consultations with the relevant state authorities and social partners resulted in the understanding that like the hospital sector, electricity and water supply services, transport and postal services are basic services where the right to strike can be restricted or even prohibited. The Committee recalls that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively. It considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee recalls that while the hospital sector, electricity and water supply services can indeed be considered essential, transport services in general, including air and railway transport, and postal services do not constitute 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 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, 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 impartiality. 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. *The Committee expresses the hope that the Government's next report will contain information on measures taken or envisaged to amend section 281 of the Labour Code and section 233 of the Criminal Code so as to ensure that air and railway transport sector workers can exercise the right to strike, taking into account the principles described above.*

The Committee had previously noted the Government's indication that section 6(1) of the Act on Trade Unions, according to which "trade unions are prohibited from engaging in political activity, associating with political parties or carrying out joint activities, providing and receiving assistance or donations to/from political parties" was repealed in 2006. *The Committee once again requests the Government to transmit with its next report a copy of the repealing instrument.*

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

*Articles 1 and 4 of the Convention.* The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 alleging that despite an adequate protection of trade union rights in law, trade union activities in multinational companies are often reprimanded in practice. The Committee recalls that it had previously noted similar comments made by the ITUC in 2007, which also alleged that employers often delayed negotiations and unions rarely participated in determining wage levels and were often bypassed in the conclusion of bilateral agreements between the Government and multinational enterprises. The Committee *regrets* that the Government's report contains no observations on the ITUC 2007 comments. *Once again recalling that it is the responsibility of the Government to ensure the application of the Convention, the Committee requests the Government to initiate an investigation into the ITUC's allegations and to provide information on the measures taken in this respect. It further requests the Government to provide its observations on the ITUC's allegations.*

The Committee notes that the Government's report contains information on the protection against acts of anti-union discrimination and the collective bargaining procedure.

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 bipartite (between trade unions and the authorities) or tripartite (between trade unions, employers' organizations and the authorities of the appropriate level) negotiations. The Committee recalled that while tripartism was particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), the principle of tripartism should not replace the principle of autonomy of workers' organizations and employers (or their organizations) in collective bargaining on conditions of employment. The Committee also recalled that, according to *Article 4* of the Convention, free and voluntary bargaining with a view to the regulation of terms and conditions of employment should be conducted between workers' organizations and an employer or employers' organization and therefore requested the Government to take measures to amend its legislation so as to bring it into conformity with the Convention. The Committee *regrets* that no information has been provided by the Government in this respect. *It therefore reiterates its previous requests and reminds the Government that ILO technical assistance remains at its disposal on the abovementioned issues.*

## **Bahamas**

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

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

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

*Right of workers and employers to establish organizations without previous authorization.* In its previous direct request, the Committee noted that, according to section 8(1)(e) of the IRA, the registrar shall refuse to register a trade union if he considers, after applying the rules for the registration of trade unions, that the union should not be registered. The rules for registration are provided in Schedule I. According to section 1 of the Schedule, in applying the rules of the registration of trade unions, the registrar shall exercise his discretion. The Committee noted the Government's statement that this provision is intended to ensure that there is no confusion or ambiguity regarding the rights of workers to certain information (finances and related

matters) and that trade unions do not adopt names that are similar in nature and thereby confusing to the bargaining unit. As already stated, it is the Committee's view that provisions which confer on the competent authority a genuinely discretionary power to grant or reject a registration request, or to grant or withhold the approval required for the establishment and functioning of an organization, are tantamount to a requirement for previous authorization which is not compatible with *Article 2* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 74). **The Committee therefore asks the Government once again to take the necessary measures to ensure that no discretionary power is conferred to the registrar to refuse the registration of trade unions or employers' organizations and to provide information on any measures taken or envisaged in this respect.**

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

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

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

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

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

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

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

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

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

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

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

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

Finally, the Committee notes the comments submitted by the International Trade Union Confederation in a communication dated 4 August 2011, which refer to matters previously examined by the Committee.

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

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

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

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

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

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

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

Finally, the Committee notes the comments submitted by the ITUC, dated 4 August 2011, which refer to matters previously examined by the Committee.

## **Bangladesh**

### **Right of Association (Agriculture) Convention, 1921 (No. 11) (ratification: 1972)**

In its previous comments, recalling that all those engaged in agriculture – including those not employed in the organized sector – enjoy the same rights of association and combination as industrial workers, the Committee requested the Government to provide concrete information on the number of existing trade unions in the agricultural sector and the number of collective agreements concluded.

The Committee notes that the Government provides statistics in its report regarding the number of existing trade unions in the agricultural sector (jute: 161; tobacco: 68; sugar: 17; fisheries: 6; rubber: 24; tea: 10) for a total of around 282,000 members. *The Committee requests the Government to provide additional information in its next report on the number of collective agreements concluded in the agricultural sector.*

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

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

*Workers' and employers' organizations comments.* The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) in previous years. With respect to ITUC allegations concerning acts of violence, physical assault and arrests of trade union leaders and trade unionists that participated in strikes in the garment sector, the Committee notes that the Government indicates that: (i) it is fully aware and committed to freedom of association free from violence, pressure or threats of any kind and that the labour situation has improved after lifting the state of emergency; (ii) some groups and persons were creating anarchy in industrial areas and were involved in criminal activities and in these circumstances, the police and intelligence agency have taken measures to

maintain law and order situation and that people were arrested for criminal offences, not for taking part in trade union activities; (iii) to protect public properties and to clear the blockades organized in the garment sector, the law enforcement agencies had to interrogate some violence-creating persons, but they did not harass anyone, those actions were not aimed at harassing trade union leaders, nor to disrupt the trade union activities in the country and further, law enforcement agencies are performing their duties under directives and close supervision of the Ministry of Home Affairs; (iv) at that time, 350 women trade unionists, including the General Secretary of the Women's Committee of the Jatiya Sramik League, were arrested as they were in the crowd but they were released after a while and no charges were brought against them; and (v) it believes that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind and that the laws do not allow any undue interference with trade union activities.

The Committee further notes the Bangladesh Employers' Federation's comments related to the ITUC's allegations of acts of violence and that it indicated in particular that: (i) in the garment sector, trade unions are affiliated to different political parties and they act according to the instigated instruction of those political parties; (ii) killing, assaults and arrests are not at all desirable in workplaces; (iii) the reason of such undesirable acts is unawareness on the part of trade unions about the principle of freedom of association and that, therefore, workers carry out acts of vandalism, damage and blockade of the roads and highways for the realization of demands instead of negotiation or bipartite discussions; (iv) in such situation, the law enforcement authority has to enforce the law; and (v) under such circumstances, the workers as well as employers of the garment sector need to be educated through a process of training and awareness raising, which should explain the benefits of freedom of association to the workers' and employers' organizations. The Committee understands that the Government is availing itself of ILO technical assistance to raise awareness of freedom of association rights in the sector, and expects that this assistance will promote the full realization of these rights in the sector.

With respect to its request to indicate the status of the court case concerning the Bangladesh Garments and Industrial Sramik Federation (BGIWF) registration, the Committee notes that the Government indicates that the Department of Labour submitted the case for the cancellation of the registration of the BGIWF for violation of its constitution and unfair labour practice to the labour court in 2008 (No. 51 of 2008), and that the next hearing date was fixed on 16 November 2011. ***The Committee requests the Government to indicate in its next report the status of the registration of the BGIWF.***

Finally, the Committee notes the comments submitted by the ITUC on 4 and 31 August 2011, concerning allegations of killings and physical assaults of protesters and arrests, detention, harassment and violence against trade union leaders notably in the garment sector, the maritime sector, the shrimp cultivation and processing industry and export processing zones (EPZs) as well as the refusal by the Registrar of Trade Unions (RTU) to register new unions in the garment sector. ***The Committee requests the Government to take the necessary measures without delay to carry out investigations concerning these serious allegations with a view to determining responsibilities and punishing those responsible, and to provide full particulars in this respect.***

***Right to organize in EPZs.*** The Committee had previously noted the ITUC's allegation that the Bangladesh Export Processing Zones Authority (BEPZA) continued to raise obstacles to the establishment of workers' associations in EPZs. The Committee notes that in its 2011 comments, the ITUC indicates that, although the EPZ Workers' Association and Industrial Relations Act (2004) provided for the formation of trade unions in the EPZs, an amendment of this law in 2010, only replaced the term "Workers' Association" by "Workers' Welfare Society", which means that the right to form trade unions in EPZs remains far off. The Committee notes that the Government indicates that the BEPZA is doing its utmost to ensure that Workers' Welfare Societies are established in all enterprises within the shortest possible time. ***The Committee requests the Government to: (i) provide information and statistics on the number of workers' welfare societies established in the EPZs; and (ii) inform of all steps taken to amend legislation so that EPZ workers may fully exercise the rights guaranteed by the Convention.***

The Committee further recalls that it had previously commented on the EPZ Workers' Associations and Industrial Relations Act 2004, which contains numerous and significant restrictions and delays in relation to the right to organize in EPZs. The Committee noted that according to the Government, the BEPZA was aware of the Committee's comments in this regard, which would be taken into consideration in the present review and amendment process of the EPZ Workers' Associations and Industrial Relations Act 2004. The Committee notes with ***deep regret*** that in August 2010, the Parliament passed the EPZ Workers' Welfare Society and Industrial Relations Act 2010 (EWWSIRA) without addressing any of its previous comments and that the EWWSIRA does not contain any real improvement in relation to the previous legislation.

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

- section 16, which provides that the Workers' Welfare Society 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 17(1), which provides that there can be no more than one Workers' Welfare Society per industrial unit;

- sections 6, 7, 9 and 12, which establish excessive and complicated minimum membership and referendum requirements for the establishment of Workers' Welfare Society (a Workers' Welfare Society may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of the BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the Workers' Welfare Society);
- section 9(2), which confers excessive powers to the Executive Chairperson of the BEPZA concerning the approval of the Constitution Drafting Committee;
- section 8, which prevents steps for the establishment of a Workers' Welfare Society in the workplace for a period of one year after a first attempt failed to gather sufficient support in a referendum;
- section 27, which permits the deregistration of a Workers' Welfare Society 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 Workers' Welfare Society for one year after the previous one was deregistered;
- sections 28(1)(c), (e)–(h) and 34(1)(a), which provide for the cancellation of the registration of a Workers' Welfare Society 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 46(3) and (4), which establishes a total prohibition of industrial action in EPZs until 31 October 2013 (section 81(1) and (2)) and 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 10(2), which prevents a Workers' Welfare Society from obtaining or receiving any funds from any outside source without the prior approval of the Executive Chairperson of the BEPZA;
- section 24(1), which establishes an excessively high minimum number of associations to establish a higher level organization (more than 50 per cent of the Workers' Welfare Societies in an EPZ);
- section 24(3), which prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs; and
- sections 20(1), 21 and 24(4), which do not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election is to be determined by the BEPZA).

The Committee also notes new subsection 4 of section 38 concerning check-off facilities which stipulates that “the executive council at the beginning of the calendar year shall, with the accounts statement of the previous year, submit for approval the current year's revenue budget containing income-expenditure to the Executive Chairman or to an officer authorized by him”. The Committee recalls that measures of supervision over the administration of trade unions may only be useful if they are employed to prevent abuses and to protect the members of the trade union themselves against mismanagement of their funds. Measures of this kind may, in certain cases, entail a danger of interference by the public authorities in the administration of trade unions. ***The Committee requests the Government to indicate the scope of application of this new subsection 4 of section 38 and its impact on check-off facilities.***

Moreover, the Committee notes that under section 80 of the EWWSIRA, Workers' Welfare Societies are now prohibited from establishing any connection to any political parties or non-governmental organizations. The Committee recalls that provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives and provisions which restrict the freedom of trade unions to administer and utilize their funds as they wish for normal and lawful trade unions purposes are contrary to the principles of freedom of association. ***The Committee therefore requests the Government to take the necessary measures to repeal section 80 of the EWWSIRA.***

The Committee further notes that a federation of the Workers' Welfare Societies cannot be legally formed until BEPZA has issued regulations. According to the ITUC's comments, to date, BEPZA has yet to issue these regulations, thus deliberately preventing the workers' associations to form a federation in EPZs. ***The Committee requests the Government to indicate the measures taken or envisaged to issue the regulations concerning the right of Workers' Welfare Societies to establish and join federations, in accordance with Article 5 of the Convention.***

*Other discrepancies between national legislation and the Convention.* The Committee once again recalls that for many years it had been referring to serious discrepancies between the national legislation and the Convention. In previous comments, the Committee noted the adoption of the Bangladesh Labour Act 2006 (the Labour Act), which replaced the Industrial Relations Ordinance of 1969, and noted with deep regret that the Labour Act did not contain any improvements in relation to the previous legislation and, in certain regards, contained even further restrictions which were contrary to the provisions of the Convention. The Committee took note of the Government's statement that a tripartite labour law review committee to identify the gaps and discrepancies in the Labour Act and suggest the necessary amendments had been constituted, as well as its indication that the workers excluded from the Labour Act's provisions were not covered by other legislation. The Committee notes the Government indicates in its report that the revision of the Labour Act with comments

of all levels of stakeholders is under process and that a 22 member's high-power tripartite committee headed by the State Minister of Labour and Employment has been constituted. ***The Committee once again requests the Government to provide information on any developments with regard to the review process referred to, including a copy of any relevant draft amendment, and expresses the firm hope that the Labour Act will soon be amended to remove the discrepancies previously identified, which it repeats as follows:***

- the need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Labour Act) as well as new restrictions of the right to organize of firefighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175 of the Labour Act). The Committee notes that the Government indicates that the telex and fax operators are allowed to exercise their trade union rights. ***The Committee requests the Government to indicate the legal provisions that grant trade union rights to the abovementioned workers;***
- the need to either amend section 1(4) of the Labour Act or adopt new legislation so as to ensure that the workers in the following sectors, which have been excluded from the scope of application of the Act including its provisions on freedom of association, have the right to organize: offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes; educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family;
- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seafarers engaged in merchant shipping (section 2 LXV, 175 and 185(2) of the Labour Act);
- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union, an act aimed at "intimidating" any person to become, continue to be or cease to be a trade union member or officer, or "inducing" any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291 of the Labour Act); the Committee considers that the terms "intimidating" or "inducing" are too general and do not sufficiently safeguard against interference in internal trade union affairs, since, for instance, a common activity of trade unions is to recruit members by offering advantages, including with regard to other trade unions;
- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a) of the Labour Act);
- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f) of the Labour Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5) of the Labour Act) and that only one trade union of seafarers shall be registered (section 185(3) of the Labour Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300 of the Labour Act);
- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Labour Act) upon penalty of imprisonment (section 299 of the Labour Act);
- the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers' organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e), 291 and 294–296 of the Labour Act);
- the need to repeal provisions which provide that no person refusing to take part in an illegal strike shall be subject to expulsion or any other disciplinary measure by the trade union, so as to leave this matter to be determined in accordance with trade union rules (section 229 of the Labour Act);

- the need to amend new provisions which define as an unfair labour practice on the part of workers, an act of compelling or attempting to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using “intimidation”, “pressure”, “threat” so as to ensure that there is no interference with the right of trade unions to engage in activities like collective bargaining or strikes, and to repeal the consequent penalty of imprisonment for such acts (sections 196(d) and 291(2) of the Labour Act);
- the need to amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (section 301 of the Labour Act).

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

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 4 and 31 August 2011, concerning the dismissal of more than 5,000 employees in the garment sector in 2010, in response to workers’ exercise of their trade union rights as well as several cases in which the leaders of worker welfare societies have been fired in retaliation for the exercise of trade union rights. ***The Committee requests the Government to provide its observations thereon.***

In its previous comments, the Committee had noted the comments submitted by the National Level Trade Union Federation of Workers (NCCWE), sent along with the Government’s report, stating that there is a weak implementation of labour law in general, and more particularly an unwillingness of employers to recognize trade unions and collective bargaining. The Committee notes the Government’s indication that with all its capacity, it has been very much committed to implement the provision of the Labour Act, 2006, all over the country and that it has established a Department of Labour (MOLE) which looks after the trade unions aspects in the country and a Department of Inspection for Factories and Establishments (DIFE). The Committee further notes that the Government has started the implementation of a Better Work Programme, with the assistance of the ILO.

*Articles 1 and 3 of the Convention. Protection of workers in export processing zones (EPZs) against anti-union discrimination.* In its previous comments, the Committee had noted that the ITUC referred to numerous problems concerning the application of the Convention in the EPZ sector, particularly in the garment industry. The ITUC further stated that although the law provides for the establishment of an EPZ labour tribunal and an EPZ labour appellate, these two bodies had yet to be established, thus denying workers access to the judicial system for their grievances. The Committee had requested the Government to provide information in respect of these matters, including information on the number of complaints of anti-union discrimination in the EPZ sector submitted to the competent authorities, as well as the outcomes of those complaints.

As concerns the establishment of an EPZ Labour Tribunal and an EPZ Labour Appellate, the Committee had previously noted that according to the Government, EPZ workers could seek judicial redress in cases of anti-union discrimination. The Committee had noted that the Government had decided to allow the existing labour courts of the country (established under the Labour Act, 2006) to dispose of EPZs industrial disputes and settle the workers’ complaints, by incorporating necessary modifications in sections 56 and 59 of the EPZ Workers Association and Industrial Relation Act 2004. The Committee notes that in August 2010, the Parliament passed the EPZ Workers’ Welfare Societies and Industrial Relations Act 2010 (EWSIRA) and that section 52 specifies that until the EPZ Labour Tribunal is established under section 48 and the EPZ Labour Appellate Tribunal is established under section 51, labour courts established under section 214 and the Labour Appellate Tribunal established under section 218 of the Bangladesh Labour

Act, 2006 shall be deemed to be the EPZ Labour Tribunal and the EPZ Labour Appellate Tribunal respectively for carrying out the purposes of the Act. The Committee also notes that the Government indicates in its report that two separate orders will be published within very short time regarding the EPZ Labour Tribunal and EPZ Labour Appellate Tribunal. The Committee recalls the principle that the Government is responsible for preventing all acts of anti-union discrimination and must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned. **The Committee requests the Government: (i) to provide statistics in its next report on the number of complaints of anti-union discrimination presented by workers in the EPZs before the labour courts established under sections 214 and 218 of the Bangladesh Labour Act, 2006; and (ii) to indicate the progress made regarding the adoption of the two separate orders on the EPZ Labour Tribunal and EPZ Labour Appellate Tribunal and to provide a copy of those two orders when adopted.**

The Committee further notes that the Government indicates in its report that the intervention of counsellors is well established in all EPZs to deal with employees' grievances (e.g. harassment, dismissal, violence) and that conciliators and arbitrators have the power to resolve disputes after counsellors, as per sections 40–45 of the EWWSIRA 2010. However, the Committee notes that according to the ITUC's 2011 comments, the Bangladesh Export Processing Zones Authority (BEPZA) has not yet appointed new conciliators (when the 2004 Act expired, the Government did not extend the tenure of the EPZ conciliator who was appointed under that act) as required under the EWWSIRA 2010 thus hampering industrial dispute resolution in the EPZs. **The Committee requests the Government to indicate the measures taken or envisaged to appoint new conciliators in the very near future, as requested under the EWWSIRA 2010.**

**Article 2. Lack of legislative protection against acts of interference.** The Committee had previously noted that the Labour Act 2006 did not contain a prohibition of acts of interference designed to promote the establishment of workers' organizations under the domination of employers or their organizations, or to support workers' organizations by financial or other means with the object of placing them under the control of employers or their organizations, and had requested the Government to indicate the measures taken to adopt such a prohibition. The Committee noted the Government's indication that protective measures are laid down in the Labour Act, particularly in sections 195 and 196 concerning "unfair labour practice on the part of the employer", and that such act by the employer is an offence punishable under section 291 of the Labour Act, which provides for a prison term which may extend to two years or with a fine of up to 10,000 Bangladeshi taka (BDT), or both. The Committee further noted the Government's indication that the Tripartite Labour Law Review Committee (TLLRC) may consider adopting a more comprehensive prohibition, as requested by the Committee. **Noting that no further information was provided by the Government in its present report, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to adopt a comprehensive prohibition that covers acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs. The Committee hopes that as a first step, the TLLRC will include in its recommendations that a comprehensive prohibition covering acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs should be adopted.**

**Article 4. Legal requirements for collective bargaining.** In its previous comments, the Committee had referred to section 179(2) of the Labour Act, which provides that a trade union may only obtain registration if it represents 30 per cent of the workers in an establishment, as well as to section 202(15) of the Labour Act, which provides that if there is more than one trade union in an enterprise, the Director of Labour shall hold a secret ballot to determine the collective bargaining agent. The Committee recalled that the percentage requirements for registration of a trade union, and for the recognition of a collective bargaining agent set out in sections 179(2) and 202(15) of the Labour Act 2006, may impair in certain cases, in particular in respect of large enterprises, the development of free and voluntary collective bargaining. The Committee notes that the Government indicates in its report that the percentage requirement in section 202(15) has been repealed and that it is the trade union that secures the highest number of votes that is declared as the collective bargaining agent. **The Committee notes this information with interest and requests the Government to provide the text of the new section 202 of the Labour Act, 2006.**

The Committee further noted that according to NCCWE, collective bargaining is limited as there is no legal provision for collective bargaining at the industry, sector or national levels. In this regard, the Committee notes the Government's indications that: (i) sections 202 and 203 of the Labour Act, 2006 directly concerns collective bargaining; (ii) the settlement of disputes through bipartite negotiations is done at the industry level and that similarly, different issues are settled through bipartite negotiation or through conciliation at the sector level, such as tea sector, shrimp sector, etc.; (iii) collective bargaining was also done at the national level through consultation with the Workers' Federation but such practice no longer prevails; and (iv) there are currently 7,297 trade unions registered with the Department of Labour, 32 national federations, 112 industrial federations and 36 garments industries federations and a total of 11 collective bargaining agreements. **The Committee requests the Government to amend sections 202 and 203 of the Labour Act, 2006 in order to provide clearly that collective bargaining is possible at the industry, sector and national levels. The Committee further requests the Government to provide statistics on the number of collective agreements concluded at the industry, sector and national levels respectively in its next report.**

**Promotion of collective bargaining in the EPZs.** In its previous comments, the Committee had requested the Government to provide information on the extent of collective bargaining in the EPZ sector, including statistics on the number of collective agreements concluded and the number of workers they cover. The Committee notes the

Government's indication that 302 enterprises are eligible for workers' associations among 366 in operation and that workers' associations referendums were held in 205 enterprises – or 67.88 per cent of the total number of eligible enterprises. However, no information was provided by the Government concerning the conclusion of collective agreements in the EPZs. The Committee notes that according to the ITUC, while elected Workers' Welfare Societies (what substitutes for trade unions in the absence of a legal right to form one) in the EPZs have been established, employers have failed to take the next step and bargain collectively as required by the EWWSIRA Act 2010. ***The Committee therefore once again requests the Government to provide information in its next report on the extent of collective bargaining in the EPZ sector, including statistics on the number of collective agreements concluded since 2008, and the number of workers they cover.***

The Committee further notes that according to the ITUC, there has been little progress on collective bargaining in the EPZs and that this is largely due to the BEPZA's insistence that there is no room for collective bargaining on any working conditions above the minimum standards already established in the 2004 Act and BEPZA Instructions 1 and 2. The ITUC adds that this largely eviscerates the bargaining provisions of the EWWSIRA 2010 and leaves no room for collective bargaining. The Committee recalls that excluding wages, working hours, rest periods, leave and conditions of works from the field of collective bargaining is not in harmony with *Article 4* of the Convention. ***The Committee requests the Government to ensure that this principle is applied in practice in the EPZs and to provide a copy of BEPZA Instructions 1 and 2.***

*Tripartite wages commissions in the public sector.* The Committee recalls that in its previous comments, it had requested the Government to take the necessary legislative or other measures to end the practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions (section 3 of Act No. X of 1974). The Committee noted that the Government indicated in its report that this system does not prevent free and voluntary collective bargaining. Nevertheless, the Committee, while recognizing the singularity of the public sector which allows special modalities, considered that simple consultation with unions of public servants not engaged in the administration of the State does not meet the requirements of *Article 4* of the Convention. The Committee notes that the Government once again reiterates its position. The Committee underlines that the Government has not referred to any collective agreement in the public sector. ***The Committee therefore once again urges the Government to take the necessary measures to end the practice of determining wage rates and other conditions of employment of public servants not engaged in the administration of the State by means of simple consultation in government-appointed tripartite wages commissions, so as to favour free and voluntary negotiations between workers' organizations and employers or their organizations. The Committee once again requests the Government to indicate any measures taken or contemplated in this regard.***

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

*Article 3 of the Convention.* *The right of organizations freely to organize their activities and to formulate their programmes.* The Committee recalls that for numerous years it has advised the Government to amend section 4 of the Better Security Act, 1920, according to which any person who wilfully breaks a contract of service or hiring, knowing that this could endanger real or personal property, is liable to a fine or up to three months' imprisonment, so as to eliminate the possibility of employers invoking it in cases of strikes. The Committee notes that the Government indicated that the administrative authority has undertaken to move towards the drafting of an essential services legislation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and measures of imprisonment should not be imposed on any account, including as regards strikes in essential services. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee trusts that the Government will take duly into account the abovementioned principle when drafting the essential services legislation. The Committee requests the Government to keep it informed of any developments in this respect and to provide a copy of the legislation once adopted. Moreover, the Committee once again requests the Government to amend section 4 of the Better Security Act, 1920, so as to bring it into conformity with the Convention.***

Furthermore, the Committee recalls that it has been requesting the Government since 1998 to provide information on developments in the process of reviewing legislation regarding trade union recognition to which the Government had referred, or to indicate whether the drafting legislation process concerning trade union recognition could be considered as abandoned. In its previous observation, the Committees had also noted that the Congress of Trade Unions and Staff Associations of Barbados indicated that the Government submitted an amended Trade Union Act Cap. 361 to trade unions for comment and review. The Committee had noted that the Government indicated that the drafting process regarding legislation or trade union recognition is ongoing. ***The Committee requests the Government to provide with its next report information on any development in this respect.***

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

Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, as well as the comments submitted by the Barbados Workers' Union (BWU) in a communication dated 1 September 2011, on issues already raised by the Committee.

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

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

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

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that in previous observations, it had requested the Government to take all the necessary measures to ensure that the legislation provides adequate protection against all acts of anti-union discrimination, in taking up employment and throughout the course of employment, including at the time of termination, and covering all measures of anti-union discrimination (dismissals, demotions, transfers and other prejudicial acts) as well as adequate and dissuasive sanctions. The Committee also noted the comments made by the ITUC referring to the inadequacy of remedies for workers discharged for their union activity since courts may not reinstate dismissed workers. The Committee had noted that the Government indicates in its report that section 40A of the Trade Union Act, CAP 361 provides that any employer who dismisses a worker or adversely affects the employment or alters the position of a worker, or threatens to dismiss or to adversely affect or alter the position of a worker, because that worker is, or seeks to become, an officer, delegate or member of a trade union or takes part in trade union activities can be subject to a fine not exceeding US\$1,000 or to imprisonment for a term not exceeding six months or to both. As regards the amount of the fines, the Committee recalls again the importance of making sanctions sufficiently dissuasive against acts of anti-union discrimination or interference. The Committee had previously noted with interest that the Government indicated that it was in the final stages of drafting a new employment rights legislation, which will, inter alia, make provisions for an employment rights tribunal to hear cases of unfair dismissals and to make awards where necessary. *Given that it appears that the envisaged protection would only cover cases of unfair dismissals, the Committee requests the Government to take the necessary measures to bring the legislation into conformity with the Convention as regards not only anti-union dismissals, but also other prejudicial acts perpetrated against union leaders and members because of their affiliation or trade union activities and in particular, to strengthen the amount of the legal fines and other relevant means which can be applied by the tribunal. The Committee requests the Government to provide a copy of the new employment rights legislation once adopted.*

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

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

## **Belarus**

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

*Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2011 concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee also notes the 361st Report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 detailing violations of the Convention, which the Committee had dealt with in its previous comments. It also notes the comments submitted by the Belarusian Congress of Democratic Trade Unions (CDTU) in a communication dated 30 August 2011.

The Committee notes that in its report, the Government reiterates its commitment to the social dialogue and cooperation with the ILO. It informs of its intention to organize, together with the ILO, a tripartite seminar in the country on the issue of social dialogue. The Government indicates that the situation of trade union rights in the country has stabilized. While there are still some contentious issues and some criticism from the trade union side, the Government considers this is a common feature of social dialogue. While noting this information, the Committee *regrets* that the Government provides very limited new information on the measures taken to implement the 2004 recommendations of the Commission of Inquiry and this Committee's previous requests in respect to the application of the following Articles of the Convention.

*Article 2 of the Convention.* The Committee recalls that in its previous observations it had urged the Government to take the necessary measures to amend Presidential Decree No. 2, its rules and regulations, so as to eliminate the obstacles to trade union registration (legal address and 10 per cent minimum membership requirements). The Committee notes that

in its communication, the CDTU points out that there have been no concrete proposals to amend the Decree, which continues to create obstacles to trade union registration. In this respect, the CDTU alleges that Polotsk municipality denied registration to the Free Trade Union primary organization of “Self-employed workers at Polotsk outdoor collective farm market”. ***The Committee is once again bound to note with deep regret the absence of any tangible measures taken by the Government to amend the Decree despite the numerous requests by the ILO supervisory bodies. It therefore once again urges the Government to take the necessary steps to that effect in consultation with the social partners so as to ensure that the right to organize is effectively guaranteed. The Committee requests the Government to indicate all measures taken in this respect.***

The Committee recalls that it had previously requested the Government to provide its observations on the CDTU’s allegations of refusal to register the primary trade union organization of the Belarus Independent Trade Union (BITU) at the “Delta Style” enterprise and to provide a copy of the Supreme Court Decision in the case of refusal to register “Razam” organization. The Committee notes the Government’s indication that the decision to deny registration to the BITU primary trade union organization at the “Delta Style” was due to the process of liquidation of the undertaking and its merger with the “Kupalinka” enterprise that occurred on 27 April 2011. The Committee considers that the restructuring of an enterprise, including by way of merger, should not preclude the right of workers to establish a trade union of their own choosing. The Committee also ***regrets*** that the Government failed to transmit the decision of the Supreme Court in the “Razam” case. ***The Committee strongly encourages the Government to continue cooperation with the social partners in addressing the issue of registration in practice and to indicate in its next report all progress made in this respect. It further requests the Government to indicate whether the BITU has applied for the registration of its primary trade union at the “Kupalinka” and if so, the outcome of the registration procedure.***

***Articles 3, 5 and 6.*** The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the CDTU, the BITU and the Radio and Electronic Workers’ Union (REWU) to hold demonstrations and meetings and requested the Government to conduct independent investigations into these allegations, as well as to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee once again notes with ***deep regret*** that no information has been provided by the Government in this respect. The Committee notes with ***concern*** that the CDTU alleged new cases of refusals to authorize the holding of demonstrations. ***Recalling that protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee urges the Government to indicate the measures taken to investigate the alleged cases of refusals to authorize the holding of demonstrations and meetings and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests.***

The Committee recalls that it had previously noted with concern the CDTU’s allegation that following a refusal by the “Delta Style” company’s management to authorize a trade union meeting, the chairperson of the Soligorsk BITU regional organization met with several women workers (on their way to their workplaces) near the entrance. Following this event, the chairperson was detained by the police on 4 August 2010 and subsequently found guilty of committing administrative offence and fined. According to the CDTU, the court had decided that having met members of the union near the entrance gate of the company, the trade union leader had violated the Law on Mass Activities. The Committee had requested the Government to provide its observations on the facts alleged by the CDTU. The Committee ***regrets*** that the Government provides no information in this respect. The Committee notes with ***concern*** new allegations of arrests and detention of members of independent trade unions following their participation in public events, as detailed in the CDTU’s communication. ***The Committee requests the Government to provide its observations thereon.***

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

The Committee further ***regrets*** that the Government has not provided any information in relation to the measures taken to amend Presidential Decree No. 24 concerning the use of foreign gratuitous aid and sections 388, 390, 392 and 399 of the Labour Code, regarding the exercise of the right to strike. ***Recalling that the abovementioned legislative texts (Law on Mass Activities, Decree No. 24 and sections 388, 390, 392 and 399 of the Labour Code are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities and their amendment had been requested by the Commission of Inquiry over seven years ago, the Committee reiterates its previous requests and asks the Government to indicate all concrete measures taken in this respect.*** The Committee understands that the Law on Public Association and the Criminal Code have been recently amended and that these amendments would have bearing on the application of the Convention. ***The Committee requests the Government to provide copies of all relevant amendments to these legislative texts.***

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

The Committee notes with *deep regret* that no progress has been made by the Government towards implementing the recommendations of the Commission of Inquiry and improving the application of this Convention in law and in practice during the reporting year. Indeed, the Government has not provided any information on steps taken to amend the legislative provisions in question, as previously requested by this Committee, the Conference Committee, the Commission of Inquiry and the Committee on Freedom of Association. In this respect, the Committee also notes the CDTU's indication that it was still awaiting to see an evidence and tangible progress with regard to the Government's commitment to ensure a friendly environment for independent trade union activity and social dialogue. The Committee *regrets* to note the alleged violations of civil liberties in Belarus submitted by the CDTU in its communication, including instances of interrogation of trade unionists and search of trade union premises. *The Committee therefore urges the Government to intensify its efforts to ensure that freedom of association and respect for civil liberties is fully and effectively guaranteed in law and in practice and expresses the firm hope that the Government will intensify its cooperation with all the social partners in this regard.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

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

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

***Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)***

The Committee notes the information provided by the Government and the discussion that took place in the Conference Committee on the Application of Standards in June 2011. The Committee also notes the 361st Report of the Committee on Freedom of Association on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry.

The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 detailing violations of the Convention, which the Committee had already dealt with in its previous comments. It also notes the comments submitted by the Belarusian Congress of Democratic Trade Unions (CDTU) in a communication dated 30 August 2011.

*Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination and interference.* The Committee recalls that it had previously noted with concern the comments made by the CDTU on the discriminatory use of fixed-term contracts. The CDTU had alleged, in particular, that members of free and independent unions were forced to leave their unions under the threat of non-renewal of their contracts, and had provided detailed information on the impact of threats of non-renewal of fixed-term contracts on its affiliates at the following enterprises: "Grodno-Azot", "Belshina", "Polimir", Mozyr Oil Refinery, "Zenit", Brest Pedagogical University and Hydraulic Power Station in Novolukoml. The Committee had further noted with regret the case of Mr Aleksey Gabriel, dismissed leader of a primary-level organization of the Belarusian Free Trade Union (BFTU) at the Lukoml Power Station and the allegations of anti-union discrimination suffered by members affiliated to the Radio and Electronic Workers' Union (REWU), threats and interference in internal trade union affairs at "Mogilev ZIV" and "Avtopark No. 1". It further noted the allegations of pressure put on workers to leave their union at the Bobruisk Plant of Tractor Parts and Units (BFTU primary trade union), "Grodno-Azot" company, "Delta Style" company in Soligorsk, "Lavanstroj" construction company and Minsk Automated Lines company (all primary trade unions of the Belarusian Independent Trade Union (BITU)). The Committee urged the Government to take the necessary measures to ensure that all of the abovementioned allegations of anti-union discrimination and interference relating to the CDTU and REWU-affiliated trade unions and their members at all of the abovementioned enterprises, were brought to the attention of the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") without further delay. It requested the Government to provide information on the outcome of the discussion and on any remedial measures taken should it be found that anti-union discrimination and interference have occurred.

The Committee notes that in its report, the Government indicates that a fixed-term contract is concluded upon an agreement between an employer and a worker and that transfer from a permanent to contractual form of employment can take place only if there are organizational, structural or economic reasons, which can be disputed by a worker in court. The Government also indicates that the contractual form of employment provides employers with more flexible possibilities of human resource management. An employer's decision not to renew a contract cannot be qualified as dismissal upon an employer's initiative. The legislation in force does not require an employer to justify his or her decision not to renew a contract with a particular worker: expiry of a contract is the basis of its termination. Therefore, if an employer decides not to renew a contract upon its expiry, no justification is needed and the worker whose contract is not renewed has no legal means to raise the non-renewal in court. The Committee notes that with regard to the allegations concerning Mozyr Oil Refinery, the Government indicates that there are two primary trade unions at the enterprise: one is affiliated to the Federation of Trade Unions of Belarus (FTUB) and the other, to the BITU. According to the Government, sometimes workers change their affiliation from one union to the other, and in the period from 2009 to March 2011, 648 workers (some of whom were members of the BITU-affiliated union) left the enterprise for various reasons. With

regard to the “Grodno Azot” company, the Government indicates that the allegations have been investigated by the Prosecutor’s office on two occasions and that the allegations of pressure have not been confirmed. With regard to Bobruisk Plant of Tractor Parts and Units and Minsk Automated Lines company, the Government indicates that both the BFTU and BITU primary trade unions are signatories to the respective enterprises’ collective agreements alongside the FTUB-affiliated unions.

The Committee notes the information provided by the Government with respect to the use of fixed-term contracts. In this respect, it notes with **concern** allegations contained in the 2011 CDTU communication to the effect that short-term contracts at the company level are used by employers to fight independent trade unions and that under this system, numerous trade union activists have been dismissed and that the courts consistently dismiss such cases. The Committee considers that not only dismissal, but also non-renewal of a contract, when imposed as a result of trade union membership or legitimate trade union activities, would be contrary to the principle that no person should be prejudiced in his or her employment by reason of trade union membership or activities.

The Committee **regrets** that the Government provides extremely limited information with regard to the alleged cases of anti-union discrimination and interference at the abovementioned enterprises, despite the Conference Committee’s explicit request to the Government to submit, after an independent and impartial investigation, detailed observations on the allegations of anti-union discrimination, including as regards the anti-union impact of fixed-term contracts and employer interference in workers’ organizations, as well as information on any proposed amendments to the legislation to the Committee of Experts. The Committee further notes with **regret** new allegations of attempts to dissolve the BITU’s primary trade union at Mozyr Oil Refinery through pressure on its members. The Committee recalls that it had previously noted with regret that according to the CDTU, the Government refused to use the tripartite working group created by the Council to discuss in substance the issue of trade union rights’ violation. The Committee notes with **deep regret** that in this regard, the Government has not referred to any discussions on the issue of anti-union dismissals, threats, interference and pressure which had taken place at the tripartite Council within the reporting year. **The Committee therefore strongly urges the Government to take the necessary measures to ensure that all of the abovementioned allegations of anti-union discrimination and interference at all of the abovementioned enterprises, are brought to the attention of the Council for the Improvement of Legislation in the Social and Labour Sphere without further delay. It requests the Government to provide information on the outcome of the discussion and on any remedial measures taken should it be found that anti-union discrimination and interference have occurred. It further requests the Government to provide information on the employment status of Mr Aleksey Gabriel.**

**Furthermore, the Committee once again urges the Government to take measures to ensure that enterprise managers do not interfere in the internal affairs of trade unions and instructions are given to the Prosecutor-General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated. Should such complaints prove true, the necessary measures should be taken to put an end to such acts and punish those responsible.**

**Article 4. Right to collective bargaining.** The Committee recalls that it had previously requested the Government to provide its observations on the CDTU’s allegations of refusal to bargain collectively with its affiliates at the “Naftan” and “Grodno-Azot” enterprises. In this respect, the Committee notes that in its most recent communication, the CDTU alleges that the employer at “Naftan” enterprise has excluded the primary BITU trade union from the collective bargaining process and the agreement for 2011 has been signed with the primary trade union of the FTUB. The CDTU indicates that the union’s appeals to the National Labour Arbitration and the State Labour Inspectorate and other bodies brought no results. The Committee notes the Government’s indication that while the agreement was signed by the FTUB-affiliated union, which is the most representative organization, it applies to all workers, regardless of their union membership. The Government indicates, however, that the CDTU appealed to the tripartite Council and this issue was discussed during the Council’s 1 November 2011 meeting. The Council has decided to refer this question to its tripartite working group. **The Committee requests the Government to provide information on the outcome of the discussion in the tripartite working group concerning the case of “Naftan” enterprise, as well as on the situation at the “Grodno-Azot” with regard to the participation of the CDTU-affiliated union in the collective bargaining.**

The Committee welcomes the information provided by the Government in relation to the conclusion of a General Agreement for 2011–13, covering all employers’ and workers’ organizations in the country, signed on 30 December 2010. The Committee notes the Government’s intention to organize, together with the ILO, a tripartite seminar on the issue of social dialogue.

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

## Belgium

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

*Comments from trade union organizations.* The Committee notes the comments dated 4 August 2011 from the International Trade Union Confederation (ITUC) concerning the implementation of the Convention, in particular the systematic recourse by employers to the judicial authority to ban trade unions from taking industrial action, especially from setting up strike pickets. The ITUC denounces the employers' failure to respect the "Gentlemen's Agreement" concluded by the social partners in 2002 on the peaceful settlement of industrial disputes. The Committee recalls that, in its previous observation, it had noted comments on this same point made by the Confederation of Christian Trade Unions (CSC), the General Labour Federation of Belgium (FGTB) and the General Confederation of Liberal Trade Unions of Belgium (CGSLB) dated 21 December 2009. The Committee notes that in its reply, the Government expresses its full recognition of the right to industrial action, such as the right to organize peaceful strike pickets, which it considers inherent in the binding nature of international treaties ratified by Belgium. The Government states that it regrets that certain employers abuse their right of recourse to the judicial authority but indicates that the number of appeals is limited. Recalling the wide network of institutions for sectoral dialogue, conciliation offices and a professional body of social conciliators put in place by the public authorities, the Government also states that it has requested the National Labour Council to examine compliance with the "Gentlemen's Agreement" signed in 2002 by the social partners. ***The Committee requests the Government to report on the findings of its examination on compliance with the "Gentlemen's Agreement" concerning the peaceful settlement of industrial disputes, as well as on any follow-up.***

The Committee further recalls that in their communication dated 21 December 2009, the CSC, the FGTB and the CGSLB had also denounced a court decision restricting the autonomy of trade unions in the exercise of their disciplinary powers. In this respect, the Committee notes the Government's reply that the ruling of first instance that had been criticized had been overturned by the Antwerp Court of Appeal, which considered that a trade union had the right to exclude a member in accordance with its own statutes and respect of the right of defence. The Committee notes this information.

The Committee notes that, in its communication of August 2011, the ITUC reported that the police had made 250 arrests at the Euro-demonstration in Brussels on 29 September 2010, which had been organized by European trade unions; 150 of these arrests had been carried out as a preventive measure, even before the demonstration was held. ***The Committee requests the Government to provide its observations in reply to the comments by the ITUC.***

## Belize

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 concerning problems in practice for the exercise of trade union rights in the banana plantations and in export processing zones (EPZs). ***The Committee expresses the firm hope that the Government will be in a position to provide in its next report full particulars on ITUC's 2008 and 2011 comments.***

*Article 3 of the Convention. Compulsory arbitration.* The Committee recalls that it had previously requested the Government to amend the Settlement of Disputes in Essential Services Act 1939 (SDESA), which empowers the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in services that cannot be considered essential in the strict sense of the term, namely: the banking sector, civil aviation, port authority (pilots), postal services, social security scheme and the petroleum sector. The Committee notes that the Government indicates in its report that the Labour Advisory Board in its ongoing review of national labour legislation recommended that the Schedule to the SDESA be amended so as to exclude: (i) civil aviation and airport security services (AIPOAS); (ii) monetary and financial services (banks, treasury, Central Bank of Belize); (iii) the POA Authority (pilots and security services); (iv) postal services; (v) the Social Security Scheme administered by the Social Security Board; and (vi) services in which petroleum products are supplied, transported, conveyed, handled, loaded, unloaded or sold. The National Trade Union Congress of Belize (NTUCB) corroborated this information in its comments submitted on 12 November 2011. ***The Committee notes this information with interest and requests the Government to provide a copy of the new legislation once it is adopted.***

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, which refers to matters previously raised by the Committee. ***The Committee requests the Government to provide its observations thereon.***

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* In respect of the legal protection concerning anti-union discrimination, the Committee had previously noted that in its 2008 comments, the ITUC alleged that court procedures in cases of anti-union discrimination were too slow and cumbersome, while the fines imposed were extremely low. The Committee notes with *satisfaction* the adoption of the Labour (Amendment) Act 2005 (No. 3 of 2011), adopted on 13 April 2011 which includes new sections on “unfair dismissal” providing for judicial reinstatement of workers or workers’ representatives dismissed because of their union membership or participation in union activities (section 42(1)(a) and (b) and section 205(1) and (2)).

In its previous comments, the Committee had noted the ITUC’s allegation that in practice violations occurred in the banana plantation sector and in export processing zones, where employers do not recognize unions, and had requested the Government to provide information on these matters. The Committee had noted the Government’s indication that the ITUC’s 2008 comments would be submitted to a tripartite body established under the provisions of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act (“the Act”) and appointed in August 2008. In this regard, the Committee notes that, according to the comments submitted by the National Trade Union Congress of Belize (NTUCB) on 12 November 2011, the 2008 ITUC comments have not been discussed before the Tripartite Body appointed in August 2008. ***The Committee requests the Government to take the necessary measures to ensure that a discussion takes place before the Tripartite Body in this regard and requests the Government to provide information on the outcome of the Tripartite Body’s deliberations on the matters raised by the ITUC.***

*Articles 3 and 4. Promotion of collective bargaining.* The Committee had previously recalled that, under the provisions of section 27(2) of the Act, a trade union could be certified as a bargaining agent if it received 51 per cent of the votes and that problems might arise from such a requirement of an absolute majority since, where this percentage was not attained, the majority union would be denied the possibility of bargaining. The Committee had noted the Government’s statement that section 27(2) of the Act had still not been amended, and that it will keep the Office informed of progress concerning the revision of the said law. The Committee notes that the Government indicates in its report that the Tripartite Body will be undertaking and coordinating discussions concerning the possible amendment of section 27(2) of the Act and prior to making a recommendation will meet with the Labour Advisory Board. ***The Committee expresses the hope that it will be in a position in the near future to note progress on the amendment of the Trade Unions and Employers’ Organizations (Registration, Recognition and Status) Act and requests the Government to provide information on developments in this regard.***

## Benin

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, reporting restrictions on the right to strike and on the continuing difficulty for trade union organizations to obtain legal personality. The Committee recalls that, in 2009, the ITUC had denounced acts of intimidation against the leaders of the principal trade union federations which had called a general strike in 2008 to protest against the decline in purchasing power. The Committee also notes the comments of the General Confederation of the Workers of Benin (CGTB), dated December 2009, which reported the infringement to trade union rights, thereby discouraging the establishment and free functioning of trade union organizations in enterprises in the industrial processing zones. ***The Committee requests the Government to provide its observations in reply to the comments made by the ITUC in 2009 and 2011, and to the allegations of the CGTB.***

*Article 2 of the Convention. Right to establish trade unions without previous authorization.* The Committee has been requesting the Government for many years to take the necessary measures to amend section 83 of the Labour Code which requires the filing of trade union by-laws in order to obtain legal personality in particular from the Minister of the Interior, subject to a fine. In its previous observation, the Committee had noted the Government’s indication that its comments would be taken into account during the revision of the labour legislation. In its last report, while repeating its request for ILO technical assistance to help the social partners have a better understanding of the concept of freedom of association, the Government indicates that the process of revision of the Labour Code is still ongoing and that the requested amendments to the Code will be communicated in due time. ***Recalling that it has been making its comments for many years, the Committee trusts that the revision of the labour legislation, with the assistance of the Office, will be completed in the very near future. It expects the Government to indicate in its next report the amendments made in order to bring the legislation fully in line with the Convention with respect to establishing trade union organizations without previous authorization by removing the requirement to file their by-laws from the Ministry of the Interior, subject to a fine.***

*Right of workers without distinction whatsoever to establish trade unions.* In its previous comments, the Committee had requested the Government to revise Ordinance No. 38 PR/MTPTPT of 18 June 1968 issuing the Merchant Navy Code, which gives seafarers neither the right to organize nor the right to strike and provides for prison sentences for breaches of labour discipline. The Committee notes the adoption of Act No. 2010-11 issuing the Maritime Code of the Republic of Benin by the National Assembly on 27 December 2010. ***Although the Committee observes that reference is***

*made to the representation of seafarers within the framework of collective agreements (section 224 of the Code), it requests the Government to specify those provisions that expressly grant seafarers the right to organize and the right to strike; those dealing with sanctions for breaches of labour discipline; and, more generally, those granting seafarers all the guarantees of the Convention with respect to freedom of association.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1968)**

The Committee notes the comments on the application of the Convention submitted by the General Confederation of the Workers of Benin (CGTB) and the International Trade Union Confederation (ITUC).

In its previous comments, the Committee had hoped that the new Merchant Shipping Code would explicitly recognize the right to collective bargaining of representative organizations of workers in merchant shipping. The Committee notes the adoption of Act No. 2010-11 issuing the Maritime Code of the Republic of Benin, by the National Assembly on 27 December 2010. The Committee notes this development with *interest*, and in particular that section 224 of the Code stipulates that: (i) collective agreements concluded between the qualified representatives of shipowners and seafarers may determine, within the framework of legal provisions, the reciprocal obligations of shipowners and seafarers; (ii) these agreements are deposited with the Director of the Merchant Navy; and (iii) they must be entered in the crew list and be available on board.

## **Plurinational State of Bolivia**

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

*Comments of workers' and employers' organizations.* The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) in 2009. The Committee notes the new comments of the ITUC of 4 August 2011, which refer to matters that are already under examination.

The Committee also notes the comments of the Confederation of Private Employers of Bolivia (CEPB), dated 18 August, concerning the position of the ILO Employers' group in relation to the right to strike (in this regard, see the General Survey on the fundamental Conventions in light of the 2008 Declaration on Social Justice for a Fair Globalization, Part II "Freedom of association and collective bargaining").

*Legislative issues.* The Committee recalls that for many years it has been referring in its comments to the following matters:

- the exclusion of agricultural workers from the scope of the General Labour Act of 1942 (section 1 of the General Labour Act of 1942, and Regulatory Decree No. 224 of 23 August 1943, issued under the Act), which implies their exclusion from the guarantees afforded by the Convention. In its previous observation, the Committee noted the reference by the Government to various provisions which have gradually granted the guarantees set out in the Convention to agricultural workers and its indication that the Bill on agricultural and rural workers, establishing the conditions and rights of agricultural workers, was before the Senate of the National Congress. The Committee notes the Government's indication in its report that: (1) the Bolivian people of pluricultural composition has drawn inspiration from past struggles, from independence, from the peoples' fight for liberation, from indigenous, social and trade union protests, as well as the fight for lands, on the basis of which what is known as a new State has been constructed; and (2) this construction commences with the new Political Constitution of the State which provides that "all men and women workers shall have the right to organize in trade unions in accordance with the law" and "trade union organization shall be recognized and guaranteed as a means of defence, representation, assistance, education and culture for men and women workers in rural areas and the city; and men and women working on their own account shall have the right to organize for the defence of their interests". *The Committee expresses the hope that, in the context of this legislative process to which the Government refers, which was initiated with the adoption of the new Political Constitution, the necessary measures will be taken to establish explicitly, in the context of the legislation giving effect to the new Constitution, the guarantees afforded by the Convention to all agricultural workers, whether they are employed or self-employed workers;*
- the denial of the right to organize of public servants (section 104 of the General Labour Act). In this respect, the Committee notes the Government's indication that: (1) the current Political Constitution provides in article 51(1) that men and women workers shall have the right to organize in accordance with the law; (2) as the Political Constitution has entered into force, it should be noted that the conditions of service of public officials contain provisions which envisage through regulations the right to organize of workers in health and education sectors, such as the Trade Union Confederation of Health Workers and the Confederation of Workers in Urban and Rural Education; and (3) it is the responsibility of the Government to adapt and amend the current conditions of service of public officials so that workers can be included in administrative careers and benefit from worthy and stable work in accordance with the current Political Constitution. *The Committee expresses the firm hope that the amendments to the legislation to which the Government refers will be carried out in the very near future so that public officials*

*enjoy the right to establish and join organizations of their choosing without previous authorization for the promotion and defence of their interests;*

- the excessive requirement of 50 per cent of the workers in an enterprise to establish a trade union, in the case of an industrial union (section 103 of the General Labour Act). In this respect, the Committee notes the Government's indication that, in accordance with the current Political Constitution, it has to amend and adapt the General Labour Act and its Regulatory Decree, which date from 1942. *The Committee trusts that these modifications will be introduced in the near future;*
- the broad powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act, which provides that labour inspectors shall attend the deliberations of trade unions and monitor their activities). The Committee recalls that *Article 3* of the Convention provides that workers' organizations shall enjoy the right to organize their administration and that the public authorities shall refrain from any interference which would restrict this right;
- the requirement that trade union officers must be of Bolivian nationality (section 138 of the Regulatory Decree of the General Labour Act) and permanent employees in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1951). In the view of the Committee, national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country, regardless of the acquisition of nationality (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 118). Provisions which lay down the requirement to belong to an occupation or establishment in order to be a trade union officer are not consistent with the Convention, as they may infringe on the right of organizations to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties, or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see General Survey, op. cit., paragraph 117);
- the requirement of the majority of three-quarters of the workers in order to call a strike (section 114 of the General Labour Act and section 159 of the Regulatory Decree). The Committee recalls that the requirement of a decision by over half of all the workers involved in order to declare a strike is too high and could excessively hinder the possibility of calling a strike, particularly in a large enterprise. The Committee considers, for example, that it would be more appropriate to reduce the required majority to a simple majority of the votes cast;
- the illegality of general and sympathy strikes, subject to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565 and section 234 of the Penal Code). The Committee recalls that the general prohibition of sympathy strikes could lead to abuse, especially where the initial strike is legal, and that these strikes, as well as general strikes, are means of action that should be available to workers. The Committee further recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and that therefore measures of imprisonment should not be imposed on any account. Such sanctions should be envisaged only where, during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts;
- the illegality of strikes in the banking sector (section 1(c) of Supreme Decree No. 1958 of 1950). The Committee recalls that banking services are not regarded as essential services in the strict sense of the term (those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) in which strikes may be banned or restricted. However, the Committee recalls the possibility of establishing a negotiated minimum service in cases where, although the total prohibition of strike action is not justified, and without calling into question the right to strike of the great majority of workers, it is considered necessary to ensure that the basic needs of users are met;
- the possibility of imposing compulsory arbitration by decision of the executive authorities in order to bring an end to a strike, including in services other than those that are essential in the strict sense of the term (section 113 of the General Labour Act). The Committee recalls that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even indirectly involve an absolute prohibition of strikes, contrary to the principles of freedom of association. The Committee recalls that compulsory arbitration to end a collective labour dispute and strike situations is only acceptable if it is at the request of both parties involved in a dispute, or in cases where a strike may be restricted, or even banned, that is in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population;
- the possibility of dissolving trade union organizations by administrative authority (section 129 of the Regulatory Decree). The Committee recalls that measures of suspension or dissolution by administrative authority constitute serious infringements of the principles of freedom of association. The Committee further considers that, in accordance with *Article 4* of the Convention, the dissolution of trade union organizations is a measure that only the judicial authorities should be able to order, and then only in extremely serious cases.

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

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) in 2009. The Committee also notes the new comments of the ITUC, dated 4 August 2011, which relate to matters that are already under examination by the Committee.

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

- the need to adjust the amount of the fines (between 1,000 and 5,000 bolivianos (BOB)) envisaged in Act No. 38 of 7 February 1944 to make them sufficiently dissuasive against acts of anti-union discrimination or interference; and
- the need to guarantee the right to organize of public servants and agricultural workers and, hence, their right to collective bargaining.

In its previous observation, the Committee noted in relation to these matters the Government's indication that: (1) following the approval of the new Political Constitution, the Ministry of Labour, Employment and Social Welfare would satisfy itself that the new draft Code of Labour Procedure is efficient and effective, allowing labour disputes or conflicts to be resolved more promptly; (2) the guarantees laid down in the Convention have been gradually extended to agricultural workers and the Chamber of Senators of the National Congress has before it a Bill on agricultural or rural workers, the aim of which is to establish conditions of work and rights for agricultural workers; and (3) the wording of the new Political Constitution drew on Convention No. 98; its application has to be regulated through statutory laws; and the Ministry of Labour, Employment and Social Welfare is currently preparing a new Labour Bill which will take into account and incorporate the Committee's observations.

The Committee notes the Government's indication in its report that it has taken note of the Committee's comments and that the draft reform of the Labour Code was replaced by the preliminary draft of the General Labour Act, which is currently being drawn up with a view to its approval. *The Committee expresses the firm hope that the legislative process that is reported to have begun following the adoption of the new Political Constitution will be completed in the near future and that as a consequence: (1) the level of fines imposed for acts of anti-union discrimination or interference will be updated to ensure that they are sufficiently dissuasive; and (2) the guarantees laid down in the Convention will be granted to public officials who are not engaged in the administration of the State and to all agricultural workers, whether they are employed or work on their own account. The Committee reminds the Government that it can have recourse to ILO technical assistance if it so wishes.*

*Content of collective bargaining.* Noting that for many years collective bargaining has in practice only covered wages, but not other terms and conditions of employment, the Committee requested the Government in its previous observation to take the necessary measures to encourage collective bargaining, including the bargaining of subjects other than wages, such as other conditions of employment, and to provide information in this regard. The Committee notes the Government's reference to the procedure for the negotiation of claims and its indication that: (1) collective bargaining does not solely cover wage matters and it is necessary to take into account the fact that sections 23 to 27 of the General Labour Act and sections 17 to 20 of its Regulatory Decree cover the collective contract of employment, which is understood as the agreement concluded between the employer and a workers' union, federation or confederation, with a view to determining general conditions of work or regulating them; (2) Supreme Decree No. 05051 of 1 October 1950 regulated aspects of the collective contract of employment; and (3) sections 106 to 113 of the General Labour Act and sections 149 to 158 of its Regulatory Decree regulate the process of conciliation and arbitration in the context of collective labour disputes. The Committee notes this information, but recalls that its comments on the subjects that are open to collective bargaining do not refer to the legislation (which undoubtedly authorizes them), but rather to practice.

The Committee also recalls that in its previous observation it noted that Article 49(2) of the new Constitution provides that "the law shall regulate labour relations respecting collective contracts and agreements; sectoral and general minimum wages and wage increases; reinstatement; paid rest and holidays, accounting of years of service, hours of work, overtime, supplements for night work, Sunday rates; the additional salary at the end of the year; bonuses or other schemes for participating in a company's profits; compensation and severance pay; maternity protection; training and vocational training and other social rights". The Committee requested the Government to explain the exact meaning of this provision and to indicate specifically whether its purpose is to establish minimum standards in the areas covered or to replace provisions concluded in the framework of collective bargaining. In this respect, the Committee notes the Government's indication that, in accordance with the Political Constitution, consideration will be given to the adoption of provisions governing the issues raised and that information will be provided in future reports on the progress achieved. The Committee notes this information.

*Application of the Convention in practice.* In its previous observation, the Committee requested the Government to provide statistical data on the number of collective agreements in the public and private sectors, the subjects addressed and the number of workers covered. In this regard, the Committee notes the Government's indication that it does not yet have processed data on the subjects covered and the number of workers covered, for which reason it notes the Committee's request and will provide information in later reports. ***The Committee expresses the hope that in the near future the Government will be able to collect the requested statistical data and requests it to provide such data as soon as it becomes available.***

## **Bosnia and Herzegovina**

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 concerning issues already raised by the Committee as well as matters related to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which will be examined in the framework of that Convention.

*Article 2 of the Convention. Requirement of previous authorization for the establishment of employers' and workers' organizations.* The Committee recalls that it had previously requested the Government to amend section 32 of the Act on the Associations and Foundations of Bosnia and Herzegovina which authorizes the Minister of Justice to accept or refuse request for registration of a trade union (paragraph 1) and provides that the request for registration shall be considered as rejected if the Minister does not adopt a decision within 30 days (paragraph 2). The Committee notes that the Government indicates in its report that more detailed instructions on how to complete the documentation required for registration of associations were issued in 2010 under the Regulations on Keeping of Registry of Associations and Foundations of Bosnia and Herzegovina, which will simplify the process and facilitate the understanding and application of the Act on Associations and Foundations of Bosnia and Herzegovina. Furthermore, the Committee notes with *interest* that the Government indicates that the draft Act on Amendments to the Act on Associations and Foundations of Bosnia and Herzegovina, which is currently before Parliament, proposes amendments in line with the suggestions and instructions of the Committee and that, in this regard, paragraph 2 of section 32 will be deleted. The Committee recalls that a provision whereby a minister may, at his or her discretion, approve or reject an application for the creation of a general confederation is not in conformity with the principles of freedom of association. More generally, a law providing that the right to association is subject to authorization granted by a government department purely in its discretion is incompatible with the principle of freedom of association. ***The Committee hopes that the draft Act will be adopted in the near future and ensure that section 32(1) and (2) are amended so as to take into account these principles and ensure that any undue delays in registration can be rapidly appealed to the courts. It requests the Government to supply information in its next report on any developments in this respect.***

*Registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH).* In its previous comments, the Committee had noted the unreasonable period which had elapsed since the filing of a registration request by the SSSBiH and had requested the Government to indicate the outcome of the appeal lodged by the SSSBiH before the Court of Bosnia and Herzegovina against the refusal of its registration. The Committee notes the Government's indication that: (i) on 18 May 2011, the Court of Bosnia and Herzegovina decided to return the case to the first instance (the Ministry of Justice); (ii) the Ministry of Justice called on the SSSBiH to rearrange its 2002 registration request and attached documents in compliance with the relevant legislation and to submit them within 30 days of receipt of notice so as to enable the Ministry to implement the above ruling; and (iii) accordingly, the registration process of SSSBiH is under way. ***Recalling that almost ten years have elapsed since the filing of a registration request by this organization, the Committee expresses the firm hope that the SSSBiH will finally be registered without any further delay.***

*Republika Srpska. Article 3 of the Convention. Right of employers' and workers' organizations to elect their representatives in full freedom.* In its previous comments, the Committee had noted that the Regulation on the registration of trade union organizations would be amended so as to allow trade union representatives not permanently employed by the employer to submit an application for inclusion in the register. The Committee notes from the Government's report that negotiations between the Government and the trade unions are still ongoing regarding the adoption of the new Regulations and that in its view it is unacceptable that persons who are not employed by the employer are presidents of unions at the enterprise level considering that the right to organize is guaranteed to workers and not to third parties without worker status and that unions are free to hire lawyers if need be. The Committee recalls that provisions which require all candidates for trade union office to belong to the respective occupation, enterprise or production unit infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks. In order to bring such legislation into conformity with the Convention, it would be desirable to make it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirement a reasonable proportion of the officers of an organization (see 1994 General Survey on freedom of association and collective bargaining, paragraph 117). ***The Committee hopes that the abovementioned***

*principles will be duly taken into account in the process of adoption of the new Regulations and requests the Government to transmit a copy of the text as soon as adopted.*

## Botswana

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, as well as the comments made by Education International (EI) in a communication dated 19 September 2011. In its previous comments, the Committee had noted the comments made by Education International and the Botswana Teachers Union (BTU) concerning the Government's interference in the internal organization of the BTU. ***The Committee once again requests the Government to provide its observations thereon.***

*Articles 2 and 3 of the Convention.* The Committee recalls that it had previously requested the Government to:

- amend section 48B(1) of the Trade Unions and Employers Organisations (Amendments), 2003 Act (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; and
- 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.

In this regard, the Government indicates in its report that it had noted the Committee's comments and that consultations with the social partners on amendments of all labour legislation are still ongoing. ***The Committee once again hopes that due account will be taken of its comments in the process of amending the relevant labour legislation. The Committee once again requests the Government to provide information, in its next report, on any progress made in this regard. The Committee recalls that the Government may avail itself of the technical assistance of the Office if it so wishes.***

The Committee had also requested the Government 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 these services. The Committee was informed that the Government has adopted the Trade Disputes (Amendment of Schedule) Order 2011, on 15 July 2011, adding the veterinary services, teaching services and diamond sorting, cutting and selling services, and all support services in connection therewith to the existing essential services. The Committee once again recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 159). ***The Committee considers that the new categories added to the Schedule do not constitute essential services in the strict sense of the term and therefore requests the Government to amend the Schedule accordingly.***

Furthermore, in its previous comments, the Committee had requested the Government to amend section 43 of the TUEO Act, which provides for inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The Committee notes that according to the Government, section 43 does not authorize the Registrar of Trade Unions to inspect the books of accounts but should be read only as conferring the powers to inspect such books on the members of the union and not on the Registrar. Noting that according to the legislation, the books of accounts shall be open to inspection as many times as provided by the Registrar, the Committee recalls that the control by the public authorities (or by its decision) 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. ***In these circumstances, the Committee once again requests the Government to take necessary measures to amend section 43 of the TUEO Act accordingly.***

The Committee had also requested the Government to indicate the practical application of sections 49 and 50 of the TUEO Act which provide for the inspection by the minister of the financial affairs of a trade union "whenever he considers it necessary in the public interest", including the frequency with which these sections are invoked to inspect trade unions finances. In this regard, the Committee notes the Government's indication that these sections have never been invoked.

*Employees in the prison service.* In its previous comments, the Committee had requested the Government to amend section 2(1)(iv) of the TUEO Act and section 2(11)(iv) of the Trade Disputes Act, both of which specifically exclude employees of the prison service from their scope of application, as well as section 35 of the Prisons Act, which prohibits prison officers from becoming members of a trade union or any body affiliated to a trade union. The Committee notes that

the Government indicates that prison services, in accordance with article 19 of the Constitution, are part of the disciplined forces and that these forces are not permitted to unionise and that the prison services are not only part of the justice system but they have also security responsibilities. The Committee recalls that while exclusion from the right to organize of the armed forces and the police is not contrary to the provisions of the Convention, the same cannot be said for prison staff and the functions exercised by the prison staff should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). ***In these circumstances, the Committee once again requests the Government to amend the abovementioned sections of the TUEO Act, the Trade Disputes Act and the Prison Act in order to grant to prison staff the right to establish and join organizations of their own choosing.***

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

The Committee notes the comments made by the International Trade Unions Confederation (ITUC) in a communication dated 4 August 2011. The Committee also notes the comments made by Education International (EI) in a communication dated 19 September 2011 concerning the unilateral determination and changes of the terms and conditions of employment in the public sector (in matters that should be left to the parties), through the issuance of Statutory Instrument No. 50 of 2011 which revoked, without consultations with the representative organizations, the new Public Service Act and Status of the Bargaining Council and the Public Service Bargaining Council. The Committee recalls that while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages. In addition, in the case of negotiations in the public or semi-public sector, intervention by the authorities is compatible with the Convention in so far as it leaves a significant role to collective bargaining. Measures which unilaterally fix conditions of employment should be of an exceptional nature, be limited in time and include safeguards for the workers who are the most affected (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 262 and 265). ***The Committee requests the Government to amend Statutory Instrument No. 50 of 2011 in accordance with this principle and in full consultation with the most representative organizations and to provide information on the measures taken in this regard.***

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

*Scope of the Convention. Application of the Convention to prison staff.* The Committee had previously requested the Government to amend section 2 of the Trade Disputes Act, section 2 of the Trade Union and Employers' Organizations (Amendment) Act 2003 (TUEO), and section 35 of the Prison Act, so as to ensure that prison staff are afforded all the guarantees provided under the Convention. The Committee had noted from the Government's report that it had no intention to grant prison staff the right to unionize since their staff association, as provided for in the Prison Act, supposedly caters adequately for the negotiations on their welfare, terms and conditions of employment. However, the Committee noted that according to section 35(3) of the Prison Act, a prison officer may only become a member of an association established by the minister and regulated in the manner prescribed; and that under section 35(4), any prison officer who becomes a member of a trade union or anybody affiliated to a trade union shall be liable to be dismissed from the service. The Committee recalls that all public service workers other than those engaged in the administration of the State should enjoy protection against acts of anti-union discrimination and interference and their union should enjoy bargaining rights. ***Therefore, the Committee once again requests the Government to amend the Trade Disputes Act, the TUEO Act and the Prison Act to ensure to prison staff the rights enshrined in the Convention.***

*Article 1 of the Convention.* In its previous comments, the Committee had further noted the Government's statement that consultation was ongoing concerning the ITUC's previous observation according to which if a trade union is not registered, union committee members are not protected against anti-union discrimination (e.g. article 23 of the Employment Act). ***Recalling that the Government is responsible for preventing all acts of anti-union discrimination in order to give effect to Article 1 of the Convention, the Committee once again requests the Government to take the necessary measures to ensure that all union committee members, including those of unregistered trade unions, enjoy an adequate protection against anti-union discrimination.***

*Articles 2 and 4. Protection against acts of interference and promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to provide information on the progress made with respect to the following legislative changes:

- the adoption of specific legislative provisions ensuring adequate protection against acts of interference by employers or employers' organizations in the establishment, functioning or administration of trade unions, coupled with effective and sufficiently dissuasive sanctions;
- the repeal of section 35(1)(b) of the Trade Disputes Act, which permits an employer or employers' organization to apply to the Commissioner to withdraw the recognition granted to a trade union on the grounds that the trade union refuses to negotiate in good faith with the employer; and
- the amendment of section 20(3) of the Trade Disputes Act, so as to ensure that compulsory arbitration of disputes of interest is permissible only in the following instances: (1) where the party requesting arbitration is a trade union seeking a first collective agreement; (2) disputes concerning public servants directly engaged in the administration of the State; and (3) disputes arising in essential services. In this respect, the Committee notes the Government's indication that it has included in the National Development Plan 10 a project to establish an independent dispute resolution system.

The Committee noted that consultations with the social partners on all labour legislation were still ongoing. ***The Committee requests the Government to indicate, in its next report, any progress made on the abovementioned provisions and it hopes that***

*the Government will make every effort to take the necessary action in the very near future. The Committee encourages the Government to avail itself of the technical assistance of the Office if it so wishes.*

*ITUC's comments.* The Committee noted the ITUC's comments concerning the necessity for a trade union to represent a significant proportion of the workforce in order to bargain collectively. The Committee noted the Government's indication that in terms of section 48 of the TUEO Act as read with section 32 of the Trade Dispute Act, the minimum threshold to be recognized by the employer is set at one third of the workforce of any organization. The Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members. ***The Committee requests the Government to provide in its next report information on the measures taken or contemplated so as to ensure that where no union represents one third of the employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.***

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

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

*Article 1 of the Convention.* In its previous observation, the Committee had noted that the Botswana prison service is excluded from the scope of the Public Service Act, the Trade Union and Employers' Organizations (Amendments) Act 2003 (TUEO) and the Trade Disputes Act. The Committee also noted the Government's statement that the Botswana prison service has been determined by national laws and regulations to be providing a security service. The Committee notes that the Government indicates in its report that prison services, in accordance with article 19 of the Constitution, are part of the disciplined forces and that these forces are not permitted to unionise and reiterates that the prison services are not only part of the justice system but they have also security responsibilities. In this respect, the Committee once again recalls that under *Article 1* of the Convention, only the police, the armed forces, high-level employees, whose functions are normally considered as policy-making or managerial, and employees whose duties are of a highly confidential nature, may be excluded from the scope of the Convention. ***Accordingly, the Committee once again requests the Government to amend section 2 of the TUEO Act, section 2 of the Trade Disputes Act and section 35 of the Prisons Act, so as to guarantee for the prison service the rights enshrined in the Convention.***

*Article 5.* In its previous comments, the Committee had noted that the current legislation does not provide adequate protection to public employees' organizations from acts of interference by the public authorities in their establishment, functioning or administration. The Committee had noted that, according to the Government, the Public Service Act was being reviewed and that consideration would be given to the Committee's comments. Therefore, the Committee had requested the Government to ensure that draft legislation contains precise provisions providing adequate protection to public employees' organizations from acts of interference by the public authorities in their establishment, functioning or administration. ***Noting the Government's indication that consultation on the matter is still ongoing, the Committee once again hopes that the Government will make every effort to take the necessary action in the near future and invites the Government to avail itself of the technical assistance of the Office in this regard, if it so wishes.***

## **Brazil**

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

The Committee notes the comments of the Union of Hotel, Bar and Allied Workers of São Paulo and Region (SINTHORESP) and the Confederation of Tourism Workers (CONTRATUH), dated 25 July 2011, alleging that trade unions were excluded from the process of negotiating the recruitment of workers with disabilities in an enterprise in the food sector. The Committee also notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, referring to matters already raised by the Committee, as well as allegations of anti-union dismissals and the murder of two trade union leaders and a trade union member. The Committee notes that the Government states, in reply to the ITUC comments, that it rejects any act of assault on the life and dignity of the worker and that, in this respect, the authorities responsible for the investigation of criminal acts carry out their duties in line with the principles of due process. ***The Committee notes this information and requests the Government to communicate the outcome of the judicial inquiries conducted in relation to the killings of the trade union leaders mentioned by the ITUC (as well as the alleged killings of 11 trade unionists between 1993 and 2009, denounced in 2009 by the Força Sindical, the Noca Central dos Trabalhadores do Brasil, the União Geral dos Trabalhadores, the Central Única dos Trabalhadores, the Central dos Trabalhadores e Trabalhadoras do Brasil and the Central General dos Trabalhadores do Brasil.***

*Article 4 of the Convention. Compulsory arbitration.* In its previous observation, the Committee noted the Government's indication that: (1) under Constitutional Amendment No. 45 of 8 December 2004 (reform of the judiciary, amendment to Article 114), it was established that a collective dispute (*dissídio coletivo*) may only be determined with the agreement of both parties (the intervention of the judiciary can no longer be requested unilaterally); (2) Decree No. 186 was adopted, under which the parties may discuss, in the context of the Ministry of Labour and Employment, disputes which arise in relation to the registration of trade unions, thereby allowing the Ministry to act as a mediator in the dispute; and (3) the labour courts may only intervene in collective bargaining at the request of both parties to the dispute. The Committee requested the Government to indicate whether it is still possible "in practice" to impose "*dissídio coletivo*"

through compulsory judicial arbitration at the request of only one party and to indicate in its next report the progress made with regard to the reported draft trade union reform. ***Observing that the Government does not refer specifically to this matter in its report, the Committee reiterates its request.***

***Right to collective bargaining in the public sector.*** The Committee recalls that for many years it has been referring to the need, in accordance with *Article 4* of the Convention, for public employees who are not engaged in the administration of the State to have the right to collective bargaining. The Committee notes the Government's indication that, with regard to public officials, the Labour Relations (Public Service) Convention, 1978 (No. 151), was ratified in 2010 and that a working group was established with the social partners in the Ministry of Labour to formulate legislative proposals to be sent to the Office of the President of the Republic and that a Bill and a draft constitutional amendment would then be submitted. ***The Committee welcomes this information and expresses the hope that the Bill will grant public employees who are not engaged in the administration of the State the right to conclude collective agreements. The Committee requests the Government to provide information in its next report on any progress in this respect.***

***Subjection of collective agreements to financial and economic policy.*** The Committee recalls that in its previous observations it also referred to the need to repeal section 623 of the Consolidation of Labour Laws (CLT), under the terms of which the provisions of an agreement or accord that are in conflict with the orientations of the Government's economic and financial policy or the wage policy that is in force shall be declared null and void. The Committee notes the Government's indication that: (1) in the past, with a view to the protection of wages, clauses were included in collective agreements providing for automatic adjustment when inflation reached a certain percentage; (2) it was common that, while a collective agreement was in force, economic measures were adopted, accompanied by a new wage policy, and that accordingly the wage adjustment measures became incompatible with the rules for adjustment during the inflationary period; (3) in 2008, the Supreme Federal Tribunal issued a binding decision ("sumula") prohibiting the use of the minimum wage as the index used as a basis for calculating the salaries of public officials or employees; and (4) in a socio-economic context that differs from the time when an agreement was concluded, it cannot be expected that a clause that is incompatible with the new situation remains in force. The Committee notes this new information provided by the Government and recalls once again that, except in exceptional circumstances required by economic stabilization policies, it is the parties to the collective bargaining process who are best placed to determine wages and they should be the ones to do so, and that it considers that the restriction contained in section 623 of the CLT affects the independence of the social partners during collective bargaining and, when it is of a permanent nature, it impedes the development of voluntary collective bargaining procedures between employers or their organizations and organizations of workers for the determination of terms and conditions of employment. ***The Committee once again requests the Government to take steps to repeal the legislative or constitutional provision that restricts the right to collective bargaining, and to provide information in its next report on any measure adopted in this respect.***

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

### ***Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1994)***

The Committee notes the Government's report and the general information provided on the application of the Convention. However, the Committee observes that, the Government does not refer specifically in its report to the matters raised in its previous observations, which related to the following points:

- (a) the prohibition of establishing more than one trade union, whatever its level, to represent the same occupational or economic category at the same geographical area (article 8(II) of the Constitution and section 516 of the Consolidation of Labour Laws (CLT)). The Committee recalls that all workers, including rural workers, have the right to establish organizations of their own choosing without previous authorization and that this implies the effective possibility to create, if the workers so choose, more than one workers' organization to represent the same occupational or economic category in the same geographical area. ***The Committee requests the Government to provide information in its next report on any measure adopted in this respect;***
- (b) the levying of compulsory union dues for all workers in a particular economic category (sections 578, 579 and 580 of the CLT). In this respect, the Committee recalls that questions concerning the financing of trade union organizations should be governed by the by-laws of the organizations and not imposed by law. ***Under these conditions, the Committee requests the Government to take the necessary measures to amend the relevant legislative provisions and to provide information in its next report on any measures adopted in this respect.***
- (c) the requirement of five lower level organizations to form federations (section 534 of the CLT). In this respect, the Committee recalls that, as in the present case of organizations in a single sector, the requirement of five organizations is too high and makes it difficult for trade unions to establish organizations at a higher level in full freedom, and is therefore contrary in particular to the provisions of the Convention respecting policies to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers. ***Under these conditions, the Committee requests the Government to consider the amendment of section 534 of the CLT with a view to reducing the number of lower level organizations required to form a federation, and to provide information in its next report on any measures adopted in this respect.***

## Bulgaria

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) in 2009. It further notes the comments made by the ITUC in a communication dated 4 August 2011. **The Committee requests the Government to provide its observations thereon.**

The Committee notes that the Government's report contains no reply to the issues raised by the Committee in its observation of 2010. The Committee is therefore bound to reiterate the comments it has been making for several years.

*Article 3 of the Convention. Right of employers' and workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities.* The Committee had highlighted on numerous occasions the need to amend the following provisions:

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

In its previous observation, the Committee noted that the Government, in its report for the period ending May 2009: (i) with regard to the strike vote, reiterated its commitment to the tripartite consultations with a view to reaching a mutually acceptable solution that would address the recommendations of the Committee; (ii) on the issue of the right to strike in the railway transport sector, stressed its will to resolve this issue and achieve progress in the near future, and indicated that it had initiated internal expert discussions about a possible amendment of the Railway Transport Act; and (iii) concerning the right to strike of civil servants, stated that was ready to reopen the discussion with a view to finding a solution, welcomed ILO technical assistance, and indicated that a working group had been established to make proposals for legislative amendments to ensure compliance with the Convention. The Committee had welcomed the information provided by the Government and hoped that in the process of legislative amendments due note would be taken of its comments. ***In the absence of any new information in this regard, the Committee once again expresses its firm hope that, in the near future, its comments as well as the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2696 will be duly taken into account in the ongoing process of legislative amendments. The Committee trusts that the ILO will continue providing technical assistance as requested by the Government and requests the Government to transmit any new legislative text once adopted. The Committee once again requests the Government to supply the legal text which repealed the prohibition on strikes in the energy, communication and health sectors.***

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 on matters being examined by the Committee. ***It requests the Government to provide its observations thereon.***

The Committee notes that the Government's report has not been received. It is therefore bound to reiterate the issues raised in its previous observation.

*Article 1 of the Convention. Protection of workers against acts of anti-union discrimination.* The Committee had previously requested the Government to provide its observations on earlier comments submitted by the ITUC and the Confederation of Independent Trade Unions in Bulgaria (CITUB) on the lengthiness of anti-union discrimination proceedings. In its previous observation, the Committee noted the Government's reference to section 310(1) of the Code of Civil Procedure, according to which claims of illegal dismissal, reinstatement and compensation are examined through summary procedure, and asked it to indicate the average length of anti-union discrimination proceedings in practice. The Committee notes that the ITUC indicates that the process of setting up specialized labour courts has continued with ILO assistance, that the legal proceedings for the reinstatement of dismissed workers can take a long time and sometimes even years, and that the sanctions against employers for unfair dismissal are too weak to be dissuasive. ***The Committee urges the Government to supply practical information***

*regarding the average length of anti-union discrimination proceedings and the compensations paid or sanctions imposed in case of anti-union dismissals, and to indicate the status of the process of establishing specialized labour courts.*

*Article 2. Protection against acts of interference.* In its previous comment, the Committee had requested the Government to take the necessary measures to ensure adequate protection, including by means of dissuasive sanctions, against acts of interference by employers' organizations. The Committee had previously noted that the Government once again referred to section 33 of the Labour Code, which provides for the autonomy of workers' and employers' organizations in formulating their statutes, electing their representatives and adopting their programmes of action stating that it is not considered necessary to have an explicit ban on the acts of interference. In this respect, the Committee once again 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* (see General Survey on freedom of association and collective bargaining, 1994, paragraph 232). **Noting that national legislation does not provide full protection against acts of interference by employers or employers' organizations, the Committee requests the Government to indicate the legislative measures taken or envisaged to ensure adequate protection, including by means of dissuasive sanctions, against such acts of interference.**

*Article 4. Promotion of free and voluntary collective bargaining.* The Committee had previously noted that sections 51(b)(1) and (2) of the Labour Code provided 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. It further noted, in this respect, 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. Considering 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, the Committee requested the Government to amend sections 51(b)(1) and (2) of the Labour Code. **With reference to the Government's earlier commitment to conducting the necessary consultations with the aim of reaching a mutually acceptable decision on this matter, the Committee expects that the necessary legislative amendments will be adopted in the very near future and requests the Government to provide information on any developments in this regard.**

*Articles 4 and 6. Collective bargaining in the public sector.* In its previous comment, the Committee had taken note of the comments made by the ITUC and the CITUB on the denial of collective bargaining rights to public servants and requested the Government to take the steps necessary to amend the Civil Service Act. The Committee had previously noted the Government's indications that: (i) legislatively regulated issues could not be subject to collective bargaining; (ii) 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; (iii) 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; and (iv) issues related to income and social security in the public service are discussed in the National Council for Tripartite Cooperation, in which all nationally representative employers' and workers' organizations are represented. The Committee recalls that all public service workers, other than those engaged in the administration of the State, should enjoy the right to collective bargaining. **With reference to the Government's earlier commitment to conducting the necessary consultations with the aim of reaching a mutually acceptable decision on this matter, the Committee expects that the necessary legislative amendments will be adopted in the very near future and requests the Government to indicate any development in this regard.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future. It reminds the Government that it may continue to avail itself of ILO technical assistance in dealing with all the points raised.**

## Burkina Faso

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

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

The Committee noted the comments of the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning the application of the Convention and reporting dismissals of trade union delegates and members for participation in strikes. **The Committee requested the Government to provide its observations on these matters and on the ITUC's comments of 2009.**

*Article 3 of the Convention. Occupation of premises in the event of a strike.* The Committee noted previously that, under section 386 of the Labour Code, the exercise of the right to strike shall on no account be accompanied by occupation of the workplace or its immediate surroundings, subject to the penal sanctions established in the legislation in force. In this respect, the Committee recalled that any restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful or where observance of the freedom of non-strikers to work, or the right of management to enter the premises, are impeded. **The Committee therefore requested the Government to take the necessary measures to amend section 386 of the Labour Code as indicated above so that the restrictions that it envisages only apply in cases in which a strike ceases to be peaceful or where observance of the freedom of non-strikers to work and the right of management to enter the premises are impeded.**

*Requisitioning of public employees.* In its previous comments, the Committee recalled the need to amend sections 1 and 6 of Act No. 45-60/AN of 25 July 1960 under which, in order to ensure continuity of administration and the safety of persons and property, public servants may be required to perform their duties. The Committee pointed out that it would be advisable to restrict

the powers of the public authorities to requisition workers to cases in which the right to strike may be limited or even prohibited. Noting the Government's statement that it was planning to revise Act No. 45-60/AN, the Committee requested the Government to indicate any amendment or repeal of sections 1 and 6 of that Act. *Noting the absence of information in this respect, the Committee reiterated its request to the Government to indicate any measures taken to amend or repeal sections 1 and 6 of Act No. 45-60/AN to take into account the principles referred to above.*

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

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

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

The Committee noted the comments from the International Trade Union Confederation (ITUC) dated 26 August 2009 and 24 August 2010 concerning anti-union practices, particularly dismissals and transfers. *The Committee requests the Government to send its observations in this respect.*

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee had hoped that the Government would soon be able to indicate the approximate number of workers and sectors covered by the collective agreements in force and had asked it to give an account of all measures to promote collective bargaining (including in the bakery, road transport and media sectors, in relation to which the Committee asked for information in its previous comments), particularly those taken by the Directorate of Labour Relations and Promotion of Social Dialogue (DRPPDS).

As regards the approximate number of workers and sectors covered by the collective agreements in force, the Committee noted the Government's indication that constraints due to the elections had prevented the compilation of the requested information. However, the Government indicated that it hoped that the elections would take place as soon as possible and would enable the numbers of workers covered by the collective agreements in force to be determined. *The Committee requests the Government to send the requested information as soon as it is available.*

As regards the measures to promote collective bargaining, particularly those taken by the DRPPDS, the Committee noted the Government's indication that: (1) the DRPPDS had held consultations with the social partners concerning the revision of the inter-occupational collective agreement; (2) during these consultations, the social partners expressed the wish focus on negotiations aimed at the conclusion or revision of sectoral agreements; (3) the DRPPDS had therefore identified the sectors of activity covered by previous agreements and those which are not covered, in order to encourage the social partners to engage in collective negotiations; and (4) training aimed at strengthening the capacity of the social partners for collective negotiations had been held and other training, in cooperation with the Programme of Social Dialogue in Francophone Africa (PRODIAF), was planned. The Committee also noted with regard to the media sector that the sectoral collective agreement was negotiated and signed on 6 January 2009 and dialogue was ongoing with respect to the bakery, road transport, banking and financial establishment sectors. *The Committee requests the Government to send information on any developments in this sphere and indicate the collective agreements which have been concluded.*

*Collective bargaining in the public sector.* As regards the public service advisory bodies, including the tripartite Public Service Advisory Council, which has competence for dialogue (section 51 of Act No. 013/98/AN of 28 April 1998 concerning the public service), the Committee previously noted the indication that the employees had not yet appointed their representatives and asked the Government to supply information on any new developments in this respect. The Committee also asked the Government to specify the categories of public servants not engaged in the administration of the State who enjoy the right to collective bargaining.

In this respect, the Committee noted the adoption of Act No. 019-2005/AN of 18 May 2005 amending Act No. 013/98/AN of 28 April 1998. It also noted the Government's indication that all public officials, with the exception of officials having the duties of director-general, technical director or departmental director who are engaged in the administration of the State, fully enjoy the right to collective bargaining. *Noting that the Government's report does not contain any information concerning the representatives to the Public Service Advisory Council, the Committee requests the Government to: (1) indicate whether these representatives have been appointed and also any new developments in this area and; (2) send a copy of Act No. 019-2005/AN of 18 May 2005 amending Act No. 013/98/AN of 28 April 1998 in order to evaluate the application of the right to collective bargaining of public servants 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 near future.*

*Finally, the Committee notes the comments from the ITUC dated 4 August 2011 and requests the Government to send in observations in this respect.*

## **Burundi**

### **Right of Association (Agriculture) Convention, 1921 (No. 11) (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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Cambodia**

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), dated 4 and 31 August 2011, and by the Cambodian Labour Confederation (CLC) and Education International (EI), in two communications both dated 31 August 2011. The Committee notes that these comments refer to serious acts of violence and harassment against trade union leaders and members and other violations of the Convention, as well as concerns over the increase in use of fixed duration contracts which could undermine the enjoyment of freedom of association and collective bargaining rights. *The Committee urges the Government to send its observations on all the issues raised by the ITUC, the CLC and EI, as well as on the 2010 comments by the ITUC and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC).*

In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists (Case No. 2318). As regards the impunity prevailing in these three murders, the Committee noted, in its previous observation, that the convictions of Sok Sam Oeun and Born Samnang for the murder of

Chea Vichea had been remanded to the Appeal Court by the Supreme Court and that they had been released on bail; that Thach Saveth who had been convicted for the murder of Ros Sovannareth had been awaiting a review of his conviction by the Supreme Court for several years; and that no information had been provided in relation to the murder of Hy Vuthy. The Committee notes the information provided by the Government in its report, according to which: (1) an investigation was being conducted in the case of the murder of Chea Vichea, following which the case would be sent to the Appeal Court for re-processing; (2) the Supreme Court ordered on 2 March 2011 the provisional release of Thach Saveth on bail; and (3) the case of the murder of Hy Vuthy has been sent to the prosecutor of Phnom Penh Municipal Court on 2 September 2010 for processing. The Committee expresses the firm hope that the reopening of these three cases by the judiciary will allow full and independent investigations into the murders of the abovementioned Cambodian trade union leaders to be conducted so as to bring to justice the actual murderers and perpetrators of these heinous crimes as well as the instigators. ***Recalling its previous comments and the conclusions of the Committee on Freedom of Association concerning the total absence of due process in relation to the trials of Sok Sam Oeun, Born Samnang and Thach Saveth, the Committee requests the Government to provide information of any steps taken to compensate them for damages.***

Finally, the Committee takes note of the discussions on Cambodia in the Conference Committee on the Application of Standards (June 2011). It notes in particular that the Conference Committee urged the Government to: (1) adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts and ensure their full implementation; (2) provide information on the progress made in this regard, as well as in respect of the creation of labour courts; (3) intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure that the final draft legislation on trade unions would be fully in conformity with the Convention; and (4) transmit the draft texts to the Committee of Experts so that it would be in a position to comment as to their conformity with the Convention.

***Trade union rights and civil liberties.*** In its previous observations, the Committee urged the Government to take all the necessary measures to ensure that the trade union rights of workers were fully respected and that trade unionists were able to engage in their activities in a climate free of intimidation and risk. The Committee takes note of the comments made by the ITUC and the CLC, concerning serious acts of violence and harassment against trade union leaders and members, such as a violent attack against the president of the FTUWKC or the arrest of another union leader, as well as of the discussion during the Conference Committee, regarding the persistent climate of violence and intimidation towards union members. The Committee is bound to recall, once again, that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. The Committee further recalls that workers have the right to participate in peaceful demonstrations to defend their occupational interests. ***In light of the above, the Committee once again urges the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives as well as that of their families, in accordance with the abovementioned principles.***

***Independence of the judiciary.*** In its previous observations, the Committee, noting the conclusions of the ILO direct contacts mission of April 2008, referring to serious problems of capacity and lack of independence of the judiciary, requested the Government to take concrete and tangible steps, as a matter of urgency, to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. The Committee notes that the Government indicates in its report that an anti-corruption law was adopted together with a five year strategic plan (2011–15) and that an anti-corruption institution has been established. ***The Committee requests the Government to provide information on the composition and mandate of the anti-corruption institution and on its activities, together with a copy of the law, the strategic plan and any other relevant document.***

***With regard to the proposed laws on the Status of Judges and Prosecutors and on the Organization and Functioning of the Courts, in the absence of any further information, the Committee requests the Government to indicate whether these laws have been adopted. If this is the case, it reiterates its request to the Government to provide a copy of these laws. If not, it urges the Government to adopt them without delay.***

***Furthermore, in the absence of any further information on the creation of labour courts, the Committee is bound to reiterate its request to the Government to provide information on the progress made in this regard.***

***The draft Trade Union Law.*** In its previous observation, the Committee noted that the Government indicated that it was working with the cooperation of the ILO on a draft Trade Union Law. The Committee notes that the ITUC, the CLC and EI, in their 2011 comments, express concerns over a number of provisions of the draft Trade Union Law, in particular in relation to the scope of application of the law, the requirements for a local union to be registered, the possibility for the Ministry of Labour to suspend the registration of a union, the qualifications imposed for trade union leadership, and the sanctions on trade union leaders and members for the commission of unfair labour practices. Moreover, the CLC indicates that in the course of the drafting process the Government only took into consideration comments from the employers' organizations. EI further indicates that the Cambodian Independent Teachers' Association had not been consulted. The Committee also notes that the Conference Committee trusted that the new legislation would ensure, in particular, that civil

servants, teachers, air and maritime transport workers, judges and domestic workers are fully guaranteed the rights under the Convention. The Committee has also been informed that a draft of the Trade Union Law has been sent to the Office and that the Government has benefited from the Office's assistance on the draft law. ***The Committee requests the Government to ensure that full consultation with the social partners on the draft Trade Union Law take place. Furthermore, the Committee expresses the firm hope that the final draft legislation on trade unions will take into account all its comments and in particular that civil servants, teachers, air and maritime transport workers, judges and domestic workers will be fully guaranteed the rights under the Convention. It requests the Government to provide information on the adoption of the Trade Union Law.***

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: 1999)***

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 and 31 August 2011, which refer, in particular, to serious and numerous acts of anti-union discrimination and interference. The Committee further notes the comments made by the Cambodian Labour Confederation (CLC) on 31 August 2011, indicating, in particular, that independent trade unions face many risks such as discrimination, and mostly dismissals, and that employers create "yellow unions" to interfere with the independent unions activities. Lastly, the Committee notes the comments made by Education International (EI) on 31 August 2011, indicating that teachers and civil servants were denied both the right to freedom of association and the right to collective bargaining. ***The Committee urges the Government to send its observations on all the issues raised by the ITUC, the CLC and IE.***

*Articles 1 and 3 of the Convention. Protection against anti-union discrimination.* In its previous observation, the Committee had underlined the need to take steps without delay to adopt an appropriate legislative framework in full consultation with the social partners to ensure adequate protection against all acts of anti-union discrimination, dismissals and other prejudicial acts, including by means of sufficiently dissuasive sanctions. The Committee notes that the Government indicates in its report that the Labour Law ensures the rights of unions and that when the Law on Trade Union will be enforced these rights will be further promoted. The Committee also notes that, in their comments, both the ITUC and the CLC report severe cases of anti-union discrimination and anti-union dismissals. ***Against this backdrop, the Committee urges the Government to ensure, in full consultation with the social partners, that adequate protection against all acts of anti-union discrimination, dismissals and other prejudicial acts, including by means of sufficiently dissuasive sanctions, will be provided for in the Trade Union Law which will be adopted. It requests the Government to provide information on developments in this regard.***

*Article 4. Recognition of trade unions for purposes of collective bargaining.* In its previous observation, the Committee requested the Government to amend section 1 of Prakas No. 13 of 2004, which provides that the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation 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 considered in this respect that permitting the objections of third parties as grounds for refusing a union most representative status ran counter to the principle of promoting collective bargaining expressed in *Article 4* of the Convention. The Committee notes that the Government indicates in its report that when the Trade Union Law is promulgated, its provisions will apply in this respect. The Committee also notes that the ITUC, the CLC and the EI, in their 2011 comments, express concerns about a number of provisions of the draft Trade Union Law, in particular in relation to the modalities for designation of the most representative union. The Committee recalls that the determination of the most representative organizations must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse (see General Survey on freedom of association and collective bargaining, 1994, paragraph 97). ***The Committee requests the Government to ensure, in the framework of the adoption of the Trade Union Law, that this principle will be upheld, and that the new legislation suppresses the possibility for third parties to put forward objections to the granting of the most representative status to a trade union. The Committee requests the Government to provide information in this regard.***

*Articles 4 and 6. Right to collective bargaining of 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. On numerous occasions, both the Committee on Freedom of Association (see Case No. 2222, 334th and 356th Reports) and the Committee requested 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 sole exception of those engaged in the administration of the State. More particularly, the Committee urged the Government to immediately take the necessary measures to amend the Common Statute of Civil Servants so as to guarantee fully the right to collective bargaining. The Committee notes from the information provided by the Government in its report that no progress have been made in this respect. Concerning the application of the Convention in practice, it notes with **concern** the comments made by the ITUC, the CLC and EI, recalling that civil servants' associations are not recognized as trade unions and do not enjoy collective bargaining rights. It further notes that the ITUC, the CLC and EI, express concerns about the scope of application of the draft Trade Union Law. ***The Committee requests the Government to indicate whether the right to collective bargaining of public servants***

*is an issue addressed within the framework of the drafting of the Trade Union Law. If that is the case, it requests the Government to ensure that the final draft legislation on trade unions guarantees the right to collective bargaining for all public servants, including teachers, with the sole exception of those engaged in the administration of the State. If that is not the case, the Committee urges the Government to take the necessary measures to amend the laws pertaining to all public sector workers, and more particularly the Common Statute of Civil Servants, so as to bring them in conformity with the Convention. The Committee requests the Government to provide information regarding any developments in this respect.*

*Consultations on the draft Trade Union Law.* The Committee notes that the CLC indicates in its comments that in the course of the drafting process of the Trade Union Law the Government only took into consideration comments from the employers' organizations. EI further indicates that the Cambodian Independent Teachers' Association had not been consulted. The Committee has also been informed that a draft of the Trade Union Law has been sent to the Office and that the Government has benefited from the Office's assistance on the draft law. ***The Committee requests the Government to ensure that full consultation with the social partners on the draft Trade Union Law take place. In general, the Committee urges the Government to take the necessary measures to ensure meaningful consultation with the social partners with respect to any labour law reform and to ensure their full and equal participation in all relevant social dialogue forums. Furthermore, the Committee expresses the firm hope that the final draft legislation on trade unions will take into account all its comments. The Committee requests the Government to provide information on these matters and in particular on the adoption of the Trade Union Law.***

*Application of the Convention in practice.* The Committee notes that the Government indicates in its report that 55 collective agreements have been registered and that these agreements are attached to its report. However, the Committee notes that the documents received as attachments to the Government's report are not collective bargaining agreements. ***Noting the comments made by the ITUC according to which collective bargaining is rare and difficult, the Committee expresses its concern about this information and reiterates its request to the Government to communicate in its next report statistics on the collective agreements (workers and sectors covered in the different regions, and number of genuine collective agreements).***

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

## Cameroon

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011, as well as the Government's reply. The Committee also notes the Government's reply to the comments received in 2009 from the ITUC concerning the refusal to recognize the Trade Union Federation of the Public Sector (CSP), and particularly that it has not received the approval of the Ministry of Territorial Administration and Decentralization and that, consequently, the CSP has no legal existence, but that the envisaged reforms would provide a basis for resolving this problem. The Committee recalls that public servants, like all other workers, without distinction whatsoever, must benefit from the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. ***It hopes that the CSP will be registered in the near future.***

The Committee further notes the comments of the General Union of Workers of Cameroon (UGTC), dated 20 September 2010 and 9 September 2011, and the Cameroon United Workers Confederation (CUWC), dated 20 October 2011. ***The Committee requests the Government to provide its observations on these comments in its next report.***

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

The Committee has also been requesting the Government for many years to take the necessary measures to amend section 6(2) of the Labour Code of 1992 (which provides that persons establishing a trade union which has not yet been registered and who act as if the said union has been registered shall be liable to prosecution) and section 166 of the Labour Code (establishing heavy fines for members of a union who commit this offence).

The Committee recalls the Government's indication in its previous report that the adoption of the amendments under consideration would replace the current system for the registration of trade unions, which is equivalent to a system of previous authorization, by a procedure of declaration and would not involve penal sanctions for violations of the law; moreover, the power to cancel the registration of an organization would lie solely with the judicial authorities, thereby bringing an end to the possibilities for the dissolution of organizations by administrative authority. The Committee notes the Government's indication in its report that the Ministry of Labour and Social Security has established a committee for the revision of the Labour Code and its implementing texts, and that the provisions respecting trade unions will be revised to bring them into conformity with the provisions of the Convention. The Government adds that the current revision of the Labour Code and the adoption of an Act on trade unions will, among other issues, resolve the problem of trade unions in

the public sector. *The Committee is therefore bound to reiterate its firm hope that, in the framework of the envisaged reforms, the Government will be in a position to indicate without further delay the progress achieved on all these points.*

*Article 5.* For many years, the Committee has been requesting the Government to take the necessary measures to repeal section 19 of Decree No. 69/DF/7 of 6 January 1969 (under the terms of which trade unions or associations of public servants may not join a foreign occupational organization without obtaining prior authorization from the minister responsible for “supervising public freedoms”). *Noting that on this matter the Government refers once again to the envisaged reforms, the Committee once again urges it to take the necessary measures without delay to amend the legislation with a view to removing the requirement for previous authorization for the affiliation of trade unions of public servants to an international organization.*

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

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

The Committee takes note of the comments sent by the International Trade Union Confederation (ITUC) in communications dated 24 August 2010 and 4 August 2011, and the Government’s reply thereon. The Committee notes the comments of the General Union of Workers of Cameroon (UGTC), dated 20 September 2010 and 9 September 2011 and the comments of the Confederation of United Workers of Cameroon (CTUC), dated 20 October 2011. *It requests the Government to provide its observations thereon in its next report.*

*Article 1 of the Convention. Sanctions against trade unionists.* With regard to its request concerning the amendment of sections 6(2) and 166 of the Labour Code, which allow the imposition of fines ranging between 50,000 and 500,000 francs on members responsible for the administration or management of a non-registered trade union, who act as if the union had been registered, the Committee refers to its observation in the framework of the regular examination of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Article 4. Right of collective bargaining in practice.* In its previous comments, the Committee requested the Government to reply to the comments made by the trade union organizations concerning the lack of genuine collective bargaining in the country since 1996. The Committee notes the Government’s indication in its report that Cameroon has negotiated and signed 30 collective agreements and contracts, including seven enterprise agreements, covering millions of workers in the private sector.

*Compliance with collective agreements.* The Committee notes that, in its reply to the comments of the ITUC of 24 August 2010, the Government indicates that the problem of the application of collective agreements by enterprises is a priority and that it is endeavouring to extend and to make all collective agreements binding. *Recalling the importance of guaranteeing compliance with collective agreements by the parties, the Committee requests the Government to provide information on the measures adopted in this respect.*

## **Canada**

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

The Committee takes note of the comments from the International Trade Union Confederation (ITUC) dated 4 August 2011 which relate to a number of issues under examination, as well as the Government’s reply thereto.

The Committee takes note of the discussions which took place within the Conference Committee on the Application of Standards in June 2010 on the implementation of the Convention by Canada. The Committee notes that in its recommendation, the Conference Committee noted that the issues that were pending related in particular to the exclusion of a variety of workers from the coverage of the labour relations legislation in a number of provinces. The Conference Committee stressed the importance of ensuring to all workers, without distinction whatsoever, the right to form and join the organization of their own choosing and, accordingly, expressed the firm hope that all necessary measures would be adopted in the near future to provide full guarantees of the rights set forth in the Convention to all workers.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in a number of cases concerning allegations of interference into the right to organize and carry out trade union activities, including collective bargaining, in various provinces of Canada (Case No. 2173, 357th Report, paragraphs 30–34; Case No. 2257, 358th Report, paragraphs 31–36; Case No. 2430, 358th Report, paragraphs 37–42; and Case No. 2654, 356th Report, paragraphs 313–384).

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

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

In this regard, the Committee notes with *regret* from the Government's report that the Government of Alberta has no plan for a legislative review following the Supreme Court's decision on Ontario's AEPA, although it is stated that the Government of the Province will continue to monitor the impacts of the *Ontario (Attorney General) v. Fraser* decision, particularly as other courts and tribunals may apply the decision in other cases.

As for Ontario, the Committee recalls that in its previous comments it noted that, although the AEPA gave agricultural employees the right to form or join an employees' association, it however maintained the exclusion of agricultural employees from the Labour Relations Act and did not provide a right to a statutory collective bargaining regime. The Committee observes from the Government's report that, pursuant to the *Ontario (Attorney General) v. Fraser* decision of the Supreme Court, the Province seems to consider that the rights of agricultural workers, under the AEPA, to form associations to represent and communicate their interests and exercise their constitutionally protected rights are adequate. While acknowledging the Supreme Court decision upholding the constitutionality of the AEPA, the Committee nevertheless notes with *regret* that the Government of Ontario is not considering any amendments to the AEPA aimed at ensuring sufficient guarantees for the full exercise of freedom of association rights by agricultural workers, particularly bearing in mind the obstacles to organizing that are inherent to the nature of this work, as well as the conditions necessary to enable these workers to have recourse to industrial actions without sanction.

The Committee is bound to recall once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) shall have the right to organize under the Convention. Therefore, any provincial legislation that would deny or limit the full application of the Convention in relation to the freedom of association of agricultural workers should be amended. ***Consequently, the Committee once again urges the Government to ensure that the Governments of Alberta and Ontario take all necessary measures to amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention. It requests the Government, in particular, to provide detailed information and statistics with its next report on the number and scope of coverage of trade unions in the agricultural sectors in Ontario and on any complaints as to the challenges in exercising their rights under this Convention in practice.***

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

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

The Committee notes the statement by the Government of *New Brunswick* according to which it continues to consult stakeholders on the potential for amendment of the Industrial Relations Act to remove the exclusion of domestic workers. It notes with *regret* that the Government's report does not contain any information from the Governments of *Ontario, Alberta and Prince Edward Island* that legislative amendments are planned in respect of the exclusion of domestic workers from the industrial relations laws. With regard to *Nova Scotia*, the Committee notes that domestic workers are not excluded under the Trade Union Act.

With regard to the other professionals, such as architects, dentists, land surveyors, lawyers, doctors and engineers, the Committee notes the statement of the Government of *Nova Scotia* which reiterates that these professionals in question are generally members of professional organizations that represent their interests, including through collective bargaining. Hence, they cannot be considered disadvantaged in the labour market. As for *Saskatchewan*, the Committee takes note of the Government's indication that the Trade Union Act does not explicitly exclude architects, dentists, land surveyors, lawyers and doctors but is designed to capture the relationship between employees and employers as per the definitions set in the Act. The Province of *Saskatchewan* has other pieces of legislation instituting those professions as associations for the purposes of acting collectively.

The Committee is bound to recall once again its view that the exclusion of these categories of workers from the labour relations law 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 law, and this can function as an impediment to their activities and discourage membership. **Consequently, the Committee once again urges the Government to ensure that the Governments of Alberta, Nova Scotia, Ontario and Prince Edward Island take all necessary measures to remedy the exclusion of professionals, such as architects, dentists, land surveyors, lawyers, doctors and engineers, from the statutory protection of freedom of association and to amend their legislation or to adopt specific regulations so as to ensure that these professionals are allowed to establish and join organizations of their own choosing and that these organizations enjoy the same rights, prerogatives and means of recourse as other workers' organizations under the Convention. The Committee requests the Government to indicate in its next report whether, in the Province of Saskatchewan, these categories of professionals could form organizations of their own choosing under the Trade Union Act, and to indicate whether under the other pieces of legislation instituting these professions as associations for the purposes of acting collectively, the latter enjoying the same rights, prerogatives and means of recourse as other workers' organizations formed under the Trade Union Act.**

**Furthermore, the Committee expects that the next report of the Government will include information on concrete measures taken or contemplated by the Governments of Ontario, Alberta and Prince Edward Island to amend their legislation in respect of the exclusion of domestic workers from their labour relations law. The Committee expects that the next report of the Government will also include information on the outcome of discussions held on the amendment to the Industrial Relations Act to remove the exclusion of domestic workers and any measures taken thereon by the Government of the Province of New Brunswick.**

*Nurse practitioners (Alberta).* The Committee had been noting for many years that nurse practitioners are deprived of the right to establish and join organizations of their own choosing by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act of the Province of Alberta. The Committee notes with *regret* from the Government's report that there are no planned reviews of the status of nurse practitioners. The Committee once again recalls that the expression "all workers and employers without distinction whatsoever" used in *Article 2* of the Convention means that freedom of association should be guaranteed without discrimination of any kind. **The Committee urges the Government to ensure that the Government of the Province of Alberta takes all necessary measures to amend the Labour Relations (Regional Health Authorities Restructuring) Amendment Act so that nurse practitioners have the right to establish and join organizations of their own choosing.**

*Principals, vice-principals in educational establishments and community workers (Ontario).* The Committee recalls that its previous comments concerned the need to ensure that principals and vice-principals in educational establishments as well as community workers have the right to organize, pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 1951 and Case No. 1975.

The Committee notes from the Government's report that, in February 2010, the Ministry of Education released Policy/Program Memorandum No. 152, *Terms and Conditions of Employment of Principals and Vice-Principals*, the purpose of which was to set out provincial standards of practice to assist school boards in establishing terms and conditions of employment for principals and vice-principals. The Memorandum explicitly states that, when negotiating terms and conditions of employment, principals and vice-principals shall have the right to representation by their local principal and vice-principal association. The Government further indicates that all boards were required to implement the Memorandum by 31 March 2011. With regard to community workers, the Government indicates that the Ontario Ministry of Community and Social Services led a review of the ILO's comments regarding community placements, with consideration given to recent court decisions on related matters and in the context of the Ontario Works Program. According to the report, options identified during the review are being evaluated in light of the recent decisions of the Supreme Court of Canada, and will be brought forward for consideration by government decision-making bodies.

The Committee recalls its view that it is not necessarily incompatible with freedom of association principles to deny managerial or supervisory employees the right to belong to the same trade union as other workers. It also considers that such categories of workers should have the right to form their own associations to defend their interests and should not be defined so broadly as to weaken the organizations of other workers by depriving them of a substantial portion of their present or potential membership. **Taking due note of the latest positive developments referred to by the Government with regard to the representation of principals and vice-principals by their association as well as the review made by the Ministry of Community and Social Services on the representation of community workers, the Committee expects that the next report of the Government will contain full particulars on progress made in law and practice in the Province of Ontario to guarantee to these categories of workers, the fundamental right to establish and join organizations of their own choosing for the defence of their professional interests.**

*Public colleges' part-time employees (Ontario).* In its previous comments, the Committee took note with interest of the amended Colleges Collective Bargaining Act which would allow part-time academic and support staff workers in Ontario's colleges to fully enjoy the right to organize. The Committee takes note of the conclusions and recommendations reached in November 2010 by the Committee on Freedom of Association in Case No. 2430 (see 358th Report, paragraphs 37–52), and observes that the Colleges Collective Bargaining Act (CCBA) came into effect in October 2008 and gave part-time academic staff and part-time support staff at Ontario's colleges the right to bargain collectively. However, the

Act also provides for a process to change, establish or eliminate bargaining units, including the possibility for colleges to challenge the number of cards union members have signed, which they allegedly take advantage of to delay the certification process. In this regard, the Committee notes the indication that the Ontario Public Service Employees' Union had filed certification applications to represent both the part-time academic staff and part-time support staff units. In both cases, representation votes have been held and the ballot boxes have been sealed pending a decision by the Ontario Labour Relations Board (OLRB) concerning issues that remain in dispute between the parties. Ultimately, the complainant's allegations that mediation and costly litigation at the OLRB can take months or even years had not been answered by the Government. ***Recalling the importance that part-time academic and support staff in colleges of applied arts and technology in Ontario fully enjoy without delay the right to organize, as enjoyed by other workers, and the need to lift any obstacle in law and practice which would hinder these rights as provided in the Convention, the Committee requests the Government to indicate in its next report any decision taken by the OLRB on the matters currently pending before it.***

*Education workers (Alberta).* With regard to the right to organize of education workers in the Province of Alberta, the Committee recalls that its previous comments concerned the need to amend provisions of the Post-secondary Learning Act which empower the board of a public post-secondary institution to designate categories of employees as academic staff members – who are allowed, by law, to establish and join a professional association for the defence of their interests. The Committee previously expressed its view that such provisions would allow for future designations to exclude faculty members and non-management administrative or planning personnel from membership of the staff associations whose purpose is to protect and defend the interests of these categories of workers. The Committee notes with ***regret*** that the Alberta Government states that it has no present plans to amend section 60(2) of the Post-secondary Learning Act. ***The Committee urges the Government to ensure that the Government of the Province of Alberta takes all necessary measures with a view to ensuring that all university staffs are guaranteed the right to organize without any exceptions.***

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

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

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

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

The Committee notes from the Government's report that the settlement reached in the health-care sector following the Supreme Court of Canada's decision in *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC27* has indeed serve as an inspiration for the settlement of grievances prevailing in the education sector, since the Government of British Columbia is now in discussions with the British Columbia Teachers Federation (BCTF) over the repercussions of the B.C. Supreme Court decision pertaining to Bill 28 (the Public Education Flexibility and Choice Act). The Committee previously requested the Government to indicate any decision taken by the Labour Relations Board (LRB) with regard to the essential service level (minimum service) in the education sector and the factors taken into consideration in doing so. The Committee notes the Government's indication that the LRB has never been called upon to issue a decision setting minimum essential service levels in the education sector. The Government however specifies that the LRB has issued on July 2011 a decision involving the designation of essential services for students and eligible children under the School Act, setting essential service levels for what BCTF has characterized as "Phase 1" of its job action plan. This decision reflects an agreement that had been reached between the British Columbia Public School Employers' Association (BCPSEA) and the BCTF. The Government indicates that subsequent phases of the BCTF's job action plan may require further applications to the LRB, which may in turn require the LRB to set essential service levels in the education sector. Finally, the Committee takes due note of the indication of the Government

according to which the provisions of the Skills Development and Labour Statutes Amendment Act that make education an essential service do not take away the right of teachers to enter into strike or to engage in other job action as part of the collective bargaining process. ***The Committee requests the Government to ensure that the Government of the Province of British Columbia continues to provide information on any decision from the Labour Relations Board with regard to essential service levels in the education sector, and to indicate the outcome of discussions with the British Columbia Teachers Federation on the Public Education Flexibility and Choice Act.***

***Manitoba.*** The Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act which prohibits teachers from engaging in strike action. The Committee once again notes with ***regret*** from the Government's report that there are no plans to make amendments to the Public Schools Act in the immediate future. The Committee is bound to recall that the right to strike should only be restricted for public servants exercising authority in the name of the State and in essential services in the strict sense of the term. ***The Committee once again urges the Government to ensure that the Manitoba Government takes measures in order to amend the Public School Act 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. The Committee also suggests that the Manitoba Government give consideration to the establishment of a voluntary and effective dispute-settlement mechanism in this regard, on the basis of consultations with all organizations concerned.***

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

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

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

The Committee notes the Government's statement that this Act is still under appeal before the provincial courts, that the hearings before the Superior Court will begin in December 2011 and may last until spring 2012, and that the Government of Quebec is reserving his comments until the courts have made their judgments. ***The Committee once again urges the Government to ensure that the Government of the Province of Quebec takes all necessary measures with a view to: (i) ensuring that strikes may only be restricted or prohibited in essential services and, if so, adequate compensatory guarantees are afforded to the workers concerned, for example, conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be fully impartial and independent by the parties concerned and leading to binding awards which should be implemented rapidly and fully; (ii) reviewing the excessive sanctions provided for in the Act in order to ensure that they may be applied only in cases where the right to strike may be limited in accordance with the principles of freedom of association and that they are proportionate to the infringement committed. In this regard, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers; and (iii) reviewing the provisions facilitating class actions against an association of employees, as there is no reason, in the Committee's view, to treat such actions differently from other class actions in the Code of Civil Procedures. The Committee further requests the Government to indicate the outcome of the appeal pending on Act No. 43 before the provincial courts.***

*Article 3. Arbitration imposed at the request of one party after 60 days of work stoppage (article 87.1(1) of the Labour Relations Act) (Manitoba).* The Committee recalls that its previous comments concerned the need to amend article 87.1(1) of the Labour Relations Act which allowed a party to a collective dispute to make a unilateral application to the Labour Board so as to initiate the dispute-settlement process, where a work stoppage exceeded 60 days. The Committee notes from the Government's report that the Labour Management Review Committee (LMRC), an advisory body on labour matters to the Manitoba Government with equal representation from workers and employers, recently reviewed sections 87.1 to 87.3 of the Labour Relations Act concerning the settlement of subsequent agreements. The LMRC made no recommendations on these provisions, and therefore no legislative changes to these provisions are anticipated at this time. Although it notes the indication that, during the reporting period, the Manitoba Labour Board ordered an end to work stoppages and settled new collective agreements on only two occasions, in both instances at the request of the union, the Committee is bound to recall once again that provisions which allow for one of the parties to refer a dispute to compulsory arbitration seriously limit the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and formulate their programmes (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 148 and 153). ***The Committee urges the Government to ensure that the Government of the Province of Manitoba takes all necessary measures to amend the Labour Relations Act so that an arbitration award may only be imposed in cases involving essential services in the strict sense of the term, of public servants exercising authority in the name of the State or where both parties to the collective dispute agree.***

*Article 3. Compliance of the Public Service Essential Services Act and of the Act to amend the Trade Union Act of the Province of Saskatchewan.* In its previous comments, the Committee took note of communications of September 2008 and August 2009 from the ITUC denouncing the Public Service Essential Services Act (Bill No. 5) and the Act to amend the Trade Union Act (Bill No. 6) which were proclaimed into law in May 2008 by the Government of the Province of Saskatchewan. The ITUC indicated that Bill No. 5 weakened the right of workers to organize, permitted employers to potentially designate every worker individually as providing an essential service without recourse to such potential avenues as binding arbitration, reducing the bargaining rights of workers. The ITUC further alleged that Bill No. 6 weakened the rights of workers and unions to organize into associations and it potentially permitted employers to use coercive means to prevent the creation of union associations, and punish workers for engaging in union activities.

The Committee further noted that the National Union of Public and General Employees (NUPGE) had presented in 2008 a complaint before the Committee on Freedom of Association in relation to Bills Nos 5 and 6. In this regard, the Committee notes the conclusions and recommendations reached by the Committee on Freedom of Association when it examined in March 2010 the complaint lodged by the NUPGE (Case No. 2654). The Committee notes in particular that its attention is drawn to a number of legislative amendments recommended by the Committee on Freedom of Association: (i) the provincial authorities are requested to take the necessary measures, in consultation with the social partners, to amend the Public Service Essential Services Act so as to ensure that the Labour Relations Board may examine all aspects relating to the determination of an essential service, in particular, the determination of the sectors in question, classification, number and names of workers who must provide services and act rapidly in the event of a challenge arising in the midst of a broader labour dispute; (ii) the Public Service Essential Services Regulations, which set out a list of prescribed essential services, should be amended in consultation with the social partners; (iii) the provincial authorities are requested to take the necessary measures so that compensatory guarantees are made available to workers whose right to strike may be restricted or prohibited under the Public Service Essential Services Act; and (iv) the provincial authorities are requested to take the necessary measures to amend the Trade Union Act so as to lower the requirement, set at 45 per cent, for the minimum number of employees expressing support for a trade union in order to begin the process of a certification election.

The Committee previously noted that a number of national and provincial trade unions have filed in the provincial court in July 2008 to have Bills Nos 5 and 6 declared unconstitutional for violating, among other fundamental texts, the Canadian Charter of Rights and Freedoms and international Conventions ratified by Canada. The Committee notes from the Government's report that this case is still before the courts. ***The Committee requests the Government to provide information on any decision reached by the courts in this regard, and on any follow-up given thereto. The Committee firmly hopes that the next report of the Government will include particulars on steps taken by the Government of the Province of Saskatchewan to give effect to the recommendations made in March 2010 by the Committee on Freedom of Association with regard to amendments to be made to the Public Service Essential Services Act, the Public Service Essential Services Regulations and the Trade Union Act.***

## Cape Verde

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

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had noted comments from national trade union organizations concerning the limited number of collective agreements concluded, and the

Government's confirmation that the total number of agreements remained low. The Committee had also noted the Government's request for technical assistance from the ILO Dakar Office to promote voluntary collective bargaining.

The Committee notes in this respect that a national workshop on collective bargaining was held in Praia on 9, 10 and 11 May 2011, resulting in a national Action Plan on collective bargaining. The Committee notes that, according to the Government, the objectives of this workshop were to: (a) recall the major principles of collective bargaining; (b) enable the stakeholders to evaluate the level of collective bargaining in the country; (c) present to the social partners the methods and procedures of collective bargaining, as well as bargaining techniques; and (d) make recommendations with a view to improving the situation as regards the conclusion of collective agreements. Furthermore, the Committee notes that the priority objectives of the Action Plan are: (1) to consolidate the technical capabilities of the social partners; and (2) to create a national committee for the promotion of collective bargaining.

The Committee notes with *interest* the adoption of Deliberation of 17 June 2011 establishing the National Committee for the Promotion of Collective Bargaining.

Finally, the Committee notes that: (1) a collective labour agreement was concluded with TAP-Air Portugal and published in the *Official Gazette* of 16 October 2009; and (2) the collective labour agreement of the private insurance sector is in the process of being revised.

***The Committee requests the Government to provide information on the progress made in the area of collective bargaining as part of the Action Plan adopted in May 2011 and of the impact of the measures mentioned above on the number of collective agreements concluded. The Committee also requests the Government to provide information on the National Committee for the Promotion of Collective Bargaining.***

## Central African Republic

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

The Committee takes note of the comments of 4 August 2011 by the International Trade Union Confederation (ITUC), referring to matters already raised by the Committee. In its previous comments, the Committee took note of comments by the ITUC reporting continuous breaches in social dialogue and the dismissal of the General Secretary of the Association of Teachers during the general strike of January 2008. ***The Committee once again requests the Government to send its observations on these comments.***

The Committee notes with *regret* that the Government's report contains no information on the points raised in its previous observation and hopes that the next report will contain full information on the points in question.

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

The Committee observes that, under section 26 of the Labour Code, parents and guardians may oppose the right to organize of minors under 16 years of age. It recalls that the minimum age for joining a trade union in full freedom should be the same as that established by the Labour Code for admission to employment (14 years according to section 259 of the Code), without the permission of the parents or guardian being necessary. ***The Committee requests the Government to take the necessary measures to amend section 26 of the Labour Code in that regard.***

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

On numerous occasions, the Committee has also requested the Government to take the necessary measures to amend section 11 of Order No. 81/028 concerning the Government's powers of requisition in the event of a strike when so required in the general interest so as to restrict powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, that is in the public service in respect of public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in a situation of acute national crisis. ***Noting with regret that***

***the Government has not provided information on this matter, the Committee requests it to take the necessary measures to amend this provision taking the above principle into account.***

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

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

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

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, reporting the blockage of wage bargaining in the public service and the ineffectiveness of labour inspection, which is almost non-existent. ***The Committee requests the Government to provide its observations on these matters.***

*Article 2 of the Convention. Protection against acts of interference.* In its previous comments, the Committee noted that, under the terms of section 30(2) of the new Labour Code, the head of the enterprise or his or her representatives shall not use any means of pressure in favour of or against any specific trade union organization. The Committee considered that the above provision did not cover all the acts of interference envisaged in *Article 2* of the Convention, and in particular acts which are intended to place workers' organizations under the financial or other types of control of an employer or of an employers' organization. The Committee requested the Government to take measures to extend the protection envisaged against acts of interference and to indicate the penalties applicable for violations of the current section 30(2). The Committee notes the Government's indication that regulations will be adopted to broaden the protection afforded against acts of interference to include all the acts of interference envisaged in *Article 2* of the Convention, and that these texts will also establish the penalties applicable in the event of violations of section 30(2). ***The Committee notes with interest these formal commitments by the Government and expresses the firm hope that measures for the adoption of these regulations will be taken in the near future. The Committee requests the Government to provide information on any progress achieved in this respect.***

The Committee notes with *regret* that the Government's report does not contain any information on the other points raised in its comments and it hopes that the Government's next report will contain full particulars on these points.

*Article 4 of the Convention.* In its previous comments, the Committee indicated that the negotiation of collective agreements by professional groupings should only be possible where no trade union exists. It requested the Government to amend the legislation in this respect. The Committee notes with regret that, under the terms of sections 197 and 198 of the new Labour Code, the representatives of trade union organizations and professional groups of workers are placed on an equal footing and may engage in collective bargaining. While noting that, according to the Government, collective

agreements and work agreements are, in practice, always negotiated by the representatives of workers' unions and of employers, the Committee notes with regret that the national authorities did not take the opportunity of the reform of the Labour Code to amend the legislation as indicated. **Recalling that the Convention promotes collective bargaining between employers and trade union organizations, the Committee once again requests the Government to take the necessary measures for the amendment of the legislation in the near future and to provide information on any progress achieved in this respect.**

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

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

## Chad

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

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

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

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

With regard to Act No. 008/PR/07 of 9 May 2007 regulating the right to strike in public services, the Committee notes that section 19 gives a broad definition of essential services and includes radio and television broadcasting services and abattoirs. The Committee points out that the principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 159).

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

- Section 11(3) of the Act, which imposes the obligation to declare the “possible” duration of a strike. The Committee recalls that, under section 13(1), non-compliance with this condition would result in a strike being declared illegal. **Recalling that trade unions should be able to call strikes of unlimited duration and considering that the legislation should be amended to this effect, the Committee requests the Government to indicate the measures adopted for this purpose.**
- Sections 20 and 21, under which the public authorities (the Minister concerned) have the discretion to determine the minimum services and the number of officials and employees who will ensure that they are maintained in the event of a strike in the essential services enumerated in section 19. In this respect, the Committee recalls once again that such a service should nevertheless meet at least two requirements: (1) firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (2) as this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of

association and collective bargaining, paragraphs 160 and 161). *The Committee therefore once again requests the Government to amend the legislation to ensure that the minimum service is limited to the operations that are strictly necessary to avoid jeopardizing the life or normal living conditions of all or part of the population, that the workers' organizations concerned are able to participate in defining such a service, along with the employers and the public authorities, and to indicate any progress achieved in this respect.*

- Section 22(1) of the Act, which provides that any refusal by officials or employees to comply with requisition orders (sections 20 and 21) makes them liable to the penalties provided for in sections 100 and 101 of Act No. 017/PR/2001 issuing the general public service regulations. In this regard, the Committee recalls that these legislative provisions describe the degrees of disciplinary penalties to be imposed by order of gravity, but without indicating those which correspond to the different degrees of fault. *The Committee once again requests the Government to clarify the scope of penalties for contraventions of legal provisions and also requests it to indicate any other penalties that can be imposed for violations of Act No. 008/PR/2007 regulating the exercise of the right to strike in public services.*

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

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

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

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

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

## **Chile**

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

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 4 August 2011 concerning the application of the Convention and also the Government's reply, which indicates that its observation will be sent as soon as possible. *The Committee requests the Government to send its observations in this respect, and also on the comments made in 2009 by the ITUC, the National Inter-Enterprise Union of Airport Workers of Chile and other unions in various sectors.* The Committee also notes the comments from the Confederation of Production and Commerce (CPC) dated 10 August 2011 concerning the position of the Employers' group at the ILO regarding the right to strike. The Committee notes that the draft reform of the Constitutional Organic Act on municipalities, No. 18695, which dealt with the right to strike, was rejected in the Chamber of Deputies.

*Articles 2 and 3 of the Convention.* The Committee recalls that it has been requesting the Government for several years to amend or repeal various legislative provisions, or to take measures to ensure that certain workers are afforded the guarantees laid down in the Convention. Specifically, in its previous comments, the Committee requested the Government to take steps to:

- repeal section 11 of Act No. 12927 concerning the internal security of the State, which provides that any interruption or collective suspension, stoppage or strike in public services or public utilities, or in production, transport or commercial activities which is not in accordance with the law and is detrimental to public order or to compulsory legal functions or is damaging to any vital industries shall constitute an offence and be penalized with imprisonment or relegation;
- ensure that officials of the judiciary are afforded the guarantees set forth in the Convention;
- amend article 23 of the Political Constitution, which provides that the holding of trade union office is incompatible with active membership of a political party and that the law shall establish penalties for trade union officials who engage in political party activities;
- amend sections 372 and 373 of the Labour Code, under which an absolute majority of workers in the enterprise is required for a decision to strike;
- amend section 374 of the Labour Code, under which a strike must be carried out within three days of the decision to call it, otherwise the workers in the enterprise concerned shall be deemed to have refrained from going on strike and so accept the employer's final offer;
- amend section 379 of the Labour Code, which provides that at any time the group of workers concerned by the negotiations may be called upon to vote, by at least 20 per cent of them, for the purpose of taking a decision, by absolute majority, to censure the negotiating committee, in which case a new committee shall be elected forthwith;

- amend section 381 of the Labour Code containing a general prohibition on the replacement of striking workers but which provides for the possibility of such replacement subject to compliance by the employer with certain conditions in the final offer during the process of negotiation, and the requirement to pay a bond of four units of account (UF) for each worker hired as a replacement. The Committee notes that the Government recalls that the possibility of replacement of striking workers is generally prohibited, being an exceptional facility granted to the employer subject to compliance with strict conditions. The Committee recalls that the replacement of striking workers should be limited to cases in which strikes may be restricted or even prohibited, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in situations of acute national or local crisis, or in the event of non-compliance with a minimum service;
- 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 (section 384(3) 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 notes the Government's reference to Case No. 2649 examined by the Committee on Freedom of Association (CFA) and its indication that the Comptroller-General of the Republic has stated that this restriction on the declaration of a strike would be justified in view of the fact that: (a) the employees work in certain entities whose operation must be ensured on a continuous basis for reasons of public interest and on account of the principle of the State's readiness for service referred to in article 1(3) of the Constitution, which obliges the State to promote the common good; (b) in order to apply this prohibition, since no distinctions are made regarding the conditions in which part of the work is to be executed, the respective entities have recourse to the subcontracting system; and (c) ILO Conventions Nos 87, 98 and 151 do not contain any statements or requirements specifically concerning the situation of strikes in entities that provide essential services for the public. While noting this information, the Committee recalls that the definition of services in which strikes may be prohibited, and also 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; and that the aforementioned list includes certain private port terminals 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 reason of its nature, timing or duration causes 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. The Committee notes the Government's statement that the Directorate of Labour, which is responsible for defining the substance and scope of labour standards, stated in opinion No. 5062/093 of 26 November 2010 that the concept of "essential services" contained in section 380(1) of the Labour Code should be interpreted as "services the interruption of which could endanger the life, personal safety or health of all or part of the population". The Committee observes that the definition of services with respect to which the President of the Republic can order the resumption of work goes beyond that of essential services in the strict sense of the term;
- ensure in law and in practice that agricultural workers enjoy the right to strike;
- amend section 254 of the Penal Code, which provides for criminal penalties in the event of interruption of public services or public utilities or dereliction of duty by public employees;
- amend section 48 of Act No. 19296, which grants broad powers to the Directorate of Labour for the supervision of the accounts and financial and property transactions of associations.

*While welcoming the Government's statement that it notes the Committee's observations and reiterates its willingness to incorporate into the relevant national legislation all the necessary provisions to ensure prompt alignment with the Convention, the Committee hopes that the Government will take all the necessary measures in the near future to amend the legislation to bring it into full conformity with the provisions of the Convention. The Committee requests the Government to provide information in its next report on any measures taken in this respect. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

Finally, the Committee has been informed of the preparation of a draft reform of the Political Constitution. *The Committee requests the Government to provide information in its next report on any progress made in this respect and on the possible inclusion of provisions in amended legislation on the reformed Political Constitution relating to trade union rights.*

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

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 4 August 2011 concerning the application of the Convention. With regard to the comments dated 24 March 2009 from the National Inter-Enterprise Union of Airport Workers of Chile and other unions in various sectors and the comments dated August 2009 from the ITUC, the Committee notes the Government's indication that it will send its observations as soon as possible. The Committee is awaiting to receive the Government's observations.

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

- section 1 of the Labour Code, which provides that the Code does not apply to officials of the National Congress or the judiciary, or to workers in state enterprises or institutions, or those in which the State contributes or in which it participates or is represented, provided that such officials or workers are subject by law to special regulations. The Committee notes that the Government welcomes this observation and expresses its willingness to take account of it in the forthcoming legislative discussions, and will provide information on any changes that occur in this matter;
- section 82 of the Labour Code, which provides that “the remuneration of apprentices may on no account be determined by means of collective agreements or accords 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 the Government’s statement that although there are limitations on the participation of these workers in regulated collective bargaining, these workers are able to take part in unregulated collective bargaining resulting in the conclusion of collective labour agreements that have an effect identical to those of collective labour agreements signed in conformity with the provisions of regulated collective bargaining. ***The Committee requests the Government to provide examples of unregulated collective bargaining in which remuneration for apprentices is determined, indicating the number of apprentices covered by collective agreements in the country;***
- section 304 of the Labour Code, which does not allow collective bargaining in state enterprises dependent on the Ministry of National Defence or which are connected to the Government through this Ministry and in enterprises in which it is prohibited by special laws, or in public or private enterprises or institutions in which the State has financed 50 per cent or more of the budget of either of the last two calendar years, either directly or through duties or taxes. The Committee notes the Government’s indication that a legal reform of the collective bargaining system for entities which may not engage in collective bargaining is an issue of parliamentary debate of current and future relevance and various items of draft legislation are before the Congress with a view to amending the legal provisions in force in this area, and one of these drafts was rejected for lack of a quorum. The Committee notes a number of legal or constitutional difficulties relating to collective bargaining in the public sector which have been referred to in the discussions (according to the Government’s report), but it emphasizes that the Convention is compatible with special methods of application in the public service. The Committee recalls that, under the terms of *Articles 5 and 6* of the Convention, only the armed forces, the police and public servants engaged in the administration of the State may be excluded from collective bargaining. The Committee therefore considers that the categories of workers referred to above should enjoy the right to collective bargaining in law and in practice;
- section 334(b), which 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 confer representation on the trade union concerned in an assembly, by secret ballot and in the presence of a public notary. The Committee notes that the Government reiterates that it will take account of these comments in future legal discussions;
- 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 not 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 welcomes the Government’s statement that it will take account of these comments in due course. The Committee considers that these provisions do not, generally speaking, adequately promote collective bargaining with trade union organizations;
- sections 314bis and 315 of the Labour Code, which provide that groups of workers, even when there are unions, may submit draft collective agreements. In its previous comments the Committee noted a bill which contains various amendments to the current legislation on collective bargaining and will enable collective bargaining to be undertaken by groups of workers formed for this purpose solely in enterprises where there is no existing trade union;
- section 320 of the Labour Code, which places an obligation on employers to notify all workers in the enterprise of the submission of a draft collective accord so that they can propose draft texts or agree to the draft submitted. The Committee notes the Government’s statement that the purpose of this provision is to promote and facilitate collective bargaining together with other provisions relating to the same subject, and to establish order and peace so that the enterprise is not exposed to repeated bargaining procedures which waste time and affect productivity at the levels of both management and workers; according to the Government, this provision does not affect voluntary collective bargaining and only applies to regulated collective bargaining. The Committee recalls that direct bargaining between an enterprise and its workers, over and above representative organizations where these exist, may be detrimental to 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.

While noting the information supplied by the Government, the Committee emphasizes that significant restrictions have continued for years on the exercise of the rights established in the Convention. The Committee has noted certain draft reforms which had an impact on the application of the Convention (the reform relating to collective bargaining and the right to strike of public servants, which was rejected for lack of the constitutional quorum required for its adoption; the reform of the Constitutional Organic Act on municipalities, No. 18695, which was shelved following its rejection by the Chamber of Deputies; and the reforms relating to the collective bargaining system, which are at the first stage of the constitutional process).

*The Committee underlines the importance of the pending issues and expresses the firm hope that the Government will take the necessary measures to amend the legislation to bring it into full conformity with the provisions of the Convention. The Committee again requests the Government to provide information in its next report on all specific measures taken in this respect.*

## China

### Hong Kong Special Administrative Region

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

The Committee notes the Government's reply to the 2009 International Trade Union Confederation (ITUC) comments. The Committee further notes the comments submitted by the ITUC in communications dated 4 and 31 August 2011 on the application of the Convention. *The Committee requests the Government to provide its observations thereon.*

*Article 2 of the Convention.* In its previous comments, the Committee had noted the proposals to implement article 23 of the Basic Law which, among others, would allow for the proscription of any local organization which was subordinate to a mainland organization, the operation of which had been prohibited on the grounds of protecting the security of the State. The Committee previously expressed the firm hope that any further action on proposed legislation to implement article 23 of the Basic Law would take fully into account the provisions of this Convention, in particular, the right of workers and employers to form and join the organization of their own choosing and to organize their administration and activities free from interference by the public authorities. The Committee had also noted the Government's indication that article 27 of the Basic Law guarantees that residents of the HKSAR shall have freedom of association and the right and freedom to form and join trade unions, while article 18(1) of the Hong Kong Bill of Rights, as set out in the Hong Kong Bill of Rights Ordinance, stipulates that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". The Committee had further noted the ITUC's indication that several substantive changes had been made to the draft text of article 23 but that there has not been an announced timetable for enactment of the bill and had requested the Government to include in its next report a copy of the draft bill for article 23 of the Basic Law and to indicate any progress made in the enactment of the bill. The Committee notes that the Government indicates in its report that at present, it does not have a timetable to embark on the legislative works but when the legislative exercise is to be taken forward, the Government will fully consult the community in order to achieve a broad-based consensus on the legislative proposals. *In these circumstances, the Committee once again requests the Government to include in its next report a copy of the draft bill for article 23 of the Basic Law and to indicate any progress made in the enactment of the bill.*

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 concerning issues already raised by the Committee and the additional comments communicated by the ITUC and the Hong Kong Confederation of Trade Unions (HKCTU) dated 31 August 2011, referring notably to the deprivation of effective protection against anti-union discrimination in Hong Kong evidenced by the low number of complaints filed by the Labour Department and the even lower number of successful cases against employers – not more than two since 1997. *The Committee requests the Government to provide its observations thereon.*

*Article 1 of the Convention. Protection against anti-union discrimination.* In several of its previous comments, the Committee referred to the need to provide further protection against anti-union discrimination and noted the Government's reference to the drafting of an amendment bill that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Committee had further noted that the Government indicated that: (i) there was ongoing progress on amendments to introduce new provisions on mandatory reinstatement and re-engagement under the Employment Ordinance, Chapter 57; (ii) upon completion of the draft, it would be introduced into the Legislative Council; and (iii) it has committed to introduce a bill which criminalizes non-payment of labour tribunal awards. The Committee notes that the Government indicates in its report that the new bill will also include a provision of a further sum to be payable to the employee in case the employer fails to comply with the compulsory order of reinstatement or re-engagement. *The Committee once again expresses the hope that this bill, which has been under examination since 1999, will soon be*

*adopted so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination and requests the Government to indicate any progress made in this respect.*

*Article 4. Measures to promote collective bargaining.* Several of the Committee's previous comments concerned the need to strengthen the collective bargaining framework, in particular with respect to the low levels of coverage of collective agreements which were not binding on the employer (see Committee on Freedom of Association, Case No. 1942), and the absence of an institutional framework for trade union recognition and collective bargaining. The Committee previously requested the Government to continue to provide information on measures adopted or contemplated for the promotion of new bipartite collective agreements through the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations and to indicate any further sectors covered by collective agreements, as well as the level of coverage (number of collective agreements and workers covered). In addition, the Committee previously requested the Government to take all the necessary measures to continue to promote voluntary bipartite negotiations in the private sector and to provide additional information concerning new sectors in which collective agreements have been concluded. The Committee had previously noted that the Government referred to promotional materials, seminars, and operational activities between workers' and employers' representatives and indicated that collective agreements had been negotiated in the food processing and security services. The Committee appreciates the Government's indication in its report that during the reporting period, collective agreements in the pig-slaughtering, property management and some other public transport services trades were noted. In its previous comments, the Committee had also noted that the Government stated that: (i) it would continue to use tripartite committees as one of the useful channels for promoting bipartite voluntary negotiation at the industry level; (ii) it had been promoting direct and voluntary negotiations between employers' and workers' organizations; and (iii) it had taken measures appropriate to local conditions to promote voluntary and direct negotiations between employers and employees or their respective organizations. The Committee notes that the Government reiterates these affirmations in its report. ***Taking into account that the ITUC refers to a collective bargaining coverage of only 1 per cent of the population, the Committee once again requests the Government to continue to promote collective bargaining and to provide information in this regard.***

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

## Colombia

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

*Comments from workers' and employers' organizations.* The Committee notes the comments of the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), dated 30 August 2010 and 29 August 2011; the International Trade Union Confederation (ITUC), dated 31 August 2010 and 4 August 2011; Education International (EI), dated 7 October 2010; and the General Confederation of Labour (CGT), dated 1 September 2011. The Committee notes that these comments refer in general to matters that are already under examination by the Committee, and particularly to acts of violence against trade union leaders and members, including murders and other acts of violence, as well as the impunity in relation to many acts of violence.

The Committee also notes the comments of the National Employers' Association (ANDI), dated 31 August 2011.

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

*Technical assistance missions.* The Committee notes that, at the request of the Government, preliminary contact missions were undertaken in 2010 in relation to the various cases before the Committee of Freedom of Association. The Committee observes that these missions provided an opportunity for the parties to reach agreements and request the withdrawal of several complaints.

The Committee takes due note of the fact that the Government invited a high-level tripartite mission, which visited the country from 14 to 18 February 2011. The Committee notes the report of the mission and particularly its conclusions

addressing issues related to the strengthening of social dialogue, measures to combat violence and impunity, the employment mediation carried out by associated work cooperatives and the obstacles to freedom of association which may arise from such cooperatives, the need to strengthen labour inspection and certain pending legislative issues.

The Committee notes with *interest* the indication by the Government that the following measures have been adopted further to the conclusions of the high-level tripartite mission: (1) in relation to labour inspection, through Decree No. 1128 of 15 April 2011, 100 new labour inspectorates were established with a view to continuing to strengthen the inspection system and increasing the numbers of inspectors to 524; (2) with reference to the strengthening of the Special Committee for the Handling of Conflicts Referred to the ILO (CETCOIT), it has been agreed to establish departmental branches, with clear rules being established on their operation and gradual establishment through pilot programmes; the statutes of the CETCOIT were approved and, in February 2011, a letter of intent was signed under which the Government is providing US\$300,000 for the strengthening of the CETCOIT and the promotion of international standards; (3) in relation to measures to combat violence and impunity, the Government adopted Decision No. 716, of 6 April 2011, of the Ministry of the Interior and of Justice “issuing instructions on the scope of the position of trade union leader and activist”. Through this text, not only is protection provided to trade union leaders, but also to trade union activists and to workers who have not been able to establish a union due to the threats received. An emergency plan was implemented to update pending applications relating to risk levels, with only 17 pending applications. Directive No. 013 of 19 April 2011 was adopted establishing a plan for 100 police officers to combat impunity in relation to crimes affecting trade unionists. The Office of the Public Prosecutor is promoting action for the training of investigators and prosecutors, with such action envisaging visits to regions, which will include roundtable meetings with trade union organizations. The National Human Rights and International Humanitarian Law Unit is in the process of being strengthened, in accordance with Decree No. 2248 of 28 January 2011, under which changes are being made to the personnel of the Office of the Public Prosecutor of the Nation, with 60 new specialized prosecutors, reaching a total of 162 prosecutors at the national level from the month of January 2012. In accordance with these commitments, the Office of the Public Prosecutor has continued its investigations in the context of Cases Nos 1787 and 2761 (submitted to the Committee on Freedom of Association concerning acts of violence), with a current total of 415 guilty verdicts and 567 persons convicted, thereby clearly showing the increase in the number of convictions from one in 2001 to 415 in 2011. By decision of the Public Prosecutor of the Nation, cases involving violence against trade unionists have been assigned to the Human Rights Sub-Unit, and the Government allocated a budget to the Office of the Public Prosecutor of US\$20 million; (4) the Congress of the Republic has approved Act No. 1444 of 2011 establishing the Ministry of Labour, with the technical assistance of the ILO being provided with a view to giving effect to the Act; and (5) regional dialogue machinery has been strengthened with the support and the establishment of departmental wage and labour policy dialogue subcommittees, and a significant campaign has been launched for the training of the social partners.

*Tripartite Agreement on Freedom of Association and Democracy.* The Committee also notes the Government’s indication that in May 2011 the Government, workers and employers renewed the Tripartite Agreement on Freedom of Association and Democracy which they had concluded in 2006. With the signature of this Agreement, the State confirmed its commitment to continue promoting and deepening dialogue on social and labour matters in the country. The Government observes that it is of great importance to extend and deepen cooperation with the ILO in various fields, including with regard to associated work cooperatives, temporary employment agencies and regulations respecting collective agreements. The Committee notes the Government’s indication that, with a view to ensuring greater efficiency in this broad range of activities and cooperation, it may be appropriate to establish an ILO mission in the country, of which the principal task would be the coordination of the various fields of assistance.

Finally, the Committee notes that the Colombian Government and the Government of the United States agreed, on 7 April 2011, on a plan of action for the period up to 2013, which includes the following subjects: the reform of the criminal justice system, associated work cooperatives, temporary work agencies, collective agreements, essential services and protection programmes.

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

The Committee recalls that for many years it has been examining allegations of violence against trade unionists and the situation of impunity, which have been submitted to the Committee of Freedom of Association in Cases Nos 1787 and 2761. The Committee notes with *concern* that the ITUC, the CUT, the CTC and EI allege that 51 trade unionists were murdered in 2010 and 20 between 1 January and August 2011, and that the situation of impunity in relation to crimes against trade unionists has not changed in view of the low number of convictions, the slowness of investigation processes and the high number of murders which are not investigated. The Committee notes that, according to the Government, there were 48 murders of trade unionists between 1 January 2010 and the month of June 2011, and that between 2001 and 2011 there were 354 convictions, and 88 between 1 January 2010 and June 2011, with 483 persons being convicted and 355 sentenced to imprisonment. The Committee also notes the Government’s indication that the programme for the protection of trade union leaders is continuing and has a budget of US\$19,498,000 for the protection of 1,454 trade union leaders.

The Committee notes that, according to the Government, it is necessary to examine the context in which acts of violence occur to determine whether they are related to the general climate of violence or were committed for reasons relating to trade union activities. The Committee also notes the indication by the ANDI that it undertook a study of court

decisions relating to crimes against trade unionists and that a reading and analysis of the rulings does not show in any way that the murders of trade unions are due to a policy of the State or of employers, and that in general it may be concluded that the violence affecting trade unionists has decreased in recent years. In this respect, as affirmed by the mission which visited Colombia in 2009, with a view to providing support for investigations into acts of violence against the trade union movement, the Committee considers that a tripartite analysis could be undertaken, in the context of the Dialogue Commission on Wage and Labour Policies, of the criteria for sorting the information that is to be referred to investigation bodies and it hopes that this will provide a basis for the compilation of harmonized statistics on violence for anti-trade union reasons.

The Committee welcomes the adoption of the Act respecting victims and the restitution of lands (Act No. 1448 of 10 June 2011), the objective of which is to compensate, restore and indemnify victims of the armed conflict in Colombia.

The Committee *deplores* the murders and acts of violence against trade unionists which have been occurring for years. The Committee notes the divergences in the statistics concerning the violence affecting the trade union movement. The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and that it is for governments to ensure that this principle is respected. Although it is aware of the gravity of the situation, the Committee welcomes all the measures, of a practical and legislative nature that the Government has been adopting to combat violence in general and against the trade union movement, as well as the significant increase in convictions. ***The Committee wishes to point out, along the lines of the high-level tripartite mission, that it continues to be deeply concerned at the situation and hopes that the Government will continue to take the necessary effective measures combating the serious violence against trade union leaders and members and convicting those responsible for these acts.***

#### ***Pending legislative and practical issues***

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. Associated work cooperatives.* In its previous observation, the Committee requested the Government to consider the possibility of an independent expert undertaking a national study on the application of the Act respecting cooperatives, and the use of cooperatives in the area of industrial relations, and also to clarify the issue of whether or not workers in cooperatives can organize. The Committee notes with **satisfaction** the adoption of Decree No. 2025 of 8 June 2011, further to the conclusions of the high-level tripartite mission of 2011 which, among other provisions, establishes that no worker may be recruited without the labour rights and guarantees established in the Political Constitution and the law, including workers who are members of cooperatives. The Committee also notes that the updating of the 2006 Tripartite Agreement proposes as one of its objectives measures to combat all forms of intermediate employment which disregard the labour rights of workers, by regulating the activities of associated work cooperatives and pre-cooperatives and increasing the penalties when they engage in intermediate employment activities.

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

- the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very broad range of services that are not necessarily essential (section 430(b), (d), (f), (g) and (h); section 450(1)(a) of the Labour Code, Tax Act No. 633/00 and Decrees Nos 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963 and 57 and 534 of 1967);
- the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even where the unlawful nature of the strike is a result of requirements that are contrary to the principles of freedom of association; and
- the prohibition of the calling of strikes by federations and confederations (section 417(i) of the Labour Code).

In this regard, in its previous observation the Committee noted that, under the terms of Act No. 1210, the legality or unlawful nature of a collective work suspension or stoppage shall be determined by the judicial authorities in a priority procedure and that it is for the judicial authorities to determine when a service is essential. Taking into account the fact that the updating of the 2006 Tripartite Agreement envisages further cooperation with the ILO and that the plan of action agreed with the Government of the United States envisages addressing issues relating to essential services, the Committee trusts that the Government will undertake a tripartite analysis of the legislative provisions referred to above which will take into account the rulings of the Supreme Court and of the Constitutional Court in this respect. ***The Committee requests the Government to provide information in its next report on any measures adopted in this context.***

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

*Comments from workers' and employers' organizations.* The Committee notes the comments from the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC) and the Confederation of Retirees of Colombia (CPC) dated 3 June and 30 August 2010 and 29 August 2011; from Education International (EI), dated 7 October 2010; from the International Trade Union Confederation (ITUC), dated 4 August 2011; and from the General Confederation of Labour (CGT), dated 1 September 2011, referring to issues examined by the Committee and

also to acts of anti-union discrimination. The Committee also notes the comments from the National Association of Telephone, Communication and Allied Technicians (ATELCA), dated 4 and 10 November 2010, which refer to matters under examination by the Committee on Freedom of Association (Case No. 2434). The Committee further notes the comments from the National Association of Employers of Colombia (ANDI), dated 31 August 2011. Finally, the Committee notes various communications from the Government relating to these comments.

*Tripartite Agreement on Freedom of Association and Democracy.* The Committee notes the Government's statement that in May 2011 the Government, workers and employers renewed the Tripartite Agreement on Freedom of Association and Democracy which they had signed in 2006. The Government asserts that the signature of this Agreement reaffirms its commitment to continue promoting and extending social and labour dialogue in the country, and that it is of vital importance to increase and deepen cooperation with the ILO in various fields, including with regard to the regulation of collective accords with non-unionized workers.

The Committee notes that the Government of Colombia and the Government of the United States also agreed, on 7 April 2011, on a plan of action lasting until 2013, which provides, inter alia, for the promotion of collective agreements and the establishment of a solid system of application.

*High-Level Tripartite Mission.* In its observation relating to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee notes the visit of the High-Level Tripartite Mission to the country from 14 to 18 February 2011, and also its conclusions, which, as regards the Convention, cover issues related to acts of anti-union discrimination and the strengthening of social dialogue and collective bargaining.

The Committee notes the Government's statement in its report that it remains fully available to continue with social dialogue and create the space needed to contribute to the building of trust and the search for joint solutions enabling continued progress on labour-related matters. The Committee notes that departmental sub-commissions were set up towards this end for consultation on wage and labour policies which are receiving technical assistance as regards fundamental rights at work, the settlement of labour disputes, state policies for decent work, protection for vulnerable groups of workers and dissemination of fundamental rights at work. The Committee also observes that, according to the Government, the 32 sub-commissions which have been set up have dialogue plans designed to tackle specific labour issues in each department and a total of 428 meetings were held from 2009 to 2011. Finally, the Committee notes the Government's indication that a major training campaign has been undertaken for the benefit of the social partners with training provided for a total of 13,444 trade union officials and the creation of a diploma in negotiation, mediation and dispute settlement with the participation of trade unionists, labour inspectors and employers.

*Article 4 of the Convention. Collective bargaining in the public sector. Public servants not engaged in the administration of the State. Decree No. 535 of 24 February 2009.* In its previous observation the Committee noted with satisfaction the adoption of Decree No. 535 of 24 February 2009 concerning collective bargaining in the public sector, while also indicating that it was aware that the Decree is very short, can be improved and establishes principles which probably require further regulation to comply more effectively with its objectives and to extend in practice collective agreements in the various institutions. The Committee asked the Government to continue dialogue with trade union organizations with a view to improving the Decree that had already been adopted and to provide information in this respect. The Committee notes the Government's statement that: (1) in the context of meetings of the Sectoral Commission for the Public Sector, which comprises various Government entities and representatives of the CUT, CGT, CTC and the National Federation of State Workers (FENALTRASE), meetings have been held since February 2011 to conduct consultations on amendments to Decree No. 535 of 2009; and (2) in May 2011 the members of the Commission agreed on a preliminary draft of work for amendments to Decree No. 535 of 2009 "regulating section 416 of the Labour Code". The Committee notes that the abovementioned trade unions indicate that only the Government's signature is lacking from the agreement on the preliminary draft of work for amendments to Decree No. 535 of 2009 and this should come into force as soon as possible. The Committee welcomes this information and reminds the Government that, if it wishes, it may avail itself of technical assistance from the Office in relation to the draft decree for amendments to Decree No. 535 of 2009. **The Committee requests the Government to provide information in its next report on any further developments in this respect.**

*Collective accords with non-unionized workers.* In its previous observation the Committee referred to the need to ensure that collective accords are not used to undermine the position of trade union organizations and to the need to ensure the possibility in practice of concluding collective agreements with them. It also asked the Government to provide information on the total number of collective agreements and collective accords and the respective numbers of workers covered by them. The Committee notes the Government's indication that, with a view to discouraging the conclusion of collective accords in which better conditions are granted to non-unionized workers, Act No. 1453 of 2011 was passed, amending section 200 of Act No. 599 of 2000 and establishing the penalty of imprisonment (one to two years) and/or fines (100 to 300 times the legal monthly minimum wage in force) in the event of the conclusion of collective accords in which, overall, better conditions are granted to non-unionized workers by comparison with the conditions agreed on in collective agreements with unionized workers at the same enterprise. The Committee nevertheless underlines that when there is a trade union at the enterprise, collective agreements should not be concluded with non-unionized workers. Finally, the Committee notes the Government's statement that collective bargaining is developing in Colombia and that 279 collective agreements and 166 collective accords were concluded between January and July 2011. **The Committee requests the**

*Government to continue to supply statistics in this regard and state whether any trade union organizations exist in the enterprises where collective accords have been concluded with non-unionized workers.*

## Comoros

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

*Article 2 of the Convention. Anti-union discrimination.* The Committee notes that the Workers' Confederation of Comoros (CTC) reports numerous dismissals of trade union members and leaders in the para-public and port sectors in a communication dated 31 August 2011. ***The Committee requests the Government to provide its observations in this respect.***

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

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

## Congo

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

The Committee notes the Government's reply to the comments from the International Trade Union Confederation (ITUC) concerning the arrest of a number of trade union representatives on 27 October 2005. The Committee also notes the new comments from the ITUC dated 4 August 2011 concerning points already raised by the Committee.

*Article 3 of the Convention. Right of workers' organizations to conduct their activities in freedom and formulate their programmes.* 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. The Committee notes the Government's indication in its report that the work of revising the Labour Code, which had been suspended in 2008, resumed in 2010 and the adoption of the revised Code is envisaged for the second quarter of 2012. The Committee notes the timetable for the execution of the work, included in the Government's report, according to which a draft revised Labour Code was due to be produced in the first quarter of 2011, on the basis of which the ministries concerned, the social partners and the ILO were due to be consulted. The Committee also notes the Government's undertaking to take account, in the context of this revision, of the principles which it recalled in its previous comments, namely 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 (see 1994 General Survey on freedom of association and collective bargaining, paragraph 161). ***The Committee requests the Government to provide information in its next report on the progress of the work to revise the Labour Code and reminds the Government of the possibility of seeking technical assistance from the International Labour Office as part of this work.***

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

## Costa Rica

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

The Committee notes the Government's report and its reply to the comments of the International Trade Union Confederation (ITUC) of August 2011 concerning the application of the Convention. The Committee notes the report of the high-level technical assistance mission which visited San José in May 2011 in the context of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

*Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. Prohibition upon foreigners from holding office or exercising authority in trade unions (article 60, second paragraph, of the Constitution and section 345(e) of the Labour Code).* The Committee observed previously that Bill No. 13475 amends section 345(e) of the Labour Code so that it no longer provides that the members of the executive board of a trade union must be of Costa Rican nationality or of Central American origin, or foreign nationals married to a Costa Rican woman and having completed five years of permanent residence in the country. Nevertheless, the Bill provides that the bodies of trade unions have to comply with the provisions of article 60 of the Constitution, which provides that "foreign nationals shall be 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 along the lines requested by the ILO, had been submitted to the Legislative Assembly in 1998, but was shelved in 2009.

The Committee notes the Government's indication in its report that, on 30 July 2010, a group of deputies once again submitted a Bill to amend article 60 of the Constitution, along the lines requested by the Committee, and that if it is approved it would involve the amendment of section 345 of the Labour Code, to guarantee equality of conditions for foreign nationals in access to trade union office. **The Committee expresses the firm hope that the new Bill to reform the Constitution will be adopted in the very near future and it requests the Government to provide information in that regard.**

*Obligation for the trade union assembly to appoint the executive board each year (section 346(a) of the Labour Code).* The Committee noted previously that Bill No. 13475 no longer establishes the requirement for the executive board to be appointed each year. The Committee notes the Government's repeated indication that in practice the Ministry of Labour ensures the full autonomy of organizations to determine the duration of the mandates of their executive boards. The Government adds that, in view of the examination of another Bill (to reform labour procedures) by the Legislative Assembly, Bill No. 13475 has not become law. **The Committee requests the Government to take measures to amend section 346(a) of the Labour Code so as to adapt it to the practice followed by the authorities, and to provide information in this respect.**

*Right of organizations to organize their activities and to formulate their programmes in full freedom.* Restrictions on the right to strike: (i) requirement of "60 per cent of 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 noted previously the Government's indication that the Bill to reform labour procedures, which benefited from ILO technical assistance, had been submitted to the Legislative Assembly, was supported by the trade unions and employers' associations, with the exception of certain provisions, and took into account the recommendations of the ILO supervisory bodies. The Committee observed that the Bill:

- proposes 40 per cent of the workers of the enterprise in order to call a strike (the employers' associations rejected this percentage, citing the principle of democratic participation);
- the right to strike is restricted only in essential services in the strict sense of the term, although these include the loading and unloading of perishable goods in ports; transport is considered an essential service as long as the journey has not been completed;
- strikes may no longer be deemed unlawful before they have occurred (the Government emphasizes that this is already established by jurisprudence, and that trade unions are now heard during judicial procedures);
- arbitration is introduced for disputes in essential services and in the public sector (in this respect, the Committee recalls that compulsory arbitration is only admissible in relation to public servants exercising authority in the name of the State and in essential services the interruption of which would endanger life, personal safety or health);
- a special very short summary procedure is introduced for workers with trade union immunity; and
- the maximum limit for strikes is set at 45 calendar days (following which arbitration is compulsory).

The Committee emphasizes that, despite the improvements introduced in the Bill in relation to the legislation that is currently in force, it would be necessary to make certain additional modifications to achieve full conformity with the Convention.

Also 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 unlawful. Furthermore, according to the trade union confederations, the procedure to set a strike in motion could last around three years.

The Committee notes the Government's indication in its report that 234 amendments were submitted in 2011 to the Bill to reform labour procedures due to differences of views in the Legislative Assembly and that the achievement of consensus always requires time. The Committee notes that the report of the ILO mission undertaken in May 2011 in Costa Rica in the context of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), indicates that the mission promoted the Bill in the official meetings of the Legal Affairs Commission of the Legislative Assembly.

The Committee *regrets* to observe once again that the Bills submitted to the Legislative Assembly to achieve greater conformity between the legislation and the Convention on very important matters that are not meeting with success. ***The Committee requests the Government to continue promoting the Bill to reform labour procedures and to provide information on this subject.***

*Articles 2 and 4. The need for Bill No. 13475, in amending section 344 of the Labour Code, to establish a specific and short period during which the administrative authority is to reach a decision on the registration of trade unions and after which, in the absence of a decision, legal personality is deemed to have been obtained.* The Government reiterates in its latest report that in practice registration procedures are carried out without any delay and that, if applications fall short of the legal documentary requirements, applicants are asked to remedy the defects and are entitled to appeal. The legal time limits are 15 days for the Department of Trade Union Organizations and, if it issues a favourable opinion within that period, the Ministry of Labour issues its decision as soon as possible thereafter, and in any event within one month of the report being issued. The Committee notes that, according to the Government, the issue raised by the Committee, in addition to being superseded in practice, is no longer valid in relation to the law, as the General Act of the public administration provides that, where the statutory time limits are not respected, those concerned may appeal to the respective higher authority. The Committee previously invited the Government to have these deadlines set out explicitly in Bill No. 13475. ***The Committee observes once again that the Bill is before the Legislative Assembly, but is not being examined, and it requests the Government to provide information on any developments in this respect.***

*Submission of legislative matters to a joint commission in the Legislative Assembly. Taking into account the differences of views in the Legislative Assembly on the content of the future Act to reform labour procedures (Bill No. 15990 and the other bills relating to trade union rights), the Committee once again requests the Government to promote a joint commission in the Legislative Assembly with representation of trade unions and employers, as proposed by the Higher Labour Council (a tripartite body) to the Legislative Assembly, to address controversial matters. The Committee reminds the Government that ILO technical assistance is at its disposal in this process with a view to contributing to bringing the legislation into full conformity with the Convention.*

***Taking into account the various ILO missions which have visited the country over the years and the gravity of the problems, the Committee, while expressing disappointment at the lack of results in relation to the pending issues, also expresses the hope that it will be in a position to note substantial progress in the near future in both law and practice. The Committee requests the Government to provide information in this respect in its next report.***

*Comments by trade union organizations.* The Committee previously requested the Government to provide official statistical data on the number of trade unions and higher level organizations (in the public and private sectors) and the number of trade union members (the ITUC had indicated that trade unions were practically non-existent in the private sector). The Committee notes the Government's indication in its report that the unionization rate has risen from 8.3 per cent (2007) to 10.3 per cent (2010), representing a total of 195,950 union members (of which 72,382 are in the private sector). According to the Government's statistics, there are 281 unions, of which 127 are active in the private sector.

Finally, the Committee requested the Government to provide its observations on the ITUC's communication, dated 26 August 2009, and particularly on: (1) its allegation that in the event of a strike the unions are required to provide the names of the strikers; (2) the alleged unlawful arrest of a trade union leader in the construction sector; and (3) the violation of the Act which prohibits trade union activities by solidarist associations in certain banana and pineapple ranches.

The Committee notes the Government's indication that the (temporary) arrest of the person mentioned by the ITUC is not related to his trade union activities, but to his unlawful migrant status in the country; the refusal of his application for a residence permit had been notified to him in October 2004. The Committee notes the Government's indication that it has requested comments from enterprises in the banana and pineapple sector so that they can reply to the ITUC's allegations, which it considers to be unfounded, as details are not provided of the alleged violations of trade union rights. ***The Committee awaits this information and the Government's reply to the ITUC's allegation that in the event of a strike the unions are required to provide the names of the strikers.***

The Committee notes the comments of the Union of Medical Science Professionals of the Costa Rican Social Security Fund (SIPROMECA) of July 2011 and the Government's reply. ***The Committee also notes the comments of the Confederation of Workers Rerum Novarum (CTRN) of 31 August 2011 and those of the ITUC of August 2011 and requests the Government to provide its replies.***

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

In its previous observation, the Committee had noted the report of the high-level mission which visited the country in October 2006, as well as Cases Nos 2490 and 2518, examined by the Committee on Freedom of Association, which confirmed that a large number of trade unionists had been dismissed. The Committee notes the comments on the application of the Convention made by the Union of Medical Science Professionals of the Costa Rican Social Security Fund and Related Institutions (SIPROMECA) (April 2010), the International Trade Union Confederation (ITUC) (4 August 2011) and the Confederation of Workers Rerum Novarum (CTRN) (31 August 2011). The Committee notes the Government's indications in its reports, which cover part of the problems raised in those comments, as well as the discussion on the application of the Convention in the June 2010 session by the Committee on the Application of Standards of the International Labour Conference. The Committee notes the report of the ILO technical assistance mission which visited the country from 16 to 20 May 2011, which was conducted in a climate of full cooperation. The Committee welcomes the fact that the new Minister of Labour has reactivated tripartite dialogue in the country, as indicated in the mission report.

*Slowness and ineffectiveness of proceedings regarding complaints and compensation in the event of anti-union acts.* The Committee noted previously that, according to the high-level mission that visited the country in 2006, the proceedings in cases of anti-union discrimination are so slow that it takes at least four years to obtain a final ruling. The Committee noted that, in its comments, the ITUC indicated that the problem still exists. The employers' organization UCCAEP indicated that legislative and judicial treatment of anti-union discrimination is satisfactory and pointed out that the criticism of Costa Rican law has mostly been levelled at the slow proceedings to overturn the dismissal of trade union leaders, and that action has been taken to improve matters in this respect, particularly through a Bill to reform labour procedures that is currently on the agenda of the Legislative Assembly.

The Committee notes the Government's indications that: (1) a Bill to reform labour procedures was being discussed in the Legislative Assembly, of which the Legal Affairs Commission benefited from the participation of three deputies, the President of Chamber II of the Supreme Court of Justice, a representative of the Ministry of Labour and representatives of employers' and workers' organizations; (2) the Bill, the promotion of which was also decided upon by the Higher Labour Council (a national tripartite body), introduces oral hearings and strengthens protection against anti-union acts, is the outcome of ILO technical assistance and is an absolute priority for the Government, even though 234 amendments were submitted to it in 2011 due to divergences of views and lack of consensus among the deputies; (3) however, Bill No. 13475 to reform various sections of the Labour Code, Act No. 2 of 27 August 1943 and sections 10, 15, 16, 17 and 18 of Decree No. 832 of 4 November 1949, as amended, which is on the agenda of the Legislative Plenary, is intended to strengthen trade union activity in the country through reforms to the Labour Code intended to contribute to the establishment of unions in private enterprises and compliance with ILO standards; and (4) the executive authorities have given priority in the agenda of the Plenary to the Bill to reform labour procedures, as it is broader and more inclusive than the provisions of Bill No. 13475. The Government adds, with a view to quantifying appropriately the problem of the slowness of judicial procedures, that cases of the violation of trade union rights numbered 23 in 2007 and seven in 2010.

The Committee notes the efforts and improvements referred to by the Government at the institutional level to strengthen administrative procedures to penalize anti-union acts, and specifically: (1) a legislative initiative so that the labour inspectorate can impose administrative fines and does not have to refer cases to the judicial authorities to do so; (2) the Protocol of Good Inspection Practices for the Labour Inspectorate in Costa Rica, which includes a procedure for "cases of the reestablishment of rights", especially for victims of unfair labour practices, which therefore prejudice the exercise of freedom of association, which was issued by Administrative Directive No. 15 (May 2011) and included in the Manual of Procedures for the Labour Inspectorate; the Protocol includes a section on freedom of association and collective bargaining, encompassing interviews with and the protection of unions during inspections; (3) the establishment of an electronic network in 28 of the 31 regional, provincial and cantonal offices; and (4) the implementation in 2008, 2009 and 2010 of the programme of joint inter-institutional action in the construction and agricultural sectors, involving the National Insurance Institute, the Costa Rican Social Security Fund and the Ministry of Labour and Social Security, through the National Directorate of the General Labour Inspectorate, etc.

The Committee notes a series of initiatives to make judicial labour procedures more rapid and effective, which are detailed by the Government and were explained precisely by the Supreme Court to the 2011 ILO mission. The Committee nevertheless emphasizes that an essential aspect of the problem of the slowness of judicial procedures in cases of anti-union acts is related to the successive judicial appeals that are possible and the lodging of claims for *amparo* (the protection of constitutional rights).

The Committee however emphasizes that the Government has not conducted an evaluation of the impact of the general improvements in the administration of justice on proceedings relating to anti-union acts, where the principal problem lies in the appeals and claims for *amparo* which may delay sentencing for years. Nor has it provided information on the number of cases in which sanctions have been applied for breaches of the labour legislation in relation to trade union rights and on the sentences handed down in this respect which have become final, with an indication of the duration of the proceedings.

The Committee notes the conclusions of the ILO mission in 2011 concerning the issue of the slowness of proceedings in cases of anti-union acts:

With regard to the issue of the slowness and ineffectiveness of proceedings relating to anti-union discrimination and interference, the mission draws the attention of the Committee of Experts to the significant Bill to reform labour procedures (which is intended to speed up labour procedures, including those relating to acts of anti-union discrimination or interference, and in practice establishes a special expeditious procedure for matters relating to trade union rights). The Bill is being promoted by the Government, trade union confederations and the UCCAEP, and is under examination in the Legislative Assembly, where it is favoured by the majority of the groups, according to the understanding gained by the mission from its meetings with the heads of groups and the Legal Affairs Commission of the Legislative Assembly. If the Bill is finally adopted, it could give effect to the comments of the Committee of Experts on the need for expeditious and efficient justice and effective procedures to punish cases of acts of anti-union discrimination or interference. Certain authorities and trade union confederations agree that there was a fear of dismissal when wishing to establish or join a union, for which reason the Bill is of the greatest importance. The Bill also deals with other matters relating to the application of Convention No. 87. The mission draws the attention of the Committee of Experts to other measures referred to by the Government and the judicial authorities to combat delays in judicial proceedings.

***The Committee regrets that, despite the visit by the ILO mission in May 2011, the Bill to reform labour procedures has still not been adopted, and firmly hopes that it will be adopted in the near future, and it requests the Government to provide the text of the future Act as soon as it is adopted. The Committee also regrets to note that Bill No. 13475 to amend various sections of the Labour Code and other legislative texts has been postponed in the Legislative Assembly and requests the Government to take measures to promote the examination of the Bill, and to provide information on that subject. The Committee expresses the firm hope that in the very near future the Government will be able to provide information on legislative progress relating to proceedings in cases of anti-union acts.***

*Submission of collective bargaining to criteria of proportionality and rationality* (in its case law, the Constitutional Chamber of the Supreme Court of Justice had ruled unconstitutional a significant number of clauses in collective agreements in the public sector, at the instigation of the public authorities (the Citizens' Ombudsperson, the General Prosecutor of the Republic) or one or other political party).

The Committee notes that the trade union organizations emphasized the gravity of the problem of collective bargaining in the public sector and the requirements imposed by the Negotiating Policies Commission on public employers, and that the CTRN and the other confederations in the country considered that the long delay in the adoption of the bills to amend the legislation and the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154) (which resulted from a tripartite agreement), demonstrate the lack of interest in moving forward.

The Committee observes that the Government indicated in previous reports that: (1) the Government possesses the full will and commitment to resolve the problems raised by the Committee of Experts; (2) it has requested the ILO's technical assistance and trusts that this will enable it to overcome the problems raised; (3) the Government's efforts (many of them supported by tripartite agreement) to resolve these problems have included the submission of 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; (4) the Government's efforts have also included other types of initiatives, such as intervention as an interested party (to defend collective agreements) in legal actions for unconstitutionality brought in order to annul specific clauses in collective agreements; (5) the present Government has the will to reactivate the respective draft legislation and has maintained contact with the executive authorities, including the Ministry of the Presidency, the legislative authorities, deputies from the various groups, including the leaders of the main opposition party, which also supports the reforms requested by the ILO. The Government indicates that it has sent reports to the judicial authorities 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 occasion with the technical assistance of the ILO Subregional Office, with this assistance including the gathering of information on matters relating to Conventions Nos 151 and 154 on collective bargaining. The Government adds that meetings have been held and activities undertaken to promote the Bills referred to above and that contacts have been established for that purpose with the Subregional Office in San José.

The Minister of Labour summarized the situation to the ILO mission in the following terms: with regard to the legal actions of unconstitutionality against clauses of collective agreements in the public sector, these are not now promoted by the public authorities; over the past four years, there have only been three legal actions for unconstitutionality; in practice, very few clauses have been struck down; and there are now changes in the position of the Constitutional Chamber along the lines called for by the ILO.

The Committee wishes to refer to the report of the ILO mission of 2011, which in its conclusions indicates as follows:

With regard to the judicial removal of clauses of collective agreements through legal actions for unconstitutionality, in which the irrationality or lack of proportionality of certain clauses is invoked, the mission wishes to indicate that the new Attorney-General and the new Citizens' Ombudsperson have a good understanding of ILO principles and that legal actions for unconstitutionality have not been initiated, which is very positive. The statistics provided by the Government appear to indicate

that the scope of the problem has diminished in recent years. More specifically, the Government provided statistics (for the period 2008–11) on the rulings on the legal actions challenging the constitutionality of certain clauses in collective agreements. Of 17 rulings, only two found that the challenges had merit, with a total of three clauses being removed. According to the Government, the number of legal challenges currently before the courts is five.

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

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

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

***The Committee expresses the firm hope that the Constitutional Chamber of the Supreme Court will take into account the principles of the Convention in its rulings on the five pending legal actions and once again requests the Government to do everything in its power to ensure that the Bills to strengthen the right to collective bargaining in the public sector, including those relating to the ratification of Conventions Nos 151 and 154, are examined and, it is to be hoped, adopted by the Legislative Assembly.***

*Operation of the Commission on Collective Bargaining Policies in the Public Sector.* The Committee notes that the national trade union confederations allege that the Commission on Collective Bargaining Policies has a very negative effect on collective bargaining in the public sector. In its report, the ILO mission of 2011 indicates as follows:

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

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

The Committee welcomes that the Minister of Labour, taking up a suggestion by the 2011 mission, indicated that with a view to examining improvements in the operation of the Commission on Collective Bargaining Policies in the Public Sector, the Commission would be invited to meet with the Higher Labour Council (a tripartite body). She was also in agreement to undertake workshops and activities to promote and develop collective bargaining with trade union organizations, including training activities to improve knowledge of comparative law, and to strengthen the content of collective agreements. The question of the ratification of Conventions Nos 151 and 154 concerning participation and negotiation machinery for public employees, which at one time had tripartite consensus, would be re-examined.

***The Committee requests the Government to provide information on the meetings held between the Higher Labour Council (a tripartite body) and the Commission for Collective Bargaining Policies in the Public Sector and expresses the firm hope that in its next report the Government will be in a position to report significant progress in relation to the matters raised above.***

*Direct agreements with non-unionized workers.* With regard to the tripartite evaluation requested by the Committee of Experts concerning the large number of direct agreements with non-unionized workers in comparison with collective agreements (the Committee had requested that the evaluation should be undertaken in light of the report of an independent technical expert on that subject), the ITUC had emphasized that the majority of direct agreements are promoted by employers and that this has resulted in the number of collective agreements in the private sector being reduced to a minimum. The employers' organization UCCAEP had previously indicated that all parties had drawn attention to the importance of standing workers' committees and the protection afforded them pursuant to the Workers' Representatives Convention, 1971 (No. 135), ratified by Costa Rica. The UCCAEP added that it was clear that this is a reality in Costa Rica which has acted as a means of guaranteeing freedom, democracy and social peace and that to eliminate standing workers' committees or direct agreements is to overlook and prejudice the right of workers to associate freely and settle their disputes peacefully and through dialogue. The Government recalled that only collective bargaining has constitutional rank and that an administrative directive of 4 May 1991 prohibits the labour inspectorate from looking into the content of a direct agreement when there is an established union, so that when there is such a union the direct agreement must be rejected outright.

The Committee recalls that an independent expert appointed by the ILO pointed out in 2007 that there were 74 direct agreements in force, whereas only 13 collective agreements remained.

The Committee notes that, according to the Government, although it may be deduced that there are very different reasons which promote the existence of more direct agreements than collective agreements in the private sector, as noted by the ILO supervisory bodies, it is certain that both have their origin in the Labour Code and can be freely chosen by the labour market parties. The right to collective bargaining in positive law in Costa Rica and in national practice, in addition to being an outstanding collective instrument, benefits from a higher level of protection due to its constitutional rank.

The Government adds that in 2010 the ILO selected the national territory as the location for a seminar on “Good practices in collective bargaining in Costa Rica”, in the context of the social dialogue project. The seminar benefited from the participation of representatives of the Ministry of Labour and Social Security, employers and workers and offered a good opportunity to promote social dialogue on the subject. Three enterprises and their respective trade union representatives participated to puncture myths relating to the results of collective bargaining in the private sector. It is a means of resolving collective disputes, with the sole intervention of the parties, or of some other agreeable party. For that purpose, workers can establish standing workers’ committees, which are responsible for raising their complaints and claims with employers or their representatives, orally or in writing. It is clear that the legal purpose of such standing committees is to represent workers, only under the circumstances indicated above, and on the understanding that their functions do not extend to activities which are recognized in the country as being the exclusive prerogative of the unions. In this respect, the Government adds, it may be considered that direct agreements are another alternative, through which collective bargaining is promoted as a means of achieving a peaceful and agreed solution to disputes between employers and workers. The fact that these agreements are not negotiated by members of trade unions is a direct consequence of one of the two possible dimensions of the right to freedom of association, which also implies that there is no requirement of membership. For this reason, the Government notes with prudence the terms in which the study on direct agreements was drawn up, as prepared by the independent specialist appointed by the ILO in 2007, as the analyses focus principally on the agricultural sector, which is then used as a basis for general conclusions covering the whole of the productive economy of the country in both the public and private sectors.

The Committee wishes to refer to the conclusions of the ILO mission of May 2011 on this subject, which are as follows:

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

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

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

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

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

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

The Committee concludes that the imbalance between the number of collective agreements and that of direct agreements with non-unionized workers has worsened since 2007 to a worrying extent, and the current figures (a total of 15 collective agreements in the private sector concluded by trade unions and 159 direct agreements concluded by standing committees of non-unionized workers) show that effect is not being given to the requirement to promote collective bargaining in the private sector (*Article 4* of the Convention), particularly when it is considered that the 15 collective agreements are not sectoral and that the Government has not provided information on the number of workers covered. The Committee notes with **concern** the conclusion of the mission report that the expansion of direct agreements is being promoted in the country.

The Committee welcomes the decision of the UCCAEP and the Minister of Labour to discuss this matter with trade unions in the context of the Higher Labour Council, including discussion of the report prepared by the ILO expert in 2007.

The Committee welcomes the decision by the Minister of Labour to carry out activities in collaboration with the ILO Subregional Office to promote collective bargaining, including training activities.

*The Committee awaits tripartite developments concerning the problem of direct agreements with non-unionized workers in light of the report prepared by the expert on this subject, as well as any satisfactory solution that is proposed, including programmes in all sectors and effective measures to promote collective bargaining with existing trade unions, to prevent the promotion of direct agreements and their use for anti-union purposes. The Committee expresses the firm hope that the Government will be in a position to provide information in its next report on a significant increase in the number of collective agreements.*

In general terms, the Committee notes the Government's indication in its report of its full disposal and will to resolve the problems raised. The Committee notes the initiatives of the high-level mission to promote the Bills submitted to the Legislative Assembly on the various matters raised by the Committee of Experts. The Committee once again *deeply regrets* that these Bills still have not been adopted even though they have been under examination and have had tripartite consensus for years. *The Committee requests the Government to provide information on any development in this respect.*

The Committee emphasizes once again that the pending issues raise important problems relating to the application of the Convention. *Taking into account the various ILO missions which 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 provide information on any developments in this respect.*

### **Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1991)**

The Committee recalls that in its previous observation it requested the Government to supplement the administrative directive issued by the Ministry of Labour on 18 January 1999 with a text that sets out more clearly the right of trade union representatives to have access to farms and plantations and to meet with workers. In this respect, the Committee noted the Government's undertaking to consider the Committee's recommendations and it urged the Government to take the necessary measures to guarantee the right of trade union representatives to have access to farms and plantations and to meet with workers. In this respect, the Committee notes the Government's indication in its report that: (1) the administrative directive referred to was issued further to the recommendations of the Committee on Freedom of Association in the context of Case No. 1966 and on that occasion the Ministry of Labour and Social Security directly instructed the National Directorate of Inspection and the Directorate of Labour Affairs to engage in out-of-court conciliation action or, failing that, to undertake administrative investigations; (2) accordingly, the instruction was reiterated to the competent directorates to comply with the ruling of the Constitutional Chamber with a view to guaranteeing the application of the administrative settlement of cases of anti-union persecution or discrimination; (3) the content of the administrative directive referred to does not encompass all the existing provisions on trade union freedoms, but consists of a specific instruction issued in relation to a particular situation; (4) Costa Rica has a comprehensive system for the protection of workers' trade union rights at the national level, encompassing all sectors of the economy, for which reason it is not currently necessary to amplify the provisions contained in the directive; (5) the protection of trade union rights is a priority of the State as they consist of rights that are understood and acknowledged to be fundamental (the Government refers to the provisions of the Constitution and of the law guaranteeing trade union rights and affording protection against their violation); (6) with regard to the matters raised in the comments, labour inspectors have the right to visit workplaces, of whatever nature, at the various hours of the day and even the night, with a view to carrying out inspections, and the Manual of Procedures of the Labour Inspectorate (the 2008 Directive) establishes the procedure for cases of unfair labour practices. The Committee notes this information.

The Committee also requested the Government to provide information on the complaints received and/or reported by the Ministry of Labour relating to violations of trade union rights in the agricultural sector, and particularly with regard to the question of the access of trade union leaders to farms and plantations. In this respect, the Committee notes the Government's reiterated indication that there are no records of denunciations relating to these matters to the labour inspectorate, but that the Electronic Case System (SEC) established in the National Directorate of Labour Inspection and in regional inspection offices is currently being tested and inspectors are at the training stage. The Committee also notes the Government's indication that in the near future it will be possible to provide more detailed information on the nature of violations of labour provisions, and to generate more statistical data. *The Committee hopes that once the SEC comes into operation, the Government will be able to provide the information requested.*

## **Côte d'Ivoire**

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

In its previous comments the Committee noted comments made by the International Trade Union Confederation (ITUC) concerning: (1) threats of sanctions against primary school teachers on strike (MIDD); (2) the violent repression of striking public officials in the north of the country, and particularly the members of the Movement of Redeployed Public Officials of Côte d'Ivoire (MOFORCI); (3) the unwarranted arrest of leaders of the Union of Communal

Employees of Côte d'Ivoire (SYNAPECO-CI) and the National Union of Municipal Police Officers of Côte d'Ivoire (SYNAPOMU-CI); and (4) intimidation by the authorities and their interference in the activities of the National Union of Middle and Higher Level Health Officials of Côte d'Ivoire (SYNACASS-CI). The Committee notes the Government's replies to the questions raised. In the case of the MIDD, the Government states that this is now a legally constituted union and that the wages seized following the strike of the MIDD have been returned in full and without counting the strike days. In the cases of MOFORCI, SYNAPECO-CI, SYNAPOMU-CI and SYNACASS-CI, the Committee notes the Government's general comment that some of the events occurred in areas under the influence of the rebellion that were outside its control. The Government adds that it was entitled to require a minimum service during the doctors' strike and that it has agreed to all the claims made by SYNACASS-CI, and has released all the prisoners in provisional custody and paid their wages in full and without counting the days not worked because of the strike.

The Committee also notes the ITUC's comments of 4 and 31 August 2011 reporting a climate of insecurity in the country and referring in particular to the abduction, torture and detention, from April to July 2011, by the police of Mr Basile Mahan Gahé, General Secretary of the *Dignité* confederation without any charges being brought against him. Following a mission by the ITUC, charges were brought and Mr Mahan Gahé was transferred to Boundiali prison in harsh conditions on 9 July 2011. The ITUC indicates that it has had no news of the trade unionist and fears for his physical integrity. The Committee points out that the arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade union activities, without any charges being brought and without a warrant, constitute a grave violation of the principle of freedom of association and that a genuinely free and independent trade union movement can develop only if fundamental human rights are respected. Furthermore, the guarantees set out in international labour Conventions, particularly those relating to freedom of association, can be effective only if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, in particular the International Covenant on Civil and Political Rights, are genuinely recognized (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 31 and 43). ***The Committee urges the Government to send its observations on the ITUC's comments, to state the charges brought against Mr Gahé and to indicate whether he has been released pending trial.***

*Article 3 of the Convention. Right of employers' and workers' organizations to elect their representatives in full freedom.* The Committee notes that section 51.5 of the Labour Code provides that officers of professional trade unions must have Ivorian nationality but that foreign members of unions who have lived in Côte d'Ivoire for three years may take up administrative and management functions in the union provided that their countries grant the same right to Ivorian nationals. The Committee points out that provisions on nationality that are too strict could deprive some workers of the right to elect their representatives, for example migrant workers in sectors in which they account for a significant share of the workforce. The legislation should accordingly be made more flexible so as to allow organizations to elect their officers freely and without impediment and to allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country (see General Survey, op. cit., paragraph 118). Although the length of residence established in section 51.5 appears reasonable, the Committee considers that the reciprocity requirement is excessive and ought to be removed. ***The Committee requests the Government in its next report to indicate the measures taken or envisaged to amend section 51.5 of the Labour Code along these lines.***

## Croatia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011.

The Committee notes that the Government's report has not been received. It is therefore bound to reiterate the issues raised by the Committee in its previous observation.

*Article 3 of the Convention. Right of employers' and workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities.* In its previous comments, the Committee had recalled that since 1996, it has been commenting over the issue of the distribution of trade union assets and urged the Government to determine the criteria for the division of trade union assets in consultation with workers' organizations and to fix a specific time frame for completing the division of the property. The Committee had noted the Government's indication that: (i) for the division of trade union assets to be addressed, it was first necessary to establish the criteria for determining the representativeness of trade unions; and (ii) the Minister of the Economy, Labour and Entrepreneurship issued a decision specifying the names of the associations meeting the requirements laid down in section 2 of the Act on the Method of Determining the Representation of Trade Union Associations of a Higher Level in Tripartite Bodies at the National Level (OG 18/99) and the number of trade unions affiliated to these associations. ***In these circumstances, given that the representativeness criteria have already been defined, the Committee expresses the firm hope that the Government will take the necessary measures in the very near future to address the issue of the distribution of trade union assets and requests the Government to provide information thereon in its next report.***

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011 on matters being examined by the Committee.

*Article 1 of the Convention. Protection of workers against acts of anti-union discrimination.* In its previous comments, the Committee, referring to allegations of excessive court delays in dealing with cases of anti-union discrimination, had noted that a comprehensive process of reform had been initiated to enhance the efficiency of the judicial process and reduce the backlog of cases and that a pilot project on mediation in courts showed positive results. The Committee notes that, according to the ITUC, in spite of some improvements, law enforcement through the judicial system remains slow and labour inspection capacities remain weak. ***The Committee requests the Government once again to provide information in its next report on the progress made with respect to the measures aimed at improving the efficiency of the legal protection, as well as a copy of the instruments adopted as a result of the reform process.***

*Articles 4 and 6. Promotion of collective bargaining.* In its previous observation, the Committee had requested the Government to comment upon the 2010 observations made by the Trade Union of State and Local Government Employees (TUSLGE) alleging that the Local and Regional Self-Government Wage Act of 19 February 2010 restricts the right to organize and to bargain collectively of employees of local and regional self-government units, in particular the right of employees of financially weaker local and regional self-government units (i.e. where aids exceed 10 per cent of the unit income) to bargain collectively over the wage formation basis. The Committee notes that, according to the Government's comments in relation to these observations, the Act on Civil Servants and Civil Service Employees in Local and Regional Self-Government specifies that salaries of civil servants in local and regional self-government units are adjusted to salaries of civil servants at the State level (the Committee understands that the salaries at the State level are determined after consultations and negotiations with the most representative workers' organizations in the public sector). ***The Committee requests the Government to provide information on the application in practice of the adjustment of salaries of civil servants in local and regional self-government units to the salaries of civil servants at State level.***

Furthermore, the Committee had noted the allegations that the Act on the realization of the Government's budget of 1993 allows the Government to modify the substance of a collective agreement in the public sector for financial reasons. It had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and information on their application in practice. ***Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide, with its next report, a copy of the said legislative provisions, as well as information on their application in practice.***

## **Cuba**

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

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) and the comments of 13 August 2011 by the Independent Trade Union Coalition of Cuba (CSIC) – which the Government does not recognize as a union – referring to acts of repression against trade unionists. The Committee also notes the Government's reply to these comments.

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

In its previous comments the Committee urged the Government to take the necessary steps for the immediate release of trade union members and leaders sentenced to harsh terms of imprisonment, to investigate the allegations made by the Independent National Confederation of Workers of Cuba (CONIC) in 2009 and, if they were found to be true, to punish those who committed such acts. The Committee notes that the Government reiterates its assertion that the individuals mentioned in CONIC's communication were not punished unfairly. The charges against them were duly proved in full observance of due process. The persons concerned committed offences defined in the law and were accordingly tried and convicted by the courts of justice. No one was tried or convicted for the exercise or defence of trade union rights. The persons concerned were not sentenced by the Government but tried and convicted by competent and independent courts in full observance of due process. The Committee notes that the Government regrets that account was not taken of the replies it submitted, and repeats its assertions made in earlier reports. It emphasizes that in Cuba no trade unionists have been imprisoned, persecuted or threatened because of trade union membership, nor have any premises or assets belonging to trade union organizations been confiscated.

The Committee notes with **concern** that the CSIC – which was constituted on 30 March 2011 and whose status as a trade union confederation is denied by the Government – refers in its comments to the application of the Convention and to allegations of arrests and threats against leaders and members of CONIC, the Independent Confederation of Cuban Workers (CTIC) and the Single Council of Cuban Workers (CUTC), as well as harassment by the State Security. The Committee also notes that, according to the ITUC, up to November 2010 there had been 1,224 arrests on political grounds,

which is a disincentive to the establishment of independent trade unions. The Committee notes that in response to these comments, the Government states that: (1) the ITUC's allegations are not new but a repetition of unfounded arguments put forward in the past, and they raise other issues which only go to show that the ITUC is either unacquainted with the real situation in Cuba or is seeking to distort it; (2) the allegations are unsubstantiated and stem from fabricated information; and (3) no reference is made to the source of the information on the alleged 1,224 arrests, but it can be assumed that the figure was obtained from information already published in the press and produced on the basis of false reports. The list of alleged arrests include persons who are deceased or who have emigrated or who have simply not been arrested on any grounds.

In response to the comments of the CSIC, the Government indicates that: (1) it rejects the allegations of the so-called CSIC and rebuts its arguments; (2) the CSIC is not a trade union organization nor does it consist of Cuban workers. Its so-called membership amounts to no more than 25 members and only three of these have a labour relationship; (3) the persons concerned, now grouped together in what they allege to be a new coalition, have devoted themselves in the past to fabricating and submitting to international bodies false allegations on violations of the rights laid down in ILO Conventions with the intent of misinforming trade unionists the world over about an alleged division among Cuban workers; (4) they falsify membership figures and have no credibility whatsoever in Cuba; (5) it is untrue that in Cuba there is a climate of violence: no one is under duress or threat, and assertions of acts of violence or repression, such as those made by the CSIC, are likewise unfounded; (6) in Cuba there are no arrests of trade unionists or trade union leaders, several of the persons alleged by the CSIC to be trade unionists are common criminals (according to the Government some were not in the country at the time when the alleged acts of violence have been committed); and (7) the Government has time and again submitted replies on these cases and will pursue its work to strengthen international cooperation in defence of labour and trade union rights as well as international cooperation in the framework of the ILO which is necessary to universal attainment of the goals of decent work.

The Committee reminds the Government that freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties, which are all independent and complementary to one another and which the Conference explicitly listed in its resolution of 1970 and which 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 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 recalls that trade union rights are an important aspect of human rights and points out that the rights of workers' organizations can be exercised only in a climate of respect for all human rights and one which is free of violence, pressure, fear and threats of any kind against the leaders and members of such organizations, and reminds the Government that it has a duty to ensure observance of this principle.

***Lastly, the Committee again asks the Government to send copies of the court rulings referred to in its last report in connection with the comments made on 28 August 2007 by the ITUC, which referred to other specific cases of arrests of workers belonging to CONIC, persecution and threats of imprisonment against delegates of the Light Industry Workers' Union (SITIL), and the confiscation of equipment and humanitarian aid sent from abroad to the CUTC.***

### **Legislative issues**

In previous observations the Committee noted information from the Government to the effect that the process of revising the Labour Code was ongoing. The Committee notes that, in its report, the Government again states that a new Labour Code is in preparation and that it has not been sent to the Office because the requisite consultations have not been completed. ***The Committee expresses the hope that the revision of the Labour Code will be completed in the near future and that account will be taken of the comments the Committee has been making for many years on the application of the Convention and which are addressed below. The Committee reminds the Government that it may avail itself of technical assistance from the Office and asks it to send a copy of the draft Labour Code.***

***Articles 2, 5 and 6 of the Convention. Trade union monopoly.*** For many years the Committee has been referring to the need to delete the reference to the Confederation of Workers of Cuba (CTC) from sections 15 and 16 of the Labour Code of 1985. The Committee notes that in its report the Government states that: (1) the legislation in force and everyday practice in all work units guarantee the full exercise of trade union activities and the broadest application of the right to organize; (2) the representation of workers is exercised at different levels and in different decision-making bodies by national sectoral unions and the Confederation which, by decision of the workers themselves, as adopted in their assemblies, constitutes the expression of the desire for unity of the Cuban trade union movement; (3) the existence of a single trade union confederation was not imposed by the Government, nor does it correspond to any provision that is not the expression of the sovereign will of Cuban workers; (4) the struggle for unity of the trade union movement has a long and deep-seated tradition; in 1939 the Confederation of Cuban Workers was constituted by a decision taken freely by the workers themselves and one year later became the CTC as it now is; the unity of the workers' movement has been decisive in the success of their struggle and their claims and in defending their power as now exercised; and (5) the application in practice of the Convention is guaranteed by legal provisions establishing that "all workers, both manual and intellectual, shall be entitled, without previous authorization, to organize voluntarily and to establish trade unions"; these

rights are guaranteed in practice by the existence of 18 national sectoral unions with their municipal and provincial structures which bring together some 110,000 trade union chapters and first-level unions. In each labour unit there are one or more trade union chapters. Their leaders are elected by the workers themselves. The Committee notes that the Government adds that neither the Labour Code in force nor the supplementary legislation provides for restrictions on the establishment of trade unions and that all Cuban workers have the right to establish trade union organizations and are free to join them without prior authorization. While noting this information, the Committee again stresses that trade union pluralism must remain possible in all cases and that the law must not institutionalize a 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 also 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 measures adopted in this respect.***

*Article 3.* For several years the Committee has been referring to the need to amend section 61 of Legislative Decree No. 67 of 1983, which confers on the CTC the monopoly to represent the workers on government bodies. The Committee notes the Government's statement that it is examining the legal provisions that organize the functions of the highest government bodies. ***The Committee expresses the firm hope that in the process of examining those provisions, the Committee will in the near future 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 CTC with the expression "by the most representative organization or organizations".***

### **Right to strike**

For years the Committee has referred to the absence of recognition of the right to strike in the legislation and the prohibition of its exercise in practice, and has requested the Government to take measures to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised this right, and to keep it informed in this regard. The Committee notes the Government's statement that: (1) Cuban legislation contains no prohibition whatever on the right to strike, nor does the criminal law establish any penalties for the exercise of such rights, and that any decisions on this matter are the prerogative of the trade union organizations; (2) should Cuban workers at some time decide to resort to a strike, there is nothing to prevent them from doing so; (3) in industrial relations as practised in the country, more effective mechanisms exist and are applied for the exercise of rights, and workers systematically use them through their multiple forms of effective participation and by exercising their real power to decide on matters that affect them, which cannot be considered a limitation or prohibition of the right to strike; and (4) in the various institutionalized forms of participation by workers and their representatives in the settlement of disputes and in decision making, trade union representatives enjoy broad capacities and mandates. ***The Committee notes the information provided by the Government and again invites it, in the interests of safeguarding legal certainty for workers who decide to resort to strike action, to consider, in the context of the current legislative reform (amendment of the Labour Code) to which the Government refers, adopting provisions that expressly recognize the right to strike and the fundamental principles indicated by the Committee.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

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

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC), referring to matters already under examination. It also notes the Government's reply.

The Committee further notes the comments of the Central Organization of Workers of Cuba (CTC), forwarded with the Government's report, and the comments of 13 August 2011 by the Independent Trade Union Coalition of Cuba (whose trade union status is contested by the Government) referring to matters that pertain to application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Article 4 of the Convention.* In its previous comments, the Committee referred to the need either to repeal or to amend the following provisions to bring them into line with the Convention:

- section 14 of Legislative Decree No. 229 should be amended along the lines of the amendment made to section 8 of the new implementing regulations of the abovementioned Legislative Decree, so as to avoid any confusion and to ensure that the text of the Decree itself likewise establishes that any disputes arising in the process of drafting a collective agreement may be settled with intervention by the authorities and the CTC, only if both parties to the dispute so request;
- section 17 of Legislative Decree No. 229 has not been amended. This provision establishes the following: "Any disputes that arise during the process of formulating, amending or revising the collective labour agreement and while it is in force, about the interpretation of its provisions or failure to comply with its clauses, shall be referred, once the

conciliation procedure described above has been exhausted, to the National Labour Inspection Office for arbitration, with the participation of the Confederation of Workers of Cuba and the parties concerned. The final decision shall be binding” (the Government notified the repeal of sections 9, 10 and 11 of the implementing regulations to Legislative Decree No. 229, but not of section 17). The Committee again reminded the Government that, except in the public service and in essential services in the strict sense of the term, compulsory arbitration by the authorities is contrary to the principle of the voluntary negotiation of collective agreements laid down in Convention No. 98 and, hence, contrary to the autonomy of the parties to the bargaining. The Committee also expressed the view that legislation which sets a requirement of referral to the administrative authority of disputes relating to collective bargaining, and which moreover provides for the participation of the Confederation of Workers of Cuba, also raises problems of incompatibility with the Convention. The Committee asked the Government to take measures to secure the amendment of section 17 of Legislative Decree No. 229 in order to ensure that, where disputes arise between the parties in the process of collective bargaining, the interference or intervention of the authorities and the CTC is not imposed as an obligation and that, except in the public service and in essential services in the strict sense of the term, recourse to binding arbitration is possible only with the agreement of all the parties to the negotiations;

- section 11 of Legislative Decree No. 229, which provides that “discussion of the draft collective labour agreement at a general assembly of workers shall proceed in accordance with the methodology determined for that purpose by the Confederation of Workers of Cuba”. In its previous observation, the Committee noted in this connection the Government’s statement that, in accordance with the principle of the independence and autonomy of trade union organizations, the Government may not prevent trade union organizations from adopting such decisions as they deem fit. The Government referred the Committee to comments sent by the CTC to the effect that the workers, far from considering the participation of the CTC and its methodology in bargaining and dispute settlement processes as undesirable interference, perceive it as a benefit. The CTC further stated that it is the workers who immediately refer matters to the CTC through its various bodies to obtain the necessary support and guidance for their claims and interests, which does not prejudice the will of the parties, but ensures the necessary guidance without undermining the principal role played by the first-level unions in negotiations. As to the methodology itself, the CTC stated that it consists of the application of the law which assists the national trade union organization to guide and instruct its affiliates, who account for 95 per cent of the workers in the country. Furthermore, the methodology and the other instruments guiding such action are not imposed, but are analysed and discussed in the various bodies of the trade union movement at both the central and sectoral levels, and in many cases by the workers themselves. The Committee nonetheless considered that, in the context of the monopoly trade union system of the CTC as set out in the legislation (see the observation on Convention No. 87), section 11 imposes on all trade union organizations a methodology for the discussion of draft collective agreements established by the CTC which, when combined with the existence of overly detailed provisions on the manner in which negotiations are to be held, does not adequately promote free and voluntary negotiations within the meaning of *Article 4* of the Convention. Consequently, the Committee again asks the Government to take the necessary steps to amend section 11 of Legislative Decree No. 229 by deleting the express reference to the Central Organization of Workers and ensuring the autonomy of the parties to collective bargaining;
- section 5 of Legislative Decree No. 229, which provides that the National Labour Inspection Office shall approve the conclusion of collective labour agreements in the units provided for in the budget and in the production and service activities of bodies, sectors, branches or activities that share the same characteristics, when so agreed and requested by the head of the body and the general secretary of the corresponding federation.

The Committee recalled that in an earlier report, the Government had indicated that the provision applied to units in the budget with similar characteristics, such as bakeries, schools, hairdressers, service centres and polyclinics. The Committee pointed out that the law subjects the conclusion of collective agreements in a broad sector of activities to approval by the National Labour Inspection Office. More specifically, the text of section 5 provides that “the units provided for in the budget and the production and service activities of bodies, sectors, branches and activities that share the same characteristics may, on an exceptional basis, conclude collective labour agreements when this is advisable in view of the likeness or similarity of the working conditions, where so agreed by the head of the body and the corresponding national union, with the prior approval of the Ministry of Labour and Social Security”. The Committee considered that such a situation is contrary to the principle of free and voluntary negotiation and once again requested the Government to take the necessary steps to repeal section 5 of Legislative Decree No. 229 so as to ensure that full effect is given to the principle of free and voluntary negotiation.

The Committee notes that, in reply to all its comments, the Government states that a new Labour Code is being prepared and that it is to include the substantive and procedural provisions of Legislative Decree No. 229, this process affording an opportunity for a tripartite evaluation of the questions raised.

The Committee further notes the Government’s response to the effect that: (1) the voluntary nature of, and the total autonomy of the parties to, the process of consultation, amendment or revision of collective labour agreements in the search for solutions to any disagreement that arises, clearly require that a mechanism be adopted by agreement between the parties and not by a decision of only one party; it also points out that the new wording “the parties may ...” eliminates the possibility of interpreting the provision as binding, as was the case with the wording of Resolution 27 of 2002, now

repealed; (2) the provision does not have the general scope that the Committee attributes to it but, as stated in section 5, it is exceptional in nature and applies only when the head of the body and the corresponding trade union so agree; it does not apply to all sectors or to all the entities in a single sector, but to small local service units with the same or similar characteristics in relation to working conditions; the procedure is not legally binding, but it is a possibility that is allowed when it is assessed by common agreement, and in exceptional cases requested by the parties; (3) the procedure respects the independence and autonomy of trade union organizations that adopt such decisions as they see fit to organize trade union activities in accordance with their objectives; and (4) the collective bargaining process is driven, guided and controlled by the trade unions and the CTC, which propose relevant legal amendments to the Government.

*The Committee hopes that the process to draft the new Labour Code and assess these provisions of Legislative Decree No. 229 in a tripartite framework will be concluded in the near future, and will take account of the observations the Committee has made on several occasions. It requests the Government to provide information on any amendments and hopes that it will be able to note progress in the near future. It requests the Government to provide copies of the legislative texts once they have been adopted.*

## Czech Republic

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 4 August 2011 and by the Czech–Moravian Confederation of Trade Unions (CMKOS) on the application of the Convention, as well as the Government’s reply thereon. Moreover, the Committee notes that, in response to previous comments made by the ITUC concerning negotiations on pay in the public sector and collective bargaining in the health-care service, the Government indicates that intensive collective bargaining takes place before finalizing the draft state budget; the Government also provides information on the results of labour inspections which have been conducted in 2010, including in the health-care sector.

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* In its previous observation, the Committee requested the Government to provide 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. The Committee notes that the Government indicates in its report that the State Labour Inspection Office and its eight regional labour inspectorates employ a total of 333 inspectors. The Committee also notes the Government’s indication that from 1 September 2009 to 20 June 2011, labour inspection did not register any provable case of anti-union discrimination. The Committee would first observe that the absence of proven cases of anti-union discrimination does not necessarily imply that such acts do not actually occur. *Moreover, given the divergence between the information provided by the Government and the comments made by workers’ organizations alleging anti-union discrimination, the Committee reiterates its request that the Government provides 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.*

*Article 4. Collective bargaining.* In its previous observation, noting that the Constitutional Court had rendered a sentence (No. 116/2008 Coll) which repealed certain provisions of the Labour Code, more particularly, provisions that afforded the right of trade unions to supervise the compliance with the legislation and collective agreements, the Committee requested the Government to indicate if the trade unions still had the right to denounce to the authorities cases of non-compliance with the legislation and collective agreements. The Committee notes that the Government indicates that the Constitutional Court did not touch upon the right of trade unions to carry out inspections of the state of occupational safety and health in the enterprise. The Committee further notes that the Government indicates that trade unions can still make suggestions to labour inspection authorities. *The Committee requests the Government to indicate whether trade unions have the right to denounce to the labour inspection authorities cases of non-compliance with the legislation.*

## Democratic Republic of the Congo

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

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) on the application of the Convention. In its previous comments, the Committee likewise noted the ITUC comments referring, among other matters, to the arrest of trade unionists and their torture and ill-treatment while in custody and to acts of interference in trade union activities. *The Committee requests the Government to send its observations without delay in reply to the ITUC’s comments.*

*Articles 2 and 5 of the Convention.* In its previous comments the Committee noted that section 1 of the Labour Code excludes from the Code's coverage 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 services. It asked the Government to provide further information on the trade union rights of these categories of state employees. The Committee also noted that under section 56 of Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of state public services, public officials and employees were affiliated automatically to the then Union of Workers of Zaire (UNTZA). However, pending amendment of these conditions of service, the Ministry of the Public Service issued Order No. CAB.MIN/F.P./105/94 of 13 January 1994 issuing provisional regulations on trade union activities in the public administration, which was amended by Order No. CAB.MIN/F.P./0174/96 of 13 September 1996. The Committee noted the Government's statement in its report that the reform of the public administration was still under way and that the draft revised conditions of service of career members of the state public services would shortly be submitted to Parliament. The Committee further noted the statement in the report that trade union pluralism was applied in the public administration and that the rights of public officials were protected by a joint committee composed of representatives of trade unions and the Government. The Committee notes that, in its report, the Government indicates that the revised conditions of service of career members of the state public services has still not been promulgated. ***In these circumstances, the Committee urges the Government: (i) to take the necessary steps to ensure that the reform of the public administration and the revision of the conditions of service of career members of the public services enable the guarantees set forth in the Convention to be enforced promptly for all state employees; and (ii) to indicate in its next report any new developments in this respect, including the repeal of section 56 of Act No. 81-003.***

With regard to magistrates, the Committee noted in its previous comments that according to the Government, freedom of association is recognized for magistrates, that they are governed by special regulations and that there are unions in this sector. The Committee asked the Government in its next report to provide information on the instruments governing the special regulations and trade union rights of magistrates. The Committee notes that Basic Act No. 06/020 of 10 October 2006 issuing the magistrates' regulations deals with the specific conditions of service. The Committee observes, however, that nothing in the abovementioned Act addresses the trade union rights of magistrates. ***It therefore once again asks the Government to indicate in its next report the instrument that safeguards the trade union rights of magistrates.***

*Article 3.* In its previous observation the Committee requested the Government to take the necessary steps to facilitate the organization of trade union elections in various sectors and to provide specific information on the results of such elections. It noted the Government's statement that by means of Circular No. 1 of 20 May 2008 it organized trade union elections for "enterprises and establishments of all kinds", which were held between October 2008 and July 2009. The Committee notes that, according to the Government's report, the results were published by Order No. 0038/CAB/PVPM/ETPS/2010 of 30 August 2010 pertaining to publication of the results of the trade union elections of the 2008-11 fifth edition organized in enterprises and establishments of all kinds for the 2010-13 term of office. The Committee further notes that, according to the ITUC, in September 2010 the National Union of Congolese Workers (UNTC) and the Democratic Confederation of Labour (CDT) contested the results of the union elections in the private sector. ***The Committee requests the Government in its next report to include its observations on the challenge to the union elections by the UNTC and the CDT.***

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: 1969)***

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 4 August 2011 which report, among other matters, the dismissal of many trade unionists and the refusal of employers to give effect to court orders for their reinstatement and rehabilitation. ***The Committee requests the Government to provide without delay its observations thereon.***

In its previous comments, the Committee noted with interest the Government's indication that it intended to give effect to the Committee's recommendation to conduct an independent investigation in order to clarify the questions raised by the ITUC and the Trade Union Confederation of the Congo (CSC) in 2007 concerning: (1) acts of discrimination and anti-union interference in private enterprises (including threats of dismissal against union members, despite the fact that section 234 of the Labour Code prohibits acts of anti-union discrimination); (2) the existence of many unions established and financed by employers; and (3) the failure to comply with collective agreements. The Committee requested the Government to indicate any developments and the conclusions of the independent investigation. The Committee notes the Government's indication in its report that it has not identified acts of discrimination in private enterprises, nor the existence of unions established and financed by employers or failure to comply with collective agreements, as indicated by the ITUC and the CSC, and that it is for these unions to provide proof of their allegations. The Committee understands from the Government's reply that the investigation that it conducted did not include the participation of trade unions. The Committee recalls that complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being speedy, should not only be impartial, but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner. ***Under these conditions,***

***the Committee requests the Government to conduct a new independent investigation and to ensure that all the parties can be heard.***

*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 other's affairs, section 236 provides that acts of interference must be defined more precisely. The Committee noted the Government's reply to the effect that the National Labour Council has not yet taken a decision on the draft Order prohibiting acts of interference. To that end, the Committee noted that the Government undertook to provide a copy of the Order once it had been adopted. The Committee notes that, according to the Government's report, the Order has still not been adopted. ***Under these conditions, the Committee hopes that the Order referred to above will be adopted in the very near future and requests the Government to indicate any developments in this regard.***

*Article 6. Collective bargaining in the public sector.* With regard to practice, the CSC indicated previously the existence of measures allowing the establishment of mechanisms for the promotion of collective bargaining in the public sector. The Committee noted the information provided by the Government concerning the right of public employees not engaged in the administration of the State to engage in collective bargaining, and particularly: (1) the agreement of 11 September 1999 on basic wages concluded between 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 between the Government and the unions of the public administration; and (3) the agreement concluded between the Government and the unions of the public administration following a strike by unions in the education sector in 2005. The Committee concluded that, in practice, there were wage negotiations and agreements in the public sector.

With regard to the legislative texts respecting the right to collective bargaining in the public sector, the Committee observed previously that the Government had sent the text of Ministerial Order No. 12/CAB.MIN/ TPS/ar/NK/054 of 12 October 2004 establishing the procedures for the representation and recourse to elections of workers in enterprises or establishments of all types. The Committee also noted the will expressed by the Government to regulate the salaries of public servants set by negotiated agreements in the context of the imminent reform of the public administration. In this regard, the Committee noted the comments by the ITUC that the staff of decentralized entities (towns, territories and sectors), who comprise a subcategory of public servants, do not enjoy the right to bargain. The Committee also noted that section 1 of the Labour Code explicitly excludes from the Code career members of the State public services who are governed by the general conditions of service (Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of State public services and explicitly providing for the establishment of institutions ensuring the representation of the personnel) and career employees and officials of State public services who are governed by specific conditions of service.

The Committee notes the Government's indication that the categories of workers envisaged in *Articles 4 and 6* of the Convention are governed by the Labour Code and that collective bargaining is possible through the joint committee. The Committee however observes that the text of section 1 of the Labour Code appears to exclude from its scope of application broad categories of public employees and officials. ***The Committee therefore reiterates its request to the Government to take steps to ensure that the legislation clearly guarantees the right to collective bargaining of all public servants not engaged in the administration of the State, as provided in Articles 4 and 6 of the Convention, and once again requests the Government to indicate any progress achieved in the reform of the public administration.***

## Denmark

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

The Committee notes the comments made by the Danish Confederation of Trade Unions (LO) enclosed in the Government's report. ***It requests the Government to provide its observations thereon.***

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to join organizations.* In several of its previous observations, the Committee had requested the Government to indicate the measures taken to ensure that Danish trade unions may represent all their members – residents and non-residents employed on ships sailing under the Danish flag – without any interference from the public authorities, and whether, in particular, these unions may freely represent seafarers who are not Danish residents in respect of their individual grievances. The Committee had noted with satisfaction the Government's indication that the Danish International Ships Register (DIS) agreement states that seafarers not resident in Denmark working on board DIS ships have the right to be members of several trade unions (i.e. both a Danish trade union, and a trade union in their home country) and enables the seafarers' organizations to represent a seafarer who is not domiciled in Denmark or a foreign trade union in matters relating to the Danish legislation and to assist seafarers without a Danish residence in relation to the Danish public authorities. The Committee notes that the current DIS agreement supplied by the Government, which has been concluded in August 2009 between the Danish shipowners' associations and the Danish seafarers' organizations with the exception of one organization, allows seafarers

not resident in Denmark working on board DIS ships who are employed according to a collective agreement (section 7 of the DIS agreement) to be a member of a Danish trade union.

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

## Djibouti

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

The Committee notes with *deep concern* the comments made by the International Trade Union Confederation (ITUC) dated 4 and 31 August 2011 concerning the application of the Convention, in particular the allegations concerning the obstacles preventing the Labour Union of Djibouti (UDT) from developing its activities. The ITUC also denounces the fact that in October 2009 the preparatory work for the 4th UDT Congress was disrupted by the police who sent all the participants away and arrested several members of the UDT Executive, subjecting them to interrogation. Postponed to a later date, the UDT Congress was finally held quietly on 17–18 January 2010 at the actual headquarters of the UDT. The ITUC also recalls that the passport of the UDT Secretary-General has been confiscated since December 2010, which prevents him from fulfilling his commitments of representation at both regional and international levels; that the UDT has been broken into on numerous occasions; that its bank account has been frozen and then cancelled; and that its letter box is still confiscated. The ITUC points out moreover that interference in the organization of trade union activities not only affects the UDT in its capacity as a national confederation, but also many grass-roots trade unions, such as the dockers' union whose attempts to hold congresses have been violently repressed. Given that the Government has still not provided any observations on the comments made by the ITUC and in the light of their serious nature, the Committee draws the Government's attention once again to the fact that the exercise of trade union rights can only take place in a climate free from violence, pressure or threats of any kind and that the prohibition imposed on a trade union federation to develop its activities constitutes a direct violation of the Convention. ***The Committee therefore requests the Government to provide, without delay, its observations on the comments made by the ITUC. Furthermore, the Committee requests the Government once again to provide its observations on the comments made by the ITUC in August 2009 and August 2010 denouncing persistent actions of harassment and anti-union discrimination, as well as the violent repression of strikes.***

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

The Committee notes with *profound regret* that the Government's report has not been received for the second consecutive year. The Committee recalls that its previous comments concerned the following matters.

***Legislative problems.*** The Committee recalls that its previous comments concerned the provisions of Act No. 133/AN/05/5th L of 28 January 2006 issuing the Labour Code. This Act was denounced by the ITUC and also by the UDT and the General Union of Djibouti Workers (UGDT) as challenging fundamental rights relating to freedom of association. The Committee had noted that, according to the report of the direct contacts mission undertaken in January 2008, the Government had reaffirmed that all the social partners were consulted in the process of preparation of the Labour Code. However, the Committee notes that the Government held working meetings with the mission to consider the points of divergence between the national legislation and the Conventions in order to rectify them and that it undertook to bring the recommended solutions to the attention of a tripartite National Council for Labour, Employment and Vocational Training (CNTEFP), which was due to be constituted. The Committee had noted that, in its report of May 2008, the Government had reiterated its commitment to reviewing certain provisions of the legislation in order to bring them into conformity with the Convention and bring them to the attention of the CNTEFP. In this respect, the Committee notes the warning contained in the report of the direct contacts mission regarding any excessive delay in constituting the CNTEFP and the impact thereof on the adoption of the necessary legislative amendments. It also notes the mission's recommendation that, in a context where the representativeness of workers' organizations has not yet been established in a clear and objective manner, no representation from the trade union movement of Djibouti should be discarded from the work of the CNTEFP. The Committee further notes that, in its recent examination of a case concerning Djibouti, the Committee on Freedom of Association has noted the Government's indication that the CNTEFP has been constituted pursuant to Presidential Decree No. 2008-0023/PR/MESN and is chaired by the Minister of Employment, that its secretariat is provided by the Directorate of Labour and Relations with the social partners and that, in addition to its tripartite composition, the CNTEFP also includes a representation of the Parliament (Case No. 2450, 359th Report, paragraph 392). ***The Committee urges the Government to provide detailed information concerning the current composition of the CNTEFP and its functioning, in particular the manner in which it is consulted on legislative matters and matters affecting the interests of representative employers' and workers' organizations.***

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

*necessary measures to revise and amend the other legislative provisions taking into account the comments reiterated hereafter:*

- *Section 5 of the Act on Associations.* This provision, which requires organizations to obtain authorization prior to their establishment as trade unions, is contrary to *Article 2* of the Convention.
- *Section 23 of Decree No. 83-099/PR/FP of 10 September 1983.* This provision, which confers upon the President of the Republic broad powers to requisition public servants who are indispensable to the life of the nation and the proper operation of essential public services, should be amended in order to restrict the power of requisition to public servants who exercise authority in the name of the State or in essential services in the strict sense of the term.

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

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

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

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

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

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

*Article 4. Promotion of collective bargaining.* **The Committee also once again requests the Government to provide a copy of the Decree envisaged under section 282 of the Labour Code, establishing the structure and procedures of the National Joint Committee on Collective Agreements and Wages, and any other relevant information on its work.**

## **Dominica**

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

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.* The Committee recalls that it has been referring, for a number of years, to the need to take the necessary measures 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 recalled 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 recalled 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 on freedom of association and collective bargaining, 1994, paragraph 160).

The Committee had also requested the Government to amend sections 59(1)(b) and 61(1)(c) of the Act that empowers the minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. The Committee recalled 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, that is, for public servants exercising authority in the name of the State or in essential services in the strict sense of the term).

The Committee notes that the Government indicates in its report that there has been no change in the legislation since its last report. The Government further indicates that the Committee's comments have been discussed by the Industrial Relations Advisory Committee and that the latter is in the process of formulating its decision and reporting its recommendations to the Minister of Labour.

*The Committee hopes that the Government will take the necessary measures to amend the legislation so as to bring it into conformity with the principles of freedom of association and requests it to provide information on developments 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 comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, on the application of the Convention. The Committee also notes the comments of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), dated 31 August 2011, on matters that are already under examination and concerning allegations relating to the refusal to register various trade unions. *The Committee requests the Government to provide its observations in this regard.*

The Committee also notes the Government's indication in its report of the adoption of a new Constitution of the Dominican Republic, on 26 January 2010, which enshrines in article 62(3), (4), (5) and (6) the right to freedom of association and collective bargaining. *In this respect, taking into account the constitutional provisions and the stimulus that they can give to achieving greater conformity with the provisions of the Convention, the Committee invites the Government, in consultation with the social partners, to take the necessary measures to amend the following legislative provisions on which it has been commenting for many years, to bring it into conformity with the Convention.*

*Article 2 of the Convention. Right to establish and join organizations without previous authorization.* Section 84(I) of the Regulations adopted under the Civil Service and Administrative Careers Act (Decree No. 523-09), which maintains the requirement for organizations of civil servants to obtain 40 per cent of the total number of employees in the institution concerned with the right to organize.

*Article 3. Right to formulate their programmes.* Section 407(3) of the Labour Code, which requires a majority of 51 per cent of workers' votes in the enterprise in order to call a strike.

*Article 5. Right to establish federations and confederations.* Section 383 of the Labour Code of 1992, which requires federations to obtain the votes of two-thirds of their members to be able to establish confederations.

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

*The Committee requests the Government to provide information in its next report on any measure adopted with a view to amending the legislation.*

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

The Committee takes note of the comments of the International Trade Union Confederation (ITUC), the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), referring to a lack of effective sanctions against acts of anti-union discrimination in various enterprises, restrictions on the freedom of association of public employees and the requirement that a union must represent an absolute majority of the workers in order to be able to bargain collectively. *The Committee requests the Government to send its observations thereon.*

The Committee also notes the adoption of a new Constitution, proclaimed on 26 January 2010, which guarantees freedom of association and the right to collective bargaining.

*Lengthy proceedings in the event of violation of trade union rights.* The Committee notes the ITUC's comments referring to matters already under examination, and to the length of court proceedings, which last for some 18 months or more, and reporting that collective agreements have been negotiated in only four enterprises in the export processing zones (EPZs). **While noting that, according to the Government, the length of court proceedings has been shortened to less than one year, the Committee requests the Government to send its observations thereon.**

*Article 2 of the Convention. Insufficiently dissuasive sanctions against acts of anti-union discrimination.* In its previous comments, the Committee asked the Government to carry out a full investigation into the ITUC's allegations of 31 August 2005 regarding the lack of effective penalties against acts of anti-union discrimination, anti-union dismissals of leaders in sugar cane plantations, the drawing up of black lists of trade unionists in the EPZs and the dismissal of all the founding members of a trade union which the administrative authority had refused to register. The ITUC raises this question again in its 2009 comments. The Committee previously asked the Government in particular to provide further details on the absence of effective penalties for acts of anti-union discrimination. In its 2009 comments, the ITUC pointed out that penalties are not sufficiently dissuasive. While observing that the Government has not sent any specific information in reply to the ITUC's allegations of 2005, the Committee notes the Government's statement that information and guidance are provided on an ongoing basis to workers who report violations of their trade union rights. Furthermore, in 2007 and 2008 numerous inspections were carried out (12 of them in EPZs) in response to requests made by union federations or the unions themselves, and where violations of freedom of association were demonstrated, reports of the infringements were drawn up and submitted to the courts for appropriate penalties to be determined. Nine reports of infringements were thus dealt with in 2007 and seven in 2008. **Recalling once again that investigations should be carried out without delay in cases where acts of anti-union discrimination are reported, the Committee expresses the firm hope that the Government will hold a thorough investigation of these alleged cases without delay that will enable it to identify those responsible and, as the case may be, impose sufficiently dissuasive sanctions. The Committee also requests the Government to indicate the specific penalties that may be imposed by law on persons found guilty of anti-union acts.**

*Article 4. Requisite majorities for collective bargaining.* The Committee points out that for many years it has referred in its comments to the fact that, in order to engage in collective bargaining, a trade union must represent an absolute majority of the workers in an enterprise or a branch of activity (sections 109 and 110 of the Labour Code). The Committee observes that the Government has not sent its comments on this point and recalls that in its previous observation it noted that the Labour Advisory Committee had held a meeting with a view to obtaining proposals agreed by the social partners and the Government for amending the legislation. The Committee recalls that in cases where the law provides that in order to be recognized as a bargaining agent, a trade union must obtain the support of 50 per cent of the members of a particular bargaining unit, problems may arise since a majority union that fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members (see General Survey on freedom of association and collective bargaining, 1994, paragraph 241). **The Committee once again requests the Government to take the necessary steps without delay to amend sections 109 and 110 of the Labour Code in order to bring them into conformity with the provisions requiring the promotion of collective bargaining.**

*Articles 2, 4 and 6. Application of the Convention in the public sector.* The Committee notes the promulgation, on 16 January 2008, of the Public Service Act, No. 41-08, and its implementing regulations (Decree No. 523-09). The Committee notes that the Act establishes the right to organize of public servants, including in federations and confederations, and that it applies to those employed in the service of the State, municipalities and autonomous entities, guaranteeing special protection (organizational immunity) for the founders of organizations and some members of their executive committees. Violation of this protection is subject to penalties, including even discharge from duties. **The Committee expresses the hope that the protection established in the new legislation on the public service will be extended to acts of anti-union discrimination at the time of hiring and in the course of employment, prohibiting any discrimination based on union membership or participation in legitimate union activities. The Committee also requests the Government to establish for organizations specific protection from acts of interference by the employer such as interference in or control – whether financial or otherwise – of the association's activities. The Committee also requests the Government to establish sufficiently dissuasive penalties against such acts of discrimination and interference.**

*Articles 4 and 6. With regard to the right to collective bargaining of public servants not engaged in the administration of the State, who, under the terms of Article 6 of the Convention should enjoy the right to collective bargaining through their organizations, the Committee requests the Government to indicate whether under article 62 of the new Constitution, associations of public servants now enjoy the right to collective bargaining.*

*Article 4. Right to collective bargaining in practice.* The Committee notes that, according to the Government's report, the authorities have implemented measures such as the dissemination of laws and regulations, training workshops for trade unions, workers and employers and guidance provided at the request of any interested party. The Committee also

notes the Government's statement that in 2007, 15 new agreements were registered and in 2008, 14 collective labour agreements were deposited, which, in this last instance, benefited 7,420 workers. The Committee observes that there has been a drop in the number of agreements and of workers covered and that it is not clear from the information supplied by the Government whether it refers to the private sector or the public sector or both. **While pointing out that Article 4 requires the Government to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers, the Committee requests the Government to take specific measures in this area and to send statistical information on collective agreements concluded in the public and private sectors, including in the EPZs, indicating the number of workers covered by them.**

## Ecuador

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

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) on the application of the Convention. **It requests the Government to send its observations thereon, and on the serious allegations made by the ITUC in 2009 concerning repression by the police and the army of a demonstration organized by the trade union federations in 2006, that led to serious injuries and arrests, and on the alleged threats and acts of intimidation against leaders of the Workers Confederation of Ecuador (CTE) and the United Confederation of Workers of Ecuador (CEDOCUT).**

The Committee notes the Government's reply to the International Organisation of Employers' (IOE) comments of 2009. It also notes the comments of 1 September 2011 from the National Federation of Chambers of Industry of Ecuador, concerning the position of the ILO Employers' group regarding the right to strike.

The Committee also notes the report of the technical cooperation mission carried out in Quito from 15 to 18 February 2011 during which there was an examination of the matters raised by the National Federation of the Enterprise Petróleos del Ecuador (FETRAPEC) on 24 August 2009, and the arguments submitted by FETRAPEC to the Committee on Freedom of Association in Case No. 2684. The Committee notes the information gathered during the abovementioned mission, and in particular the information provided by the Government to the effect that a process has begun to reform the Labour Code and the Government has undertaken to consult the ILO in the course of that process.

#### **New Constitution**

In its previous observation, the Committee noted that some provisions of the new Constitution raise problems of compatibility with the Convention. Specifically:

- article 326(8), which provides that “the State shall encourage the creation of organizations of men and women workers and of men and women employers, in accordance with the law; and shall promote democracy, participation and transparency in their running and alternation in their leadership”. The Committee notes the Government's statement that: (1) interference in the internal affairs of organizations, whether of employers or of workers, cannot be inferred from the Constitution, since such organizations have the right to elect their representatives in full freedom and the right to organize their own administration; and (2) changeover of leadership will secure for organizations a future marked by participation, transparency and democracy. In this respect, the Committee once again points out that according to *Article 3* of the Convention, decisions as to the alternation of members of executive committees should lie solely with the organizations of workers and employers and their members. **While noting the information sent by the Government, the Committee requests it to take the necessary measures to repeal or amend this provision so as to allow a right to re-election for officials of workers' and employers' organizations;**
- article 326(12), which establishes that collective labour disputes shall, in all instances, be referred to courts of conciliation and arbitration. The Committee recalls that compulsory arbitration to end a collective labour dispute or a strike is acceptable only where requested by both parties to the dispute and where the strike may be restricted or prohibited, namely in disputes in the public service involving public servants who exercise authority in the name of the State or in essential services in the strict sense 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 again requests the Government to take the necessary measures to repeal or amend this provision so as to ensure that compulsory arbitration is possible only in the instances cited above;**
- article 326(15), which prohibits suspension of public services in education, social security, the production and processing of hydrocarbons and the transportation and distribution of fuel, and provides that the law shall set limits to ensure the running of such services. The Committee recalls that the right to strike may be restricted or prohibited only: (1) for public servants exercising authority in the name of the State; (2) in essential services in the strict sense of the term (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); or (3) in the event of an acute national or local crisis. The Committee further recalls that in order to avoid damage that is irreversible or out of all proportion to the occupational interests of the parties to the dispute, and in order to avoid damages to third parties, i.e. the users or consumers who suffer the economic effects of

collective disputes, the authorities could establish a system of minimum service in other services which are of public utility. *The Committee requests the Government to take the necessary measures to amend article 326(15) to ensure that the right to strike may be exercised in these services, with the possibility of minimum services being established.*

### **Pending legislative issues**

The Committee recalls that for many years it has been requesting the Government to take measures to repeal or amend the following provisions of the law:

*Article 2 of the Convention. Right of workers to establish organizations without prior authorization.*

- sections 450, 459 and 466 of the Labour Code establishing a minimum requirement of 30 workers for the creation of associations, works committees or assemblies to organize works committees;

*Article 3. Right of organizations to elect their representatives in full freedom.*

- section 466(4) of the Labour Code requiring Ecuadorian nationality to become a trade union officer.

*Right of organizations to organize their activities and formulate their programmes.*

- section 26(g) of the Codification of the Framework Act on the Civil Service and Administrative Careers and the Unification and Standardization of Public Sector Remuneration, which prohibits work stoppages on any grounds in public services which may not be deemed essential in the strict sense of the term (education, social security, hydrocarbon production, fuel processing, transportation and distribution, and public transport) and provides for dismissal for failure to observe the prohibition;
- section 522, second paragraph, of the Labour Code regarding the determination of minimum services by the Minister of Labour in case of disagreement between the parties in the event of a strike;
- section 505 of the Labour Code which implicitly denies federations and confederations the right to strike;
- Decree No. 105 of 7 June 1967 establishing the imposition of prison sentences for participation in unlawful work stoppages and strikes.

*The Committee hopes that in the process now under way to reform the Labour Code – for which technical assistance was provided by the Office – the Government will take account of all the comments the Committee has been making for years and requests the Government in its next report to provide information on all developments in this regard. The Committee also once again requests to the Government to take all necessary measures to amend section 26(g) of the Codification of the Framework Act of the Civil Service and Administrative Careers and the Unification and Standardization of Public Sector Remuneration, and Decree No. 105 of 7 June 1967.*

The Committee is raising other points regarding the public sector legislation recently adopted in a request addressed directly to the Government.

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

The Committee takes note of the comments dated 4 August 2011 by the International Trade Union Confederation (ITUC) on the application of the Convention. *It requests the Government to send its observations thereon and on the ITUC's comments dated 26 and 28 August 2009, referring to serious anti-union practices and the absence of sufficiently dissuasive penalties in the law to punish breaches of labour and trade union legislation.*

With regard to the comments of the Ecuadorian Confederation of Free Trade Unions (CEOSL) alleging the use of “blacklists” in one province, the Committee points out that the practice of blacklisting trade union officials or trade unionists is a serious threat to the free exercise of trade union rights. *It again requests the Government to hold an inquiry and, if the allegation of blacklisting is confirmed, to take the necessary steps to ensure that the practice is punishable by sufficiently dissuasive penalties.*

### **New Constitution**

In its previous comments, the Committee noted that in the context of the adoption of the New Constitution of Ecuador, the Constituent Assembly passed a number of “constituent resolutions” which are mandatory decisions of a “supraconstitutional” nature and are not subject to oversight or challenge by any other authority (including judicial review). The Committee observed that the Committee on Freedom of Association examined the consistency of these resolutions with the provisions of the Convention in Case No. 2684 and criticized the unilateral review of collective agreements deemed to be improper by the administrative authority in the petroleum and health sectors. The Committee notes in this connection the report of the Technical Cooperation Mission carried out in Quito from 15 to 18 February 2011, in the course of which the issue of constituent resolutions was examined. The Committee notes that on that occasion the Government stated that: (1) the constituent resolutions are lawful since they were issued after several public consultations which yielded a high percentage of favourable votes; and (2) Constituent Resolution No. 23 provides that such resolutions may be amended through the procedure applying to the adoption of ordinary laws. The Committee nonetheless observes that in its report the Government states that constituent resolutions are not subject to amendment

because they were issued by means of a nationwide consultation in which the Ecuadorean public responded to the call of the Constituent Assembly. The Committee stresses the need to amend the provisions that are inconsistent with the Convention, namely:

- Constituent Resolutions Nos 002 and 004, which place a ceiling on public-sector pay, compensation for unfair dismissal and other grounds of termination of the employment relationship, and ban supplementary private pension funds that involve input from state funds (Executive Decree No.1406 provides that no state resources shall be contributed to supplementary funds). The Committee considers that these provisions, which apply even when public-sector enterprises have sufficient income, impose permanent limitations on collective bargaining that are incompatible with the Convention. ***The Committee requests the Government to take the necessary steps to remove these limitations and to reinstate the right to collective bargaining on all subjects that affect the working and living conditions of workers.***
- Constituent Resolution No. 008 provides that it is necessary to revise clauses in public-sector contracts that contain undue and disproportionate privileges and benefits, and Ministerial Order No. 00080 and Order No. 00155A lay down administrative procedures for the automatic adjustment and revision of work contracts that include such clauses. The Committee points out in this connection that the checking of clauses in public-sector agreements for possible flaws should be done not by the administrative authority – which in the public sector is both judge and party – but by the judicial authority, and only in extremely serious cases. The Committee considers that regulations that allow the administrative authority unilaterally to cancel or cut clauses in collective agreements are contrary to the principle of free and voluntary bargaining. ***The Committee accordingly requests the Government to take the necessary measures to repeal or amend Ministerial Order No. 00080 and Order No. 00155A and to indicate whether Constituent Resolution No. 008 is compatible with judicial review of certain clauses in public-sector collective agreements that may be flawed.***

#### ***Pending legislative issues***

The Committee again points out that for several years it has been commenting on the following matters:

- the need to include in the legislation provisions that ensure protection against acts of anti-union discrimination at the time of recruitment;
- the need to amend section 229, second paragraph, of the Labour Code respecting the submission of the draft collective agreement, so that minority trade union organizations with a membership amounting to no more than 50 per cent of the workers subject to the Labour Code may, on their own or jointly (when there is no majority union representing all the workers), negotiate on behalf of their own members;
- the need for teachers and heads of education establishments in the public sector and for staff performing technical and vocational duties in the education sector who are governed by the Higher Education Act (Act No. 2000-16) and the Act on Educational Careers and Posts in the Public Teaching Sector (Act No. 94 of 1990) to enjoy the right to collective bargaining. The Committee notes in this connection that the Government refers to articles 96 et seq. of the new Constitution of Ecuador which deal with the right to organize and dispute settlement. ***It requests the Government to indicate whether these workers may conclude collective agreements through their organizations.***

***Noting the Government's statement that the National Assembly is in the process of amending the Labour Code, the Committee hopes that in the course of this work – to which the Office provided technical assistance – the Government will take account of all the comments the Committee has been making for years regarding protection against anti-union discrimination and interference and collective bargaining, and requests it in its next report to provide information on all developments in these areas.***

#### ***Laws adopted in the public sector***

***Article 6. Exclusion of certain public employees from the guarantees laid down in the Convention.*** In its previous comments the Committee took note of two bills under debate by the National Assembly, namely: the Basic Bill on Public Enterprises and the Basic Public Service Bill. The Committee notes that they were enacted into law on 24 July 2009 and 6 October 2010, respectively. The Committee notes in this connection that the Basic Act on Public Enterprises states, in section 26, that “in public enterprises or entities established under private law in which public resources account for the majority share, collective bargaining is not open to human resources that are not deemed to be workers as defined in the law, namely public servants who can be freely appointed and removed and, in general, persons holding executive office or positions as directors, senior representatives, managers, advisers, positions of trust, general representatives, consultants and career public servants”. The Committee considers that *Article 6* allows exclusion from the Convention's scope only for public servants engaged in the administration of the State (particularly those who are employed in government ministries and other comparable bodies, as well as ancillary staff) (see General Survey on freedom of association and collective bargaining, 1994, paragraph 262), and that the list of public servants excluded from the scope of application of the abovementioned legislation goes beyond the exclusions allowed by *Article 6* of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that, in accordance with Article 6 of the Convention, public servants who are not engaged in the administration of the State enjoy the right to collective bargaining.***

## Egypt

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011, which refer to a number of matters which are already examined by the Committee, as well as allegations concerning numerous cases of violence against workers and trade union members involved in strikes, and to the repeated and often violent interventions of the Egyptian security forces to disperse labour protests. *The Committee notes the Government's reply on these matters and requests it to submit these allegations to a tripartite committee for their examination and provide information in this respect.*

The Committee recalls that for several years it has been commenting upon the discrepancies between the Convention and the national legislation, namely Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and Labour Code No. 12 of 2003, with regard to the following points:

- the institutionalization of a single trade union system under Act No. 35 of 1976 (as amended by Act No. 12 of 1995), and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42 and 43 of Act No. 35 (as amended by Act No. 12);
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of Act No. 35 of 1976);
- the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the same Act;
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term (sections 179, 187, 193 and 194 of the Labour Code); and
- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

The Committee notes with *interest* the Government's indication that a new bill on trade union freedoms has been drafted by a committee responsible for the review of the provisions of the Labour Code No. 12 of 2003 and the Trade Unions Act No. 35 of 1976 pursuant to Order No. 60 of 2011 so as to reconcile national legislation with international labour Conventions ratified by Egypt, including this Convention. The Government indicates that it has informed this committee of the comments made by the Committee with regard to legislative amendments required so as to bring national legislation into conformity with the provisions of the Convention. The Government also indicates that the new bill was sent to representative organizations of employers and workers so as to solicit their views before its promulgation. In its latest report, the Government informs that the draft freedom of association law was passed by the Egyptian Cabinet on 2 November 2011 and is with the Supreme Council of Armed Forces for approval. *The Committee expresses the hope that the draft law will be adopted in the very near future and will be fully in conformity with the Convention. While noting that the draft freedom of association law will annul any contrary provision in other legislation, the Committee further expects the Government to introduce amendments to the Labour Code No. 12 of 2003 taking full account of its outstanding comments and so as to bring the Code into alignment with the freedom of association law. The Committee requests the Government to provide information in its next report on the progress made in this regard and to supply the new freedom of association law as adopted and any consequential amendments proposed or adopted to the Labour Code.*

The Committee further notes with *interest* the indications in the Government's report that the Constitutional Declaration of March 2011, which has repealed the 1971 Constitution, will be in force until the promulgation of a new Constitution. The Committee observes that article 4 of the Constitutional Declaration provides that "citizens have the right to form associations, unions, syndicates, and parties, according to the law ..." and article 16 provides for the right to assembly, including that "public meetings, processions and gatherings are permitted within the confines of the law".

The Committee further takes note of the Decree of Law No. 34 (2011) adopted on 12 April 2011 by the President of the Supreme Council of Armed Forces which provides for sanctions, including of imprisonment, against any person who "during the prevalence of the state of emergency, makes a stand or undertakes an activity that results in the prevention of, obstruction, or hindering a State's institution or a public authority or a public or private working organization from performing its work" or who "incites, invites or promotes [such activity]". The Committee observes with concern that this Decree could effectively amount to a general prohibition of strikes if enforced against workers protesting for the defence of their labour rights and interests. While it is conceivable that the exercise of some civil liberties, such as the right to public assembly or the right to hold street demonstrations might be limited, suspended and even prohibited when a state of emergency is invoked, the Committee recalls that the freedom of association Conventions contain no provisions allowing

the invocation of a state of emergency to justify exemption from the obligations arising under the Conventions or any suspension of their application. Such a pretext cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights except in circumstances of extreme gravity and on condition that any measures affecting the application of the Conventions are limited in scope and duration to what is strictly necessary to deal with the situation in question (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 41). *While noting that the Government indicates that the recent legislation establishes that the right to strike will be gradually acquired, taking into account that the exercise of this right will not harm the employer's interest or the public interest, the Committee requests the Government to indicate in its next report whether the Decree of Law No. 34 (2011) adopted on 12 April 2011 by the President of the Supreme Council of Armed Forces is applicable to strikes carried out by workers, to provide detailed information on its use and to indicate the measures taken or envisaged to abrogate this Decree or limit its scope and duration.*

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: 1954)**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011, which refer to matters already examined by the Committee, as well as allegations concerning numerous cases of retaliatory measures, including dismissals, taken against workers and trade union officials for exercising legitimate trade union activities. The ITUC further refers to the complete breakdown of collective negotiation mechanisms at the national level as well as in the industrial sectors and the work sites and states that the absence of a bona fide national trade union centre makes it very difficult for workers to settle disputes through bargaining hence leading to an increased tendency to resort to protest and strike action. *The Committee takes note of the Government's reply to these comments and requests the Government to submit all those allegations before a tripartite commission for their examination and to provide information in this respect.*

*Article 4 of the Convention.* In its previous observation, the Committee had recalled that it has been making comments for a number of years on various provisions of the Labour Code, as follows:

- as regards section 154 of the 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 had asked the Government to provide information on the scope of this section and the impact the broad wording of this section might have on the application of the principle of voluntary negotiation, it had also requested the Government to indicate the specific cases in which use had been made in practice of section 154;
- as regards sections 148 and 153 of the Labour Code, the Committee had asked the Government to take the necessary steps to repeal these sections, as they enable higher level organizations to interfere in the negotiation process conducted by lower level organizations;
- as regards sections 179 and 187, in conjunction with sections 156 and 163 of the Labour Code, the Committee had asked the Government to take the necessary steps to amend the Labour Code so that the parties could have recourse to arbitration only by mutual agreement.

The Committee had accordingly requested the Government to take the necessary measures to repeal sections 148 and 153 of the Labour Code and to amend sections 179 and 187, in conjunction with sections 156 and 163 of the Labour Code, so that compulsory arbitration can only be possible for public servants engaged in the administration of the State or in essential services in the strict sense of the term.

The Committee notes with *interest* the Government's indication that a new bill on trade union freedoms has been drafted by a committee responsible for the review of the provisions of the Labour Code No. 12 of 2003 and the Trade Unions Act No. 35 of 1976 pursuant to Order No. 60 of 2011, so as to reconcile national legislation with international labour Conventions ratified by Egypt, including the present Convention. The Committee observes that the Government informed this committee of the Committee's suggestions with regard to legislative amendments required so as to bring national legislation into conformity with the provisions of the Convention. The Government indicates that the new bill was sent to representative organizations of employers and workers so as to solicit their views before its promulgation and, in its latest report, informs that the draft freedom of association law was passed by the Cabinet on 2 November 2011 and is with the Supreme Council of Armed Forces for approval. *The Committee expresses the hope that the draft law will be adopted in the very near future and will be fully in conformity with the Convention. While noting that the draft freedom of association law will annul any contrary provision in other legislation, the Committee further expects the Government to introduce amendments to the Labour Code No. 12 of 2003 taking full account of its outstanding comments and so as to bring the Code into alignment with the freedom of association law. The Committee requests the Government to provide information in its next report on the progress made in this regard and to supply the new freedom of association law as adopted and any consequential amendments proposed or adopted to the Labour Code.*

## El Salvador

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 2006)

The Committee notes the Government's detailed reply to the comments from the International Trade Union Confederation (ITUC) of 2008 and 2009. The Committee also notes the recent comment from the ITUC, dated 4 August 2011, referring to anti-union practices and dismissals. **The Committee requests the Government to send its observations thereon.**

The Committee also notes the technical assistance given in 2009 to the constituents of the country, concerning training and practice relating to Convention No. 98, and the Labour Relations (Public Service) Convention, 1978 (No. 151).

*Article 2 of the Convention. Protection against acts of interference.* In its previous comments the Committee noted that section 205 of the Labour Code and section 247 of the Penal Code provide for protection against certain acts of interference and asked the Government to take the necessary steps, in the context of the process to revise labour law, to provide explicitly in the legislation for a prohibition on all acts of interference referred to in *Article 2* of the Convention, 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 the employers or employers' organizations. **The Committee requests the Government to take the necessary measures, in the context of the process to revise labour standards as mentioned in its previous report, to complete the existing provisions providing protection against acts of interference, together with penalties that constitute sufficiently dissuasive sanctions.**

*Article 4. Collective bargaining.* In its previous comments the Committee noted that under sections 270 of the Labour Code (concerning the conclusion of the first collective agreement in an enterprise or establishment) and 106 and 123 of the Civil Service Act, a trade union must have as members no less than 50 per cent of the workers of the enterprise, establishment or institution, in order to be able to initiate the collective agreement or to engage in collective bargaining. It asked the Government to take the necessary measures to amend the abovementioned sections to ensure that when there is no union that covers more than 50 per cent of the workers, all the unions are granted the right to engage in collective bargaining, at least on behalf of their own members. The Committee notes the Government's indication that section 270 of the Labour Code and also sections 106 and 123 of the Civil Service Act are not being reformed and that it will send notification of any changes in this respect. The Committee also notes that the Government adds that section 271(2) of the Labour Code provides that if two or more trade unions have members in the same enterprise or establishment but neither of them has at least 51 per cent of the total number of workers, either of the enterprise or of the establishment, these unions may unite with a view to achieving the aforementioned percentage, in which case the employer shall be obliged to negotiate and conclude a collective agreement with the united unions, if the latter make a joint request to this effect. **While noting the possibility for two trade unions in the same enterprise to unite with a view to achieving the minimum percentage of representation to engage in collective bargaining, the Committee hopes that the Government will take the necessary measures to amend sections 270 and 271 of the Labour Code and sections 106 and 123 of the Civil Service Act in such a way that when no union covers more than 50 per cent of the workers, all unions are given the right to engage in collective bargaining, at least on behalf of their own members.**

*Revision of collective agreements.* In its previous comments the Committee noted that section 276(3) of the Labour Code provides that "if the economic conditions in the country or enterprise should change significantly, either party may request the revision of the collective labour agreement, provided that the agreement has been force for at least one year" and asked the Government to take the necessary measures to amend section 276(3) of the Labour Code in order to ensure that the renegotiation of existing collective agreements shall be possible only at the request of the parties concerned. The Committee notes the Government's indication that to date there are no plans to reform section 276 of the Labour Code and that it will send any information in due course on any changes in this respect. The Committee recalls that to impose by law the renegotiation of existing agreements is in principle contrary to the principles of free and voluntary collective bargaining laid down in the Convention. **The Committee therefore requests the Government once again to take the necessary measures to amend section 276(3) of the Labour Code, in order to ensure that the renegotiation of existing collective agreements shall be possible only at the request of the parties concerned.**

*Registration of collective agreements.* In its previous comments, referring to section 279 of the Labour Code – which provides that a decision by the Director-General of Labour to deny registration of a collective agreement is not open to judicial review –, the Committee noted the Government's explanation that the prohibition on challenging the Director-General's decision in section 279 refers only to administrative channels, meaning that administrative remedies have been exhausted and judicial channels of appeal are open, in accordance with section 7(a) of the Act concerning the settlement of administrative disputes. The Committee considered that, in order to avoid any confusion, it would be advisable to amend section 279 to make it plain that the Director-General's decision may be challenged before the judicial authority. **The Committee once again requests the Government to consider the possibility of amending section 279 of the Labour Code in order to expressly provide in the legislation that the Director-General's decision may be challenged**

*before the judicial authority. The Committee requests the Government to provide information on any further developments in this respect.*

*Approval of collective agreements concluded with a public institution.* In its previous comments the Committee noted that, under sections 287 of the Labour Code and 119 of the Civil Service Act, in order to be valid, collective agreements require the approval of the relevant ministry and the prior opinion of the Ministry of Finance. The Committee previously requested the Government to take the necessary steps to amend section 287 of the Labour Code and section 119 of the Civil Service Act in order to remove the requirement of prior ministerial approval for collective agreements to be able to come into force. The Committee notes the Government's statement that the planned reform of section 287 of the Labour Code as proposed does not contemplate the removal of that request but seeks to modify the time in which the Ministry of Finance is able to reply and, should it fail to do so, the resulting administrative silence shall be construed as positive with a view to expediting the procedure for the registration of collective agreements of autonomous official institutions. As regards the amendment of section 119 of the Civil Service Act, the Committee notes the Government's indication that it will provide information in due course on any further developments in this respect. The Committee recalls that the requirement of ministerial approval to enable a collective agreement to enter into force is not fully consistent with the principles of voluntary bargaining laid down in the Convention: however, there is nothing to prevent the budgetary authority, prior to the conclusion of the collective agreement, from informing the employer of the situation and of the budget that is available. ***The Committee again requests the Government to take the necessary measures to amend section 287 of the Labour Code and section 119 of the Civil Service Act so as to abolish the requirement for prior ministerial approval in order for collective agreements to take effect. The Committee requests the Government to provide information in its next report on any measures taken in this regard.***

*Article 6. Exclusion of certain public employees from the guarantees of the Convention.* In its previous comments the Committee noted that, under section 4(1) of the Civil Service Act, as amended by Legislative Decree No. 78 of August 2006, numerous public sector workers are excluded from the administrative career and hence from the guarantees of the Convention (collectors, treasurers, cashiers, administrators, warehouse security staff, warehouse personnel and auditors in any public institution department) and requested the Government to take the necessary steps to ensure that public servants not engaged in the administration of the State enjoy the guarantees provided for in the Convention. The Committee notes the Government's indication that section 4(1) of the Civil Service Act is not being reformed and that it will provide information on any changes in this respect. The Committee recalls that the only possible exceptions to the guarantees laid down in the Convention refer to the armed forces, the police and public servants engaged in the administration of the State (Articles 5 and 6). ***The Committee requests the Government once again to take the necessary steps to amend section 4(1) of the Civil Service Act in order that public servants not working in the administration of the State enjoy the guarantees provided by the Convention. The Committee requests the Government to provide information in its next report on any measures taken.***

*Right to collective bargaining of teachers.* In its previous comments the Committee noted that section 2 of the Civil Service Act provides that, because of the nature of their duties, members of the teaching profession are governed by a special act – which, in this specific case, does not contain any provisions on collective bargaining –, without prejudice to the social rights laid down in the Civil Service Act, which shall apply to them. The Committee also noted the Government's confirmation that, in addition to the right to association, teachers also enjoy the right to collective bargaining and requested the Government to indicate the date of the most recent collective agreements concluded with teachers in the public sector. The Committee notes the Government's statement that to date no collective labour agreement has been concluded with teachers in the public sector. ***The Committee, recalling that all teachers, including those in the public sector, are covered by the scope of the Convention's provisions, requests the Government to promote the right to collective bargaining of teachers in the public sector and to provide information on any further developments in this respect.***

## Equatorial Guinea

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

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

The Committee again recalls that it has been asking the Government for a number of years to: (i) amend section 5 of Act No. 12/1992, which provides that employees' organizations may be occupational or sectoral – so that workers may, if they so desire, establish enterprise trade unions; (ii) amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have a minimum of 50 employees – so as to reduce the number of workers required to a reasonable level; (iii) confirm that, as a result of a revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised under the conditions laid down by law; (iv) provide information on the services deemed to be essential, and on how the minimum services to be ensured are determined, as provided for in section 37 of Act No. 12/1992; (v) state whether public servants who do not exercise authority in the name of the State enjoy the right to strike (section 58 of the Fundamental Act).

***The Committee again urges the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and to send information in its next report on any measures taken or***

*contemplated in this respect. The Committee expresses the strong hope that the Government will take all possible steps without delay to resume a constructive dialogue with the ILO.*

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

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

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

The Committee notes with *regret* that the Government's report has not been received. It must therefore recall the points it raised in its previous observation.

*Article 4 of the Convention. Collective bargaining.* The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC), on the repeated refusal to recognize a number of trade unions, namely the Workers' Union of Equatorial Guinea (UST), the Independent Service Union (SIS), the Teachers' Trade Union Association (ASD) and the Rural Workers' Organization (OTC), and the lack of a legal framework for the development of collective bargaining. The Committee again stresses that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention. ***The Committee urges the Government once again to adopt the necessary measures without delay to create appropriate conditions for the establishment of trade unions that are able to engage in collective bargaining with a view to regulating conditions of employment.***

*Article 6. Right of public servants not engaged in the administration of the State to engage in collective bargaining.* The Committee notes that, according to ITUC's comments, the right of workers in the public administration to establish trade unions has still not been recognized in law, despite the fact that section 6 of the Act on Trade Unions and Collective Labour Relations, No. 12/1992, provides that the right to organize of employees in the public administration shall be regulated by a special law. The Committee notes that the ITUC also indicates that the legal framework for collective bargaining is deficient and ambiguous. ***The Committee urges the Government to indicate whether a special law has been adopted and whether it establishes the right to organize and to collective bargaining of workers in the public administration, and asks it to send detailed information on the application of the Convention to public servants not engaged in the administration of the State. The Committee reminds the Government that it may seek technical assistance on this matter from the Office, and expresses the firm hope that it will take without delay all measures within its reach to resume constructive dialogue with the ILO.***

*Part V of the report form. Application in practice.* ***The Committee asks the Government to send statistics of the number of employers' and workers' organizations, the number of collective agreements concluded with these organizations and the number of workers and the sectors covered.***

## **Eritrea**

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 4 August 2011 on the application of the Convention as well as the Government's reply.

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

*Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference.* In its previous comments, the Committee had taken note that section 28(3) of the Labour Proclamation provides for the reinstatement of trade union leaders in cases of unjustified dismissal, but did not contemplate neither the protection against other prejudicial acts nor the protection of anti-union discrimination acts against workers affiliated to a trade union. It has requested the Government to broaden the protection against anti-union discrimination to cover recruitment and all prejudicial acts during the course of employment, including dismissal, transfer, relocation, demotion, deprivation and restrictions of all kinds and requested the Government to provide information on the measures taken or envisaged in this regard. The Committee had noted that the Government indicated that it had envisaged broadening the protection to protect workers against anti-union discrimination. ***Therefore, the Committee reiterates its previous conclusion and hopes that the Labour Proclamation will be amended accordingly in the near future.***

*Sanctions applicable in cases of anti-union discrimination or acts of interference.* In its previous comments, the Committee had recalled that a fine of 1,200 Eritrean nakfa (ERN), 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. The Committee had requested the Government to indicate the sanctions applicable and to provide copies of penal sentences regarding cases of anti-union discrimination and interference. The Government indicated that the labour courts had not come across sentences regarding cases of anti-union discrimination and interference. The Government also pointed out that section 691 sanctions “petty offenses” when, by an act or omission, a person infringes the mandatory or prohibitive provisions of a regulation, order or decree lawfully issued by a competent authority. The Committee had noted, however, that this penal provision does not cover specifically the cases of anti-union discrimination acts and interference. **Therefore, the Committee requests the Government to take the measures to amend section 156 of the Labour Proclamation in order to provide higher and more dissuasive sanctions to sanction those guilty of anti-union discrimination or acts of interference and requests the Government to indicate the measures taken or envisaged in this respect. The Committee also requests the Government to communicate copies of any penal sentences regarding anti-union discrimination or acts of interference as soon as rendered in the future.**

**Articles 1, 2, 4 and 6. Domestic workers.** Previously, the Committee had expressed the strong hope that the Ministry of Labour and Human Welfare 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 had noted the Government’s statement that domestic employees like all other categories of workers, are entitled to the right to organize and collective bargaining since the promulgation of the Labour Proclamation and that one association of domestic workers has been established. The Committee further noted that according to the Government, the Ministry of Labour and Human Welfare, under its power provided in section 40 of the Labour Proclamation, would not refrain from including the rights mentioned in the Convention in the upcoming regulation applicable to domestic employees. **In this regard, the Committee once again expresses the firm hope that this regulation will be issued in the near future and will explicitly recognize to domestic workers the rights enshrined in the Convention.**

**Article 6. Right to collective bargaining in the public sector.** The Committee had previously requested the Government to provide specific information concerning the status of the draft Civil Service Proclamation. The Committee had noted that according to the Government, the Civil Service Administration had been working on the draft Civil Service Proclamation through a process of participation and interaction and that relevant and salient comments of the participants were being integrated in the final draft. The Committee had noted that the Government once again reiterated that the drafting of the legal text concerning public servants, which would guarantee the right to organize to civil servants, reached its final stage and would be communicated to the ILO once adopted. **In this regard, the Committee once again expresses the hope that the Government will take the necessary measures, in consultation with the social partners, to improve its legislation on public servants in respect of the rights enshrined in the Convention including the right to collective bargaining for public servants not engaged in the administration of the State and requests it to transmit copies of the relevant legislative acts upon their adoption.**

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

## **Estonia**

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, which refer to matters previously raised by the Committee.

The Committee recalls that for a number of years it had been raising the issue of the prohibition of the right to strike in the public service. In this respect, the Committee had previously noted that a draft Public Service Act had been approved by the Government. It had also noted the Government’s indication that the draft legislation retained the prohibition on the right to strike of public servants, although by narrowly defining the term “public servant”, the legislation would ensure that 45 per cent of the current public servants would gain the right to strike. The Committee notes that in its report, the Government indicates that although the draft legislation had been successfully submitted to Parliament, due to the election that took place in 2011 the new Government would have to resubmit a new, slightly modified draft, to Parliament in August 2011. **The Committee expresses the hope that the Government will take the necessary measures to ensure that the right to strike is guaranteed to all public servants, with the only possible exception of those exercising authority in the name of the State, and requests the Government to provide a copy of the Public Service Act once it is adopted.**

The Committee had previously requested the Government to indicate the progress achieved in respect of the adoption of the list of services where the right to strike will be restricted (through a minimum service) as referred to in section 23(3) and (4) of the Collective Labour Dispute Resolution Act. The Committee notes the Government’s indication that it continues to evaluate national industrial relations legislation. **The Committee reiterates its previous request and expresses the hope that the Government’s next report will contain progress achieved in this respect.**

## **Ethiopia**

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in communications dated 4 and 31 August 2011, and the comments submitted by Education International (EI) in a communication dated 31 August 2011, referring to issues pending before this Committee and the Committee on Freedom of Association (CFA) in Case No. 2516 (exclusion of various categories of workers, primarily in the public sector, from the right to form and join trade unions, lack of independent investigations of serious violations of trade union rights) and

alleging the Government's failure to implement the recommendations of the ILO supervisory bodies. The Committee also notes the Government's reply to the previous comments of the ITUC and EI. The Committee further notes the conclusions and recommendations of the CFA of November 2011 in Case No. 2516.

*Teachers' associations.* In its previous comments, the Committee had urged the Government to take all the necessary measures to ensure that the National Association of Ethiopian Teachers (NTA) is registered without delay. The Committee notes that the Government indicates, in its report, that the NTA submitted its application for registration to the Charities and Societies Agency (CSA) and that the CSA refused in writing its registration and requested the NTA to revise its application in accordance with the Charities and Societies Proclamation (No. 621/2009) and the Charities and Societies Regulations (No. 168/2009). In particular, the Government indicates that according to article 69/4 of the Proclamation and article 5/1 of the Regulation, the CSA shall refuse the registration if the name proposed for registration is similar to the name of another charity or society or any other institution. The Government indicates that the CSA pointed out that all the names suggested by the NTA were similar to the names of already registered organizations. The Government indicates that the Agency had therefore requested the NTA to change its name. The Government further indicates that according to article 15/2 and articles 55 and 57 of the Proclamation, charities or societies may be established either for charitable purposes or for the promotion of the rights and interests of its members. The Government indicates that the NTA's rules enabled it to function as charity and society at the same time, and that the CSA had therefore requested the NTA to correct its rules. The Government further indicates that instead of resubmitting an application accordingly, the NTA submitted a complaint to the Institute of Ombudsperson (IO) alleging refusal of registration by the Ministry of Justice. It also indicates that this complaint is still pending, NTA having failed to appear at the office of the IO to follow the case.

The Committee notes contradictory information in EI's communication, which indicates that NTA's registration has been denied verbally by the Agency and that, despite the repeated requests from the NTA's representative and contrary to article 3(3) of the Regulation, the Agency did not respond in writing to the refusal to register, which prevents the NTA from appealing the refusal. EI further indicates that since the initial meeting with the Ombudsperson in January 2009, when the Vice Commissioner guaranteed that she will discuss the issue with the concerned colleagues in the IO, and despite the various reminder visits of the NTA's representatives, the Ombudsperson has been completely silent.

The Committee further notes the Government's indication that teachers of public schools are enjoying their rights by being members of the Ethiopian Teachers Association (ETA). In this respect, the Committee recalls that workers and employers have the right to establish and join organizations of their own choosing and that an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish.

The Committee *deeply regrets* that three years after the NTA's request for registration, this organization is still not registered. It recalls that the right to official recognition through legal registration is an essential facet of the right to organize since that is the first step that workers' or employers' organizations must take in order to be able to function efficiently, and represent their members adequately. The Committee draws the Government's attention to its responsibilities in ensuring that this right is respected in law and in practice. ***The Committee urges the Government to ensure that the NTA is registered without further delay so that teachers may fully exercise their right to form organizations for furthering and defending teachers' occupational interest and to provide information on the progress made in this respect.***

With regard to the Charities and Societies Proclamation, the Committee recalls that it has previously noted with concern that the Proclamation organizes an ongoing and close monitoring of the organizations established on its basis and gives governmental authorities, in particular through the establishment of the CSA, great discretionary powers to interfere in the right to organize of workers and employers, in particular in the registration, internal administration and dissolution of the concerned organizations with respect to those falling within its scope, which appear to encompass civil servants, including teachers in public schools. The Committee urged the Government to take the necessary measures, without delay, to ensure that the Proclamation is not applicable to workers' and employers' organizations and that such organizations are ensured effective recognition through legislation which is in full conformity with the Convention. The Committee *regrets* that the Government's report contains no information on the measures taken to this effect. ***The Committee expresses the hope that the Government will provide information on the progress made in this regard in its next report and reminds the Government that it may avail itself of the technical assistance of the ILO in this respect.***

*Civil servants.* The Committee recalls that in its previous comments it had requested the Government to take the necessary measures to amend the Civil Servant Proclamation, so as to ensure that the freedom of association rights of civil servants, including teachers in public schools, are fully guaranteed. The Committee notes that the Government reiterates its previous statement that the right of workers, including civil servants, to form association is enshrined under article 42 of the Constitution. The Government further indicates that the country is under a comprehensive civil service reform programme designed to provide efficient and effective services to the public and that civil servants, as part and parcel of the executing body, have a key role to play in implementing the reform. The Government also indicates that the reform will have a significant role in strengthening democracy, ensuring good governance and guaranteeing the rights of all citizens in the country; and that, within this process, it commits itself to ensure all the benefits of civil servants. ***The Committee expresses the hope that the Government's next report will contain full information of the measures taken to amend the Civil Servant Proclamation, including in the framework of the reform referred to by the Government, so as***

**to guarantee the right of civil servants, including teachers in public schools, to establish and join organizations of their own choosing for the promotion and defence of their occupational interests.**

*Labour proclamation (2003).* In its previous comments, the Committee had requested the Government to ensure the right to organize of the following categories of workers who were excluded, by section 3, from the scope of application of the Labour Proclamation.

Concerning workers whose employment relations arise out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship), the Committee notes the Government's indication that such workers are not in a relationship for employment purposes but in a relationship focusing on how the individual is brought up, treated or rehabilitated, and that the relationship that exists between such two parties is not considered as a proper employer–employee relationship. The Government indicates that for this reason, the abovementioned category of workers is excluded from the scope of the Proclamation. The Government also indicates its intention to undertake further examination that will enable it to take appropriate measures in this respect. The Committee takes note of the Government's desire to avail itself of the technical assistance of the Office in this process. The Committee recalls that all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing. ***The Committee trusts that the necessary measures will be taken by the Government to ensure that the abovementioned categories of workers enjoy the rights afforded by the Convention, and that the necessary technical assistance of the Office, requested by the Government, will be provided in the near future.***

Concerning the right to organize of workers under contract of personal service for non-profit-making purposes, the Committee notes the Government's indication that the Labour Proclamation provides in article 3, sub-article 3/C that the Council of Ministers shall issue a regulation governing the condition of work applicable to personal services, including the right to organize. The Government's report adds that the newly adopted ILO instrument on domestic workers will help the country with the drafting of this regulation. ***The Committee expresses the hope that the new regulation will be issued without further delay so as to ensure that workers under contract of personal service for non-profit-making purposes have the right to organize in law and in practice. It requests the Government to provide information on the progress achieved in this respect and to transmit a copy of this regulation once it is adopted.***

In relation to the right to organize of managerial employees, the Committee notes the Government's indication that their exclusion is explained by the fact that they have different interests of those of other employees. The Government also indicates that managerial employees are those working in the interest and on behalf of the employer and can, therefore, conclude a contract of employment to protect their conditions of employment in accordance with the Ethiopian Civil Code and can form an association for lawful purposes based on the Constitution. It further indicates that this matter will be studied and that the experiences of other countries on the matter will be explored. The Committee recalls that *Article 2* of the Convention makes no distinction based on the nature of the functions or the hierarchical level of workers, who should all enjoy the right to organize, including managerial and executive staff. The Committee considers that provisions which prohibit workers in this category from joining trade unions in which other workers are represented are not necessarily incompatible with the Convention, provided they have the right to establish their own organizations and that the right to belong to those organizations was restricted to persons performing senior managerial or decision-making functions. ***The Committee requests the Government to take the necessary measures in order to ensure that the right of managerial employees to establish and join organizations of their own choosing for furthering and defending their interests is fully guaranteed. It requests the Government to provide information on all measures taken in this respect.***

In relation to the right to organize of judges and prosecutors, the Committee takes note of the Government's indication that the Constitution guarantees the right to organize for any lawful purposes or causes and that, accordingly, judges and prosecutors are able to form associations of their own. ***The Committee requests the Government to provide information on the existing organizations of judges and prosecutors.***

Concerning the right to organize of employees of state administration, the Committee ***regrets*** that no information has been provided by the Government on the measures taken to ensure their right to organize. ***Recalling that the only exceptions authorized by Convention No. 87 are the members of the police and armed forces, the Committee once again urges the Government to take all the necessary measures, without further delay, to ensure that employees of state administration have the right to organize, and to provide information in its next report on the progress made in this respect.***

In its previous comments, the Committee had requested the Government to delete air transport and urban bus services from the list of essential services in which strike action is prohibited (section 136(2)). The Committee notes the Government's indication that these services are essentials for Ethiopia since the private sector for these services has not been developed yet; and that, since the Government is subsidizing the sector, the removal of these services would affect the poor part of the population who is benefiting from them. The Government indicates that for this reason, the interruption of these services would endanger the life, personal safety or health of the whole or part of the population directly or indirectly. ***Recalling once again that these services do not constitute essential services in the strict sense of the term, the Committee suggests, once again, 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 once again requests the Government to delete***

*the abovementioned services from the list of essential services and to provide information on the measures taken or envisaged in this respect.*

The Committee recalls that it had previously requested the Government to amend its sections 143(2) and 160(1) so as to ensure that, except in situations concerning essential services in the strict sense of the term, acute national or local crisis and public servants exercising authority in the name of the State, recourse to compulsory arbitration is allowed only upon request of both parties. It notes the Government's indication that the majority of cases submitted to the Labour Relations Board were in accordance with the collective agreements signed between employers and trade unions. The Committee once again recalls that in cases of disputes of interest, a provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may undermine effectively the right of workers to call a strike. ***Therefore, the Committee once again requests the Government to amend its legislation so as to bring it into conformity with the Convention and to provide information concerning the measures taken or envisaged in this respect.***

The Committee had previously requested the Government to amend section 158(3) which provides 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 are present. The Government indicates that the requirement of two-thirds of the members of the union is not to decide on the action but to give the chance to the majority of members to attend and discuss the issue, to prevent unnecessary strike action and to protect the interests of most of the employees who could be affected by the action. 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. The Committee also recalls that the observance of a quorum of two-thirds of the members of a trade union may be difficult to reach especially where the trade unions have large numbers of members covering a large area. ***The Committee therefore once again requests the Government to amend section 158(3) of the Labour Proclamation so as to lower the quorum required for a strike ballot and to provide information in its next report on the progress made in this respect.***

***The Committee once again requests the Government to ensure that the provisions of the Labour Proclamation which, as noted above, restrict the right of workers to organize their activities, are not invoked to cancel an organization's registration pursuant to section 120(c) until they have been brought into conformity with the provisions of the Convention.***

***The Committee once again requests the Government to take the necessary measures, without delay, to bring the legislation and practice into full conformity with the Convention, and to provide detailed information in its next report on the progress made thereon, as well as on the time frame for such action.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

The Committee notes the comments submitted by Education International (EI) in communications dated 24 August 2010 and 31 August 2011 alleging violations of the Convention in the education sector. The Committee recalls that, in its previous observations, it had urged the Government to conduct a full and independent inquiry into similar allegations submitted by the International Trade Union Confederation (ITUC) and EI. The Committee notes the Government's observations thereon as well as the June 2010 and November 2011 conclusions and recommendations of the Committee on Freedom of Association in case No. 2516 (see 357th and 362nd Reports, respectively), addressing the same issue. With regard to the teachers' right to organize, the Committee refers to its comments under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes the comments submitted by the ITUC in a communication dated 4 August 2011 in which it alleges dismissals of unionists, interference and violation of collective bargaining rights in private undertakings. ***It requests the Government to provide its observations thereon.***

*Labour Proclamation (2003).* The Committee had previously noted that the national legislation, in particular the Labour Proclamation, provided inadequate protection of the rights afforded by the Convention. Noting the Government's indication that amendments to the legislation were on the agenda of the Ethiopian labour law reform committee, the Committee expressed the hope that the Labour Proclamation will be amended so as to ensure its full conformity with the Convention, in particular by addressing the following points.

*Scope of application of the Convention.* In its previous comments, the Committee had requested the Government to ensure that the following categories of workers who were excluded by section 3 from the scope of application of the Labour Proclamation enjoyed the rights afforded by the Convention: (1) workers whose employment relations arise out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship); (2) managerial employees; and (3) workers under contract of personal service for non-profit-making purposes.

The Committee notes that in its report the Government indicates that the first category of workers is not in a relationship for employment purposes but in a relationship focusing on how the individual is brought up, treated or rehabilitated, and that the relationship that exists between such two parties is not considered as a proper employer-employee relationship. The Government indicates that, for this reason, such workers are excluded from the scope of the Proclamation. The Government also indicates its intention to undertake further examination that will enable it to take appropriate measures in this respect. The Committee takes note of the Government's desire to avail itself of the

technical assistance of the Office in this process. Concerning the right to organize of managerial employees, the Committee notes the Government's indication that their exclusion is explained by the fact that they have different interests of those of other employees. The Government also indicates that managerial employees are those working in the interest and on behalf of the employer and can, therefore, conclude a contract of employment to protect their conditions of employment in accordance with the Ethiopian Civil Code and can form an association for lawful purposes based on the Constitution. It further indicates that this matter will be studied and that the experiences of other countries on the matter will be explored. ***Referring to its comments under Convention No. 87, the Committee expresses the hope that the Government will take the necessary measures to ensure that the abovementioned categories of workers enjoy the rights afforded by the Convention, and trusts that the necessary technical assistance of the Office requested by the Government will be provided in the near future.***

Concerning the right to organize of workers under contract of personal service for non-profit-making purposes, the Committee notes the Government's indication that the Labour Proclamation provides in article 3, sub-article 3/C that the Council of Ministers shall issue a regulation governing the conditions of work applicable to personal services, including the right to organize. The Government's report adds that the newly adopted ILO instrument on domestic workers will help the country with the drafting of this regulation. ***The Committee trusts that the new regulation will be issued without further delay so as to ensure that workers under contract of personal service for non-profit-making purposes have the right to organize in law and in practice. It requests the Government to provide information on the progress achieved in this respect and to transmit a copy of this regulation.***

***Absence of adequate protection against acts of interference.*** The Committee recalls that it has repeatedly requested the Government to amend its legislation by adopting specific provisions coupled with effective and sufficiently dissuasive sanctions providing for protection of organizations of employers and workers against acts of interference by each other's agents or members in their establishment, functioning or administration so as to give full effect to *Articles 2 and 3* of the Convention. The Committee notes the Government's indication that, while the Labour Proclamation protects individual employees from any act of interference by an employer, it contains no provision to protect workers' and employers' organizations against acts of interference by each other. The Government indicates that it has taken note of the comments of the Committee for further consideration. ***The Committee expresses the hope that the Government will adopt in the near future the necessary provisions, coupled with effective and sufficiently dissuasive sanctions, so as to ensure that workers' and employers' organizations are protected against acts of interference by each other's agents or members in their establishment, functioning or administration, in conformity with Articles 2 and 3 of the Convention. It requests the Government to provide information on the progress made in this regard in its next report.***

***Article 4. Collective bargaining.*** In its previous comments, the Committee had requested the Government to amend section 130(6) of the Labour Proclamation, as amended by Proclamation No. 494/2006, which provides that, if the negotiation to modify or replace a collective agreement is not finalized within three months from the expiry date of the collective agreement, the provisions of the collective agreement relating to wages and other benefits shall cease to be effective. The Committee notes with ***regret*** that no information has been provided by the Government in this regard. The Committee reiterates that the abovementioned 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 is not conducive to promoting collective bargaining. The Committee recalls that it is up to the parties to decide on the moment when the collective agreement becomes inapplicable after the date of its expiration. ***It expresses the hope that the Government's next report will contain full information on the measures taken to amend the Labour Proclamation so as to guarantee its full conformity with the Convention.***

The Committee recalls that in its previous comments it had requested the Government to amend article 4 of the draft regulation concerning employment relations established by religious or charity organizations, which provided that "religious or charity organizations employing persons for administrative or charity work shall not be obliged to enter into collective bargaining concerning salary increment, fringe benefits, bonus and similar other benefits which may incur financial expense upon the organization". In this respect, the Committee had noted the Government's indication that the draft regulation would be replaced by a new draft regulation. The Committee ***regrets*** that the Government provides no information in this respect. The Committee therefore 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 expresses the hope that the new regulation will be adopted in the near future and requests the Government to transmit a copy thereof.***

***Articles 4 and 6. Civil Servants Proclamation (2002).*** The Committee recalls that it had previously urged the Government to amend the Civil Servants Proclamation so as to ensure the right of civil servants, including public teachers, to defend their occupational interests through collective bargaining. The Committee notes the Government's indication that the country is under a comprehensive civil service reform programme designed to provide efficient and effective services to the public and that civil servants, as part and parcel of the executing body, have a key role to play in implementing the reform. The Government also indicates that the reform will have a significant role in strengthening democracy, ensuring good governance and guaranteeing the rights of all citizens in the country; and that, within this process, it commits itself to ensure the benefits of civil servants. ***The Committee once again urges the Government to provide, with its next report, full information on the measures taken to amend the Civil Servants Proclamation so as to***

*ensure that civil servants, including teachers in the public sector, have the right to negotiate their conditions of employment through collective bargaining.*

## Fiji

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 4 and 31 August 2011, as well as the comments made by Education International (EI) dated 30 August 2010 and 31 August 2011. **The Committee requests the Government to provide its observations thereon.** The Committee also notes the comments made by the Fiji Mineworkers Union dated 1 December 2009 and 22 August 2011 concerning matters presently examined by the Committee in the framework of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee also notes the conclusions and recommendations reached by the Committee on Freedom of Association in the framework of Case No. 2723 concerning, inter alia, acts of assault, harassment, intimidation and arrest of trade unionists, in particular that it draws the Governing Body's attention to the extreme seriousness and urgency of the issues involved in this case and urges the Government to accept an ILO direct contacts mission to clarify the facts and assist the Government and the social partners in finding appropriate solutions in conformity with freedom of association principles.

*Trade union rights and civil liberties.* The Committee notes with **great concern** the ITUC and EI allegations concerning: (i) the arrest of the General Secretary of the National Farmers Union and five other union members on 1 October 2010 due to lack of permit for a public meeting; (ii) threats and questioning of Mr Felix Anthony, National Secretary of the Fiji Trade Union Congress (FTUC) and General Secretary of the Fiji Sugar Workers, on 12 February 2011 by military officers; (iii) repeated physical and verbal assault of the FTUC National Secretary and two other union officials on 18 February 2011 by military officials leading to physical injuries which required medical attention; (iv) threats against the FTUC National Secretary on 1 April 2011 by military officer; (v) on 22 June 2011, physical assault by military officers of Mr Mohammed Khalil, President of the Fiji Sugar and General Workers Union – Ba Branch, in retaliation for the statements made by the FTUC National Secretary at the International Labour Conference (ILC); and (vi) detention and police questioning on 3 August 2011 of Mr Daniel Urai, FTUC President and General Secretary of the National Union of Hospitality, Catering and Tourism Industries Employees (NUHCTIE), and Mr Nitin Goundar, NUHCTIE member, subsequent filing of charges for “unlawful assembly” for having met with and advised union members and release on bail on 4 August, with a hearing date set for 31 October 2011. Moreover, the Committee notes from recent allegations submitted by the ITUC in the framework of Case No. 2723 that: (i) on 29 October, Mr Urai was arrested again, upon his return from the Commonwealth Heads of Government Meeting in Perth, Australia, where he spoke out against human and trade union rights violations in Fiji although he has not yet been charged with any offence; and (ii) on 4 November 2011, Mr Felix Anthony, the FTUC National Secretary, was arrested and his home and the union office searched by police. Thereafter, both have been released. The Committee also notes that, in reply to the 2008 and 2009 comments made by the ITUC concerning in particular police disruption of the National Union of Public Workers annual meeting and of the brief detention of its general secretary and his lawyer, the Government indicates that, since the union had never obtained a permit to hold its meeting as required by the Public Emergency Regulations, the police was obliged to order the union members to disperse and asked the general secretary and his lawyer to go to the police station where they were never detained but rather warned of consequences should they fail to obtain a permit in the future.

The Committee expresses its **deep concern** at the numerous acts of assault, harassment, intimidation and arrest of trade union leaders and members for their exercise of the right to freedom of association reported by the ITUC and EI, in particular the recent recurring acts of physical assault and harassment of the FTUC National Secretary. The Committee recalls that the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference at its 54th Session in 1970, lists as first among the liberties essential for the normal exercise of trade union rights the right “to freedom and security of person” since this fundamental right is crucial to the effective exercise of all other liberties, in particular freedom of association. The Committee recalls that, when disorders have occurred involving serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such 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 can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights. The Committee also recalls that the arrest and detention, even for short periods, of trade union leaders and members, without any charges being brought and without a warrant, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association. It further reiterates that searches of trade union offices and of the private homes of trade unionists should only be made when a warrant has been issued by the regular judicial authority (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 28, 29, 31 and 40). **The Committee urges the Government to take all necessary measures without delay to ensure the full respect of the above principles. It requests the Government to conduct without delay an independent**

*investigation into the acts of violence alleged above transmitting detailed information with regard to its findings and the action taken as a result. With particular regard to the arrested trade unionists, while the Committee understands that they have been released from custody, it urges the Government to take the necessary measures to ensure that no charges are brought against the FTUC National Secretary and that all charges previously brought against the FTUC President and the NUHCTIE member are immediately dropped, and to provide information on any developments in this regard. Concerning the alleged search by police of the FTUC National Secretary's home and the union office, the Committee request the Government to provide its observations on this allegation.*

With particular regard to the reported act of assault against a union leader in retaliation for statements made by his colleague at the 2011 International Labour Conference, the Committee considers that the functioning of the Conference would risk being considerably hampered and the freedom of speech of the workers' and employers' delegates paralysed if the relevant delegates or their associates were victims of assault or arrest due to the expression of views at the Conference. ***It requests the Government to provide its observations in this regard.***

Furthermore, the Committee notes the ITUC and EI allegations that: (i) as a result of the monthly renewed Public Emergency Regulations in force since April 2009, it has become difficult for trade unions to convene public activities; all union activities such as seminars, workshops and meetings, require a permit, which in practice is often refused or revoked or granted under strict conditions (including military officers attending the meetings, listening to the deliberations, approving the meeting agenda and even selecting the persons who may speak or attend); in this context, EI signals an attack on the freedom of movement of the President, the Vice-President and the accountant of the Fijian Teachers' Association (FTA) by preventing them on 9 July 2010 from boarding a plane to attend a union meeting; and (ii) heavy media censorship continues to be experienced in Fiji, and trade union statements have been prohibited from being printed or aired. In view of the above, the Committee wishes to emphasize that the freedom of association Conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligations arising under the Convention, or any suspension of their application, and that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, constitute civil liberties which are essential for the normal exercise of trade union rights (see General Survey, *op. cit.*, paragraphs 35, 37, 38 and 41). ***The Committee requests the Government to provide its observations on these allegations.***

Lastly, the Committee notes that the Government has issued the State Services Decree No. 6 of 14 April 2009, the Administration of Justice Decree No. 9 of 16 April 2009 as amended and the Employment Relations Amendment Decree No. 21 of 16 May 2011, which collectively eliminate the access of workers in the public service to the judicial or administrative review of any executive decision concerning the public service (including on terms and conditions of employment of public servants) and other selected sectors; and terminate any pending or ongoing judicial or administrative proceedings in this regard filed by any individual or organization against the State (according to EI, this entailed e.g. the termination of the proceedings against the suspension of the FTA President from the civil service on the grounds of his public comments). The Committee notes that the ITUC and EI claim that these decrees violate due process and have been promulgated without any prior consultation with the relevant trade unions. ***The Committee requests the Government to provide its observations on these issues.***

*Legislative issues. Article 2. Right of workers and employers, without distinction whatsoever, to establish organizations. Public service.* The Committee notes from the ITUC comments that the Government has issued the Employment Relations Amendment Decree No. 21 dated 16 May 2011, which excludes 15,000 public service workers from the coverage of the Employment Relations Act 2007 (ERA) thus leading to workers in the public service including in public entities losing overnight their fundamental and other trade union rights. The Committee recalls that the standards contained in the Convention apply to all workers "without distinction whatsoever", and are therefore applicable to public employees; it was indeed considered inequitable to draw any distinction, as regards freedom of association, between wage-earners in private industry and officials in the public service, since persons in either category should be permitted to defend their interests by becoming organized (see General Survey, *op. cit.*, paragraph 48). ***The Committee therefore urges the Government to take all necessary measures to ensure that public servants enjoy the guarantees enshrined in the Convention.***

*Prisons and correction services.* The Committee had previously requested the Government to amend section 3(2) of the Employment Relations Act No. 36 of 2007 (ERA) so that prison guards enjoy the right to establish and join organizations of their own choosing. In this respect, the Committee notes that the Government states that the disciplined forces including police and prisons and correction services are not covered by the ERA due to the nature of their responsibilities in providing national security in all its facets, and that the prisons and correction services are governed by separate legislation and enjoy similar privileges in regard to terms and conditions of employment except for the right to strike or access to the institutions under the ERA. The Committee also notes the Government's indication that on 29 November 2006, the Parliament had committed to undertaking a revision of section 3 of the ERA to also include the correctional authorities (including workers in the prisons and correction services), that as of 6 December 2006 the military Government had taken over the realm of running the Government, that the next parliamentary election was scheduled for 2014 and that it would be left to the next parliamentary government to decide on the change. The Committee must once again recall that the only admissible exceptions to the right to organize are those explicitly provided for under *Article 9* of

the Convention, i.e. the armed forces and the police. All other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing. The Committee considers that the functions exercised by prison guards are different from the regular functions of the army and the police and do not justify their exclusion from the right to organize (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). ***The Committee hopes that section 3(2) of the ERA will soon be reviewed to ensure that prison guards enjoy the right to establish and join organizations of their own choosing and requests the Government to indicate the progress made in that regard in its next report.***

*Right of workers and employers to establish organizations without previous authorization.* Previously, the Committee had asked the Government to amend section 122(1)(c) of the ERA, which grants the Registrar the power to determine whether a trade union name is “undesirable” and refuse the organization’s registration until an alteration has been made. In this respect the Committee notes the Government’s statement that: (i) the term “undesirable” can only be determined by the Registrar in consideration of the reservations made by certain organizations like religious, political, ethnic etc. on the name used, which may be offensive or insulting, can incite racial detestation and would contravene the Government’s People Charter for Change, Peace and Progress; and (ii) the Registrar does not have sole discretionary powers in refusing the union’s registration, as the organization may appeal that decision before the Employment Relations Tribunal.

Furthermore, the Committee had previously requested the Government to provide information as to the manner in which the principal objectives of the persons seeking registration were determined and evaluated by the Registrar, who under section 125(1)(a) of the ERA may refuse registration if the principal objectives of the persons seeking registration are not in accordance with those set out in the definition of a trade union. The Committee notes that the Government confines itself to indicating that the Registrar exercises that discretion on the basis of objective criteria and that the aggrieved trade union is at liberty to seek redress through the Employment Relations Tribunal to determine whether the refusal of registration is based on objective criteria. The Committee considers, in this respect, that section 125(1)(a) of the ERA confers upon the authorities wide discretionary powers in deciding whether or not an organization meets all the conditions for registration. ***In these circumstances, the Committee requests the Government to take measures to amend section 125(1)(a) of the ERA, by ensuring, for instance, that refusals to register an organization under the said section are determined on the basis of objective criteria.***

*Right of workers and employers to join organizations of their own choosing.* In its previous comments, the Committee had requested the Government to amend section 119(2) of the ERA, in order to enable workers exercising more than one occupational activity in different occupations or sectors to join the corresponding trade unions as full members. The Committee notes that, according to the Government, section 119(2) states that “the application for registration must be made to the registrar in the prescribed form and signed by more than six members of the trade union applying for registration provided that those members that signed the prescribed form do not belong to more than one trade union covering the same occupational activity”. The Government explains that this provision only restricts workers from joining two rival trade unions covering the same occupational activity. However, the Committee notes that section 119(2) provides that “an application for registration as a trade union must be made to the Registrar in the prescribed form and signed by more than 6 members of the trade union applying for registration provided that no member shall belong to more than one trade union.” The Committee understands that the restriction applies in case of any union regardless of the occupational activity it covers, and considers that demanding that workers belong to no more than one union in order to sign an application for registration may unduly infringe upon the right of workers to join organizations of their choosing. ***Accordingly, the Committee once again requests the Government to take the necessary measures to amend section 119(2) of the ERA so as to allow workers who engage in more than one occupational activity in different occupations or sectors to join corresponding trade unions.***

*Article 3. Right of employers’ and workers’ organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their administration and activities. Right to elect their representatives in full freedom.* Previously, the Committee had requested the Government to amend section 127 of the ERA, which provides that officers of a registered trade union must have been engaged or occupied for a period of not less than six months in an industry, trade or occupation with which the union is directly concerned; and 127(d) of the ERA, which forbids non citizens of the Fiji Islands to be trade union officers. The Committee notes that the Government stresses that section 127(2) allows the full-time positions of General Secretary and Treasurer to be filled with persons who have not been engaged in the industry, trade or occupation concerned; and that it would not be practicable for unions to engage full-time professionals and non-citizens as officers, due to their limited funds (77 per cent have less than 500 members) and the need for officers to appreciate diverse traditions, cultures and laws. Observing that it should be left to the unions themselves to decide on the practicalities of recruiting professionals or non-citizens, the Committee recalls that the requirement of membership of an occupation or establishment as a condition of eligibility for union office is not consistent with the right of workers to elect their representatives in full freedom. ***The Committee expects that section 127 of the ERA will soon be amended so as to allow for a certain proportion of the officers to come from outside the particular profession, and to allow non-citizens to run for trade union office at least after a reasonable period of residence in the country.***

*Right to draw up constitutions and rules.* In its previous comments, the Committee had requested the Government to amend section 184 of the ERA, which entitled the courts to decide the sanctions against trade union members for refusal to participate in a strike, so as to grant this power to the trade unions themselves. The Committee notes the Government's view that, while sanctions against union members for refusal to participate in a lawful strike rests with the unions, sanctions against union members for refusal to participate in an unlawful strike would be unethical and the Government cannot encourage the participation in illegal activities. The Committee notes the Government's view but considers that the expulsion of members, regardless of the invoked reasons, should be the prerogative of the trade unions. ***The Committee therefore expects that section 184 of the ERA will be amended to ensure that the issue of the expulsion from the trade union of members for refusal to participate in a strike is left to trade union constitutions and rules.***

*Right of workers' and employers' organizations to organize their administration.* The Committee had previously requested the Government to amend section 128 of the ERA, which provides that the account books and other related documents must be open to inspection during normal business hours by the Registrar, and that the Registrar may request detailed and certified accounts from the treasurer and also provides for fines or imprisonment in case a person obstructs or impedes the Registrar in carrying out an inspection. The Committee takes note of the Government's statement that trade unions are accountable to their members to avoid abuse of power leading to misuse of funds; that there is an increase in complaints to the Ministry of Labour from union members of fraudulent and corrupt practices within trade unions including the non-payment of union pensions and redundancy payments due to unlawful use of the money by executives; and that the matter will nonetheless be referred to the Employment Relations Advisory Board for consideration of the proposed amendment to set a certain percentage of union members filing complaints to give rise to an inspection of that union's accounts. ***In these circumstances, the Committee expresses the firm hope that section 128 of the ERA will soon be amended so as to ensure that the power of the Registrar to examine trade union accounts is explicitly limited to cases where a complaint from a certain percentage of members needs to be investigated, and requests the Government to indicate the results of the Employment Relations Advisory Board's deliberations.***

*Strike ballot.* The Committee recalls that it had previously requested the Government to amend section 175(3)(b) of the ERA, which provides that each issue on which a strike mandate is sought must be supported in a strike ballot by more than 50 per cent of all members entitled to vote. The Committee notes the Government's indication that in a strike mandate, the casting of votes is not conducted during a union meeting where the required quorum and majority are fixed in the union's constitution but rather at each individual workplace; and that, since union members are advised in advance of the dates, time and place of the ballot, they do avail themselves of those dates to cast their votes so that the percentages of the votes cast are mostly within the 90 per cent to 100 per cent bracket. In these circumstances, the Committee must once again recall that although a ballot requirement does not, in principle, raise problems of compatibility with the Convention, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level (see General Survey, op. cit., paragraph 170). ***The Committee requests the Government to take the necessary measures to amend section 175(3)(b) of the ERA so as to ensure that, regardless as to whether the strike ballot is conducted during a union meeting or at each individual workplace, only a simple majority of the votes cast in a secret ballot is required.***

*Declaration of a strike as unlawful.* Previously, the Committee had requested the Government to amend section 180 of the ERA, which allowed the Government to declare the illegality of a strike, in order to grant that power to an independent body, which has the confidence of the parties involved. It notes from the Government's report that the Minister declares the strike unlawful and states in the Order the legal provisions that have been breached, which gives the union the opportunity to assess the validity of the Order and seek redress by way of an appeal under section 241, and that it is the court that has the mandatory power to order discontinuance of the strike and impose penalties in case of disregard. The Committee notes that, in the Government's view, this arrangement provides for more means of redress than if the court both declared the strike unlawful and ordered its discontinuance. The Committee considers that the responsibility for declaring a strike illegal should not lie with the Government and that the existence of a right to appeal to the courts does not in itself constitute a sufficient guarantee. ***The Committee once again requests the Government to take the necessary measures to amend section 180 of the ERA, so that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved.***

*Compulsory arbitration.* The Committee had previously requested the Government to amend sections 169 and 170 of the ERA, which enable each party to a dispute to refer it to the Permanent Secretary, who must refer it to mediation, and sections 181(c) and 191(1)(c) of the ERA, which enable the Minister to apply to the Court for an injunction to discontinue a strike if satisfied that the strike is not in the public interest or will jeopardize or is likely to jeopardize, inter alia, the economy. The Committee notes that the Government indicates that, prior to asking for third-party intervention, the parties to the dispute have already exhausted the means of trying to resolve the matter internally; that unresolved disputes escalate confrontational attitudes, lead to illegal strikes and lockouts and are counterproductive for the entire country; and that when requesting discontinuance of the strike the Minister must show proof to the court that its continuance is likely to jeopardize the economy or public safety. In this regard, the Committee observes that strikes are by nature disruptive and costly. It recalls once again that a prohibition of strikes may result in practice from the cumulative

effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned. These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3 of the Convention* (see General Survey, op. cit., paragraph 153). **Accordingly, the Committee once again requests the Government to amend sections 169, 170, 181(c) and 191(1)(c) of the ERA so as to ensure that compulsory arbitration can only be imposed at the request of both parties to a dispute, or in essential services in the strict sense of the term or for public servants exercising authority in the name of the State.**

*Penalties for staging an unlawful strike.* The Committee had previously requested the Government to amend section 256(a) of the ERA, which, when read with section 250 of the ERA, provides for a possible penalty of imprisonment in case of the staging of an unlawful strike. The Committee notes the Government's statement that the imposition of a fine or term of imprisonment is targeted at offences of individual employers, and that the offence of workers having participated in an illegal strike under section 250(5) has been included in section 256(a) only with regard to the fine (max. US\$10,000 for individuals and US\$50,000 for unions). While noting the intention behind section 256(a) as described by the Government, the Committee considers that this provision, as presently drafted, allows for penal sanctions to be applied to workers having staged an unlawful but peaceful strike. The Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike, and therefore that measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger or damage caused to property). **The Committee therefore once again requests the Government to take the necessary measures to amend section 256(a) read in conjunction with section 250(5) of the ERA.**

*New legislation.* The Committee notes the promulgation of the Essential National Industries (Employment) Decree on 29 July 2011 (ENI) as well as the recent amendment to the Public Service Act. It notes that, in the view of the ITUC and EI, the new legislation violates the Convention in numerous ways and their implementation will virtually destroy the independent trade union movement. Recalling that, in the framework of Case No. 2723, the Committee on Freedom of Association has concluded that this Decree gives rise to a number of violations of Conventions Nos 87 and 98, has deeply regretted the issuance on 8 September 2011 of its implementing regulations and has urged the Government to amend its provisions without delay so as to bring it into conformity with Conventions Nos 87 and 98. The Committee considers that the following provisions are not in conformity with the Convention:

- Section 6 of the ENI, under which all existing trade union registrations in essential national industries are effectively cancelled; in order to operate, unions are required to re-register under the Act. The Committee considers that legislation which accords the administrative authority the complete discretionary power to order the cancellation of the registration of a trade union without any right of appeal to the courts is contrary to *Article 2*.
- Sections 10 to 12 of the ENI, under which a union must apply to the Prime Minister in writing to be (re-)elected as representative of the bargaining unit, the Prime Minister determines the composition and scope of a bargaining unit for the purposes of conducting elections for its representative, and the Registrar conducts and supervises elections in the bargaining unit. The Committee considers that legislative provisions conferring on the competent authority a genuinely discretionary power to grant or reject a registration request are tantamount to a requirement for previous authorization which is not compatible with *Article 2*. Moreover, the autonomy of workers' organizations can be effectively guaranteed only if their members have the right to elect their representatives in full freedom; the public authorities should therefore refrain from any interference as regards the holding of trade union elections which might restrict the exercise of this right (see General Survey, op. cit., paragraphs 74 and 112).
- Section 14 of the ENI, according to which the figure 50 per cent plus one is the percentage necessary for a union to be registered. The Committee recalls that, although a minimum membership requirement is not in itself incompatible with the Convention, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered; it may vary according to the particular conditions in which a restriction is imposed. The Committee underlines that a minimum proportion, which in practice precludes the establishment of more than one trade union in each occupation or enterprise, would restrict the right of workers to establish organizations of their own choosing (see General Survey, op. cit., paragraphs 81 and 82). The Committee considers that a provision imposing a minimum membership of 50 per cent would not be in line with *Article 2*.
- Section 7 of the ENI provides that union officials must, subject to severe civil and penal sanctions, be employees of the designated corporations they represent. The Committee recalls that provisions of this type infringe the organization's right to elect representatives in full freedom as enshrined in *Article 3* by preventing qualified persons from carrying out union duties or by depriving unions of the benefit of the experience of certain officers (see General Survey, op. cit., paragraph 117).
- Section 27 of the ENI, which provides that: (i) strikes are prohibited in essential national industries in case of disputes to obtain registration, to influence the outcome of bargaining, in the course of negotiations or over the

interpretation or application of a collective agreement; (ii) the bargaining unit may only go on strike if the parties failed to reach a collective agreement after three years of bargaining, subject to a 28-day notice period and prior written approval from the Government; (iii) the Prime Minister may declare any strike or lockout in any essential national industry unlawful; and (iv) non-compliance with the above provisions is subject to severe civil and penal sanctions including imprisonment of up to ten years. The Committee further notes that, according to the implementing Regulations issued under the ENI, the following sectors are currently considered as “essential national industries”: financial industry (including customs), telecommunications industry, civil aviation industry, and public utilities industry (including electricity and water). The Committee recalls 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, and that it may only be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). Accordingly, electricity services, water supply services and the telephone service may be deemed to be essential services, and the prohibition of the right to strike of customs officers who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association. However, the Committee considers that radio and television, banking and transport generally do not constitute essential services in the strict sense of the term where the right to strike could be restricted or prohibited. It further wishes to emphasize that responsibility for declaring a strike illegal should not lie with the government, but with an independent body, which has the confidence of the parties involved. Moreover, sanctions for strike action should be possible only where the strike prohibitions are themselves in conformity with the principles of freedom of association. As regards penal sanctions for staging a peaceful strike, the Committee refers to its comments under the ERA.

- Section 26 of the ENI, under which disputes over discipline and discharge, and the interpretation or application of a collective agreement must be settled internally or by the employer's designated reviewing officer without recourse to a judicial or quasi-judicial body; disputes involving an issue of over US\$2.78 million which remained unresolved may be referred to the Prime Minister for a final and binding determination. The Committee considers that all disputes relating to a question of right (e.g. the termination of a worker), regardless of the amount of money involved, should be fully appealable to the courts; in the first instance, they could be arbitrated. In this regard, the Committee stresses that arbitration imposed by the authorities at the request of one party could effectively undermine the right of workers to call a strike, and that compulsory arbitration is acceptable if it is at the request of both parties involved in a dispute, in the case of disputes in the public service involving public servants exercising authority in the name of the state or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.
- Section 24(4) of the Essential National Industries Decree and the alleged amendment in August 2011 of the Public Service Act 1999, which prohibit automatic dues deduction for workers in “essential national industries” and for all public service workers. The Committee underlines that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations.

*The Committee urges the Government to take the necessary measures to amend the provisions of the Essential National Industries (Employment) Decree 2011 without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. The Committee also requests the Government to take the necessary measures to ensure that the check-off facility continues to be granted in the abovementioned sectors.*

*Recalling the recommendation made by the Committee on Freedom of Association in the framework of Case No. 2723 that the Government accept an ILO direct contacts mission to clarify the facts and assist the Government and the social partners in finding appropriate solutions in conformity with freedom of association principles, the Committee hopes that such direct contacts mission will be able to take place in the near future with a view to finding solutions to the issues raised.*

*[The Government is asked to supply full particulars to the Conference at its 101st Session and to reply in details to the present comments in 2012.]*

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) on 4 August 2011 denouncing severe restrictions on collective bargaining in the public sector and pressure on civil servants to choose between their job and their role in the trade union, and on 31 August 2011 focusing on the Essential National Industries (Employment) Decree 2011 (ENI). *The Committee requests the Government to provide its observations thereon.*

The Committee also notes the serious comments made by Education International (EI) dated 31 August 2011 concerning, inter alia, the suspension from the civil service of the President of the Fijian Teachers Association on the grounds of his public comments. *Observing that the Committee on Freedom of Association has recommended his reinstatement in the framework of Case No. 2723, the Committee requests the Government to comply with this recommendation and to provide its observations on the remaining comments submitted by EI.*

*Article 1 of the Convention. Protection against acts of anti-union discrimination.* With reference to the dispute in the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers 15 years ago), the Committee had previously taken note of the Government's statement that there has been a change of ownership in the mines, that a significant number of these strikers have been employed by the new employer in the mines and that the Government has also provided those still unemployed with alternative means of livelihood through a small business scheme subsidized by the Government since the beginning of 2007. The Committee notes that the Government refers in its report to various measures with regard to the redundant miners of the Vatukoula Mining Company including the striking workers of the Fiji Mine Workers Union (FMWU), in particular important amounts of money granted for the purpose of rehabilitation or social assistance, training packages, re-employment by the new owner, relocation of squatting miners and purchase of residential blocks at the expense of the Government, and establishment in 2010 of a multi-sectoral committee to discuss solutions to the issue. The Committee notes however the comments made by the FMWU dated 1 December 2009, 15 November 2010 and 22 August 2011, in particular that the information provided by the Government concerning inter alia the re-employment of many strikers and a subsidized business scheme for the unemployed is simply not true and that there has been no improvement in the situation. The Committee notes with **concern** the contradictory views of the Government and the FMWU, with progress being reported on the one hand and the deterioration of the situation being denounced on the other. **The Committee requests the Government to provide its comments on the FMWU comments and to engage in exploratory talks with FMWU representatives with a view to reaching, without any further delay, a mutually satisfactory settlement for assistance to help the remaining workers re-establish themselves.**

*Article 4. Promotion of collective bargaining.* The Committee notes that the ENI was promulgated on 29 July 2011, that the ITUC and EI severely criticize its provisions with respect to the Convention, and that the ENI has been submitted to the Committee on Freedom of Association in the framework of Case No. 2723.

*Elected representatives.* The Committee notes that Part 3 in conjunction with section 2 of the ENI seek to establish the role of representatives – union or not – as collective bargaining agents. The Committee understands that the term “representative” may include a union delegate or an elected workers’ representative. In this regard, it recalls that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned. The Committee also recalls that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, is detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. **The Committee urges the Government to take the necessary measures without delay to ensure that the application of the legislation will be in full conformity with the above principles.**

*Annulment of collective agreements.* According to section 8 of the ENI, all existing collective agreements are null and void 60 days after the ENI enters into force, and new agreements are to be negotiated by the parties before the expiry of the 60 days; otherwise, the company may unilaterally implement new terms and conditions through a new collective agreement or individual contracts. The Committee emphasizes that legislation which annuls freely negotiated collective agreements in force and requires their renegotiation is contrary to the principle of free and voluntary collective bargaining enshrined in the Convention. In addition, the Committee observes that the Government has provided no clear and imperative reasons concerning any need for economic stabilization in a specific context, and that the legislation has effect on whole sectors without any reference to specific provisions that cannot be implemented in the framework of an acute national crisis. **Considering that the abrogation of collective agreements as well as the unilateral imposition of conditions of employment failing agreement is contrary to the obligation to encourage and promote collective bargaining, and that section 8 of the ENI constitutes a direct violation of Article 4 of the Convention, the Committee urges the Government to abrogate this provision.**

*Renegotiation of collective agreements in case of financial distress.* The Committee notes that section 23 of the ENI provides that employers may renegotiate all their collective agreements if they are considered to be in financial distress; if bargaining fails to result in a new collective agreement, the employer may submit its proposals for a new or amended collective agreement to the Prime Minister for review and the Prime Minister shall make a decision on the new terms and conditions of the new or amended collective agreement. With reference to the principles enounced above in the context of the annulment and renegotiation of collective agreements, the Committee considers that section 23 of the ENI amounts to compulsory arbitration by public authorities at the request of one of the parties. **Considering that section 23 of the ENI violates the principle of free and voluntary collective bargaining enshrined in the Convention, the Committee therefore requests the Government to abrogate this provision.**

*Restriction of the right to collective bargaining.* Previously, the Committee had requested the Government to indicate the measures taken or contemplated so as to amend section 10 of the Counter-Inflation (Remuneration) Act which envisages, if need be, the restriction or regulation of remuneration of any kind by order of the Prices and Incomes Boards and stipulates that any agreement or arrangement which does not respect these limitations will be illegal and deemed to be an offence. The Committee notes from the Government's report that: (i) section 10 is dormant, has not been used since 24 years and can only be activated in extreme situations of economic crisis bordering insolvency; (ii) in its efforts to promote collective bargaining, the Government has developed a Code of Good Faith Collective Bargaining as guidance for the social partners; and (iii) the Government's commitment to the right of workers and employers to bargain freely is

evidenced by the fact that section 10 was not activated during the global financial crisis in 2008 and the numerous cyclones hitting Fiji at the same time. The Committee further notes the Government's indication that, in the framework of the review of outdated laws, the Government is exploring, in light of the recently adopted commercial legislation, the need of retaining the Counter-Inflation (Remuneration) Act and the possibility to merge the Price and Incomes Boards with the Commerce Commission. *Accordingly, the Committee requests the Government to take measures to abrogate section 10 of the Counter-Inflation (Remuneration) Act and to provide information on any developments in the framework of the above reform.*

*In general, the Committee expresses deep concern at the serious violations of the Convention that have been brought to its attention. Recalling the recommendation made by the Committee on Freedom of Association in the framework of Case No. 2723 that the Government accepts an ILO direct contacts mission to clarify the facts and assist the Government and the social partners in finding appropriate solutions in conformity with freedom of association principles, the Committee hopes that such direct contacts mission will be able to take place in the near future with a view to finding solutions to the issues raised.*

## Gabon

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

*Observations received from trade unions.* The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 concerning restrictions on the right to strike in the public sector and also problems with exercising trade union rights in the education sector. The Committee also notes the communication of 31 August 2011 from Education International (EI), which denounces the adoption of various regulatory instruments which, it claims, have been making the exercise of union activities in the education sector more and more difficult since 2009. In its communication EI denounces in particular the circular of 4 April 2011 from the Director of the Estuaire Provincial Academy prohibiting trade unions from conducting any activities in educational establishments, i.e. the teachers' workplace. The Committee recalls that freedom of association implies for workers' organizations the right to organize their activities in full freedom aimed at defending the occupational interests of their members, including the right of workers' representatives to have access to all workplaces where such access is necessary to enable them to perform their representative duties. However, access for workers' representatives to workplaces must of course not be used to the detriment of the efficient functioning of the administration or public institutions concerned. For this reason the workers' organizations concerned and the employer must seek to reach agreements in such a way that access to the workplace during and outside working hours is recognized for the workers' organizations without jeopardizing the operation of the administration or public institution concerned. *The Committee requests the Government to send its observations on the comments from the ITUC and EI and take the necessary steps in the meantime to ensure that trade union representatives have the possibility of access to teachers in educational establishments, in accordance with the legislation in force.*

Furthermore, in its previous comments, the Committee noted the Government's indication that the designation of the most representative trade union confederations in the country is not the result of a unilateral decision by the Government, but the outcome of an agreement concluded on 27 March 2007 among six trade union confederations (COSYGA, CGSL, USAP, UTG, CONSINEQ and Intersyndicale), which designated the four most representative organizations to participate in the consultative bodies envisaged by the Labour Code, prior to their subsequent determination through trade union elections. The Committee notes the Government's confirmation in its latest report that the 2007 agreement still remains in force today and, recognizing that the problem of the representativeness of the trade union confederations persists, repeats its request for assistance from the Office in the organization of occupational elections. *Recalling once again that the determination of the most representative organizations must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 97), the Committee expects that the Government will take the necessary measures to resolve the problem of the representativeness of trade union organizations and hopes that it will be able to avail itself of ILO technical assistance. The Committee requests the Government to indicate any progress achieved in this respect in its next report.*

## Gambia

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

*Scope of the Convention. Civil servants, prison officers and domestic workers.* In its previous comments, the Committee had requested the Government to guarantee that the rights afforded by the Convention were ensured for prison officers, domestic workers and civil servants not engaged in the administration of the State. The Committee noted with regret that the new Labour Act did not apply to the abovementioned categories of workers (section 3(2)). The Committee recalled 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 notes that the Government indicates in its report that the right to collective bargaining under Part XIII of the Labour Act is a communal right guaranteed to all workers. The Committee observes that although prison officers, domestic workers and civil servant are excluded from the application of the Labour Act, section 3(3) entitles the Secretary of State to extend the Act's application by an order published in the gazette, to any excluded category of workers. **The Committee therefore requests the Government to indicate if the excluded employees under section 3(2) of the Labour Act are afforded the rights to collective bargaining under Part XIII of the Labour Act as a result of an order published in the gazette by the Secretary of State and if so, to provide a copy of the said Order. The Committee also requests the Government to indicate how these categories of workers are afforded adequate protection against acts of anti-union discrimination and interference, in accordance with Articles 1 and 2 of the Convention.**

*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.* In its previous comments, the Committee had noted that according to section 130 of the Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalled that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should not be denied to other unions in the unit, at least on behalf of their own members. The Committee further noted that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent. The Committee recalled that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. The Committee requested the Government to take the necessary measures in order to bring the legislation into conformity with the Convention in accordance with the abovementioned principles. The Committee notes the Government's indication that the Department of Labour is in consultation with the Central Government for amendments to be tabled before Parliament for approval. **The Committee trusts that these amendments will take into account the abovementioned principles and requests the Government to provide information on any development in this regard.**

## Georgia

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

The Committee notes the comments submitted by the Georgian Trade Union Confederation (GTUC) and the International Trade Union Confederation (ITUC) in communications dated 3 September 2010 and 4 August 2011, respectively, concerning restrictions on the right to strike and other matters examined by the Committee below. The Committee notes the Government's reply to the comments of the ITUC.

*Law on Trade Unions.* The Committee had previously requested the Government to amend section 2(9) of the Law so as to lower the minimum trade union membership requirement set at 100 and to indicate the impact of this provision on the establishment of trade unions at the branch or sectoral levels, including information on the number of such trade unions and their respective membership. The Committee notes that in its report, the Government indicates that the Law on Trade Unions was adopted in 1997, prior to the ratification of the Convention; thus, by virtue of article 6 of the Constitution, according to which, ratified international conventions are part of national legislation and prevail over other legal acts, Convention No. 87 prevails over the Law on Trade Unions. The Government further indicates that according to the Civil Code, trade unions are non-commercial organizations and there are no restrictions as to the number of their members for the purpose of registration. According to the Government, in practice, there are numerous trade unions with the membership of lower than 100 persons. The Government lists in this respect the following examples: Ministry of Culture, Monument Protection and Sport – 80 trade union members, Ministry of Economic Development – 80 trade union members, and JSC Bank of Georgia – 80 trade union members. The Government further asserts that in practice, there are no cases of refusals to register a trade union by the National Registry Agency. Finally, the Government argues that it is not aware of any ILO document which sets up a minimum trade union membership requirement. The Committee recalls that a high minimum membership requirement restricts the right of workers to establish and join organizations of their own choosing without previous authorization and is incompatible with *Article 2* of the Convention. It further recalls that it had always considered that the minimum requirement of 100 workers to establish unions by branch of activity, occupation or for various occupations is too high and should be reduced. While taking note of the examples provided by the Government, the Committee understands that they appear to refer not to the number of members of a particular trade union, but rather to a number of trade unions members at a particular entity (organization or undertaking). Furthermore, while taking due note of the Government's indication that the Convention prevails over the Law on Trade Unions, the Committee stresses that it is the Government's responsibility to ensure the application of the Convention in law and in practice. **It therefore trusts that the Government's next report will contain information on the measures taken or envisaged to amend section 2(9) of the Law on Trade Unions so as to lower the minimum trade union membership requirement.**

*Labour Code.* The Committee had previously noted section 49(5) of the Code providing that, after the warning strike, the parties shall participate in the amicable settlement procedures pursuant to the Labour Code. The Committee had noted, however, that the Labour Code did not provide for such a procedure and requested the Government to give consideration to appropriate mechanisms of conciliation, mediation or voluntary arbitration instead. The Committee notes that the Government reiterates that amicable settlement procedures are regulated by section 48 of the Code in sufficient detail. The Committee once again notes that, under this section, such procedures involve: (1) a written notice of commencement of the amicable procedure reflecting the grounds of dispute and claims by one party; (2) a review of the notice by the other party and its reply; and (3) written decision by the representatives of the parties, which would become a part of the existing contract of employment. Furthermore, if no agreement has been reached within 14 days, the “other party is entitled to apply to court or arbitration” (section 48(5)). The Committee understands that this section, while describes the process, does not provide for a specific mechanism (procedure) to facilitate dispute settlement between the parties. The Committee recalls that dispute settlement procedure usually involves a neutral and independent third party, in whom the parties have confidence, and who could facilitate breaking a stalemate which the parties are unable to resolve themselves. The Committee notes that the Government, on the one hand, recognizes the need to develop mechanisms of conciliation and mediation to help reduce the incidence of disputes and, on the other, indicates that a special tripartite Working Group of the Tripartite Social Partnership Commission is empowered to mediate labour disputes. ***The Committee requests the Government to provide information on the work of the tripartite Working Group as to the dispute mediation, including on the number of labour disputes it had conciliated and/or mediated. It recalls that the Government may avail itself of the technical assistance of the Office in respect of the developing and strengthening collective labour disputes conciliation and mediation mechanisms if it so wishes.***

With regard to section 48(5) of the Code, according to which, if an agreement is not reached within 14 days, one of the parties is entitled to submit the dispute to the court or arbitration, the Committee had recalled that a provision which permitted either party unilaterally to submit the dispute for compulsory arbitration effectively undermined the right of workers to call a strike. The Committee requested the Government to take the necessary measures to amend this provision so as to ensure that recourse to arbitration is limited only to situations where the right to strike can be restricted or banned, that is in: (1) essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); (2) the public services only for public servants exercising authority in the name of the State; or (3) in the event of an acute national or local emergency. The Committee notes that the Government reiterates that recourse to the arbitration is not compulsory and that a strike can be declared regardless of whether an appeal to court or arbitration had been filed. The Committee also notes the Government’s indication that parties can refer the dispute to the arbitration only upon mutual consent and that an arbitration decision is final only if there is a preliminary consent of both parties to this effect. At the same time, the Government explains that pursuant to section 48(5), if in the course of the dispute, an agreement has not been reached within 14 days or if a party has avoided to participate in the amicable settlement, the other party is entitled to apply to court or arbitration and/or continue to exercise the right to strike. The Committee notes that the latter explanation of the Government appears to confirm that one of the parties can submit the dispute to the court or arbitration if the conditions set forth by section 48(5), as mentioned above, are satisfied. ***The Committee therefore reiterates its previous request and asks the Government to indicate measures taken or envisaged to amend section 48(5) of the Code so as to ensure that recourse to arbitration by one party to the dispute is limited to the abovementioned cases.***

The Committee had previously requested the Government to repeal section 49(8) of the Code, which provides that a strike could not continue for more than 90 calendar days. The Committee notes that in the Government’s opinion, this provision is in conformity with the Convention, as the latter does not prohibit limitations on the duration of the strike. While noting the Government’s indication that after the expiration of 90 days, another strike can be declared by the union with regard to the same issue, the Committee considers that a legislation limiting duration of the strike to 90 days seriously undermines one of the essential means through which workers and their organizations may promote and defend their economic and social interests. ***The Committee considers that the right to strike should not be restricted through predetermined limitation on the duration imposed by the legislation and requests the Government to take the necessary measures to repeal this provision.***

The Committee had further requested the Government to amend section 51(2) of the Code, which prohibits strikes in sectors where “work is impossible to suspend due to the technological mode of work”. Instead of prohibition of strikes in such services, the Committee suggested establishing a system of minimum services. The Committee notes that the Government reiterates that section 51(2) sets the minimum services requirement. The Committee points out, however, that this provision refers to the prohibition of strikes, without any reference to the system of minimum services and conditions thereof. The Committee notes, nevertheless, the Government’s indication that it will discuss the possibility of amending this section in the framework of the Tripartite Social Partnership Commission. ***The Committee trusts that the Government’s next report will contain information on the measures taken or envisaged to amend section 51(2) of the Code.***

Finally, the Committee had requested the Government to amend section 51(4) and (5) of the Code providing that a strike by employees informed about termination of their contract before the dispute arises is illegal and that, if the right to strike arises before the termination of the time-based contract, the strike is considered illegal after the expiration of the

term of the contract. The Committee notes that the Government while indicating that strike shall not serve as a ground for termination of labour relations (section 49(10) of the Labour Code), confirms that after the termination of the labour contract the strike is indeed considered illegal. *The Committee therefore once again requests the Government to take the necessary measures in order to amend section 51(4) and (5) of the Code and to indicate measures taken or envisaged in this respect.*

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

The Committee notes the comments submitted by Education International (EI) in communications dated 30 August 2010 and 31 August 2011, which concern issues pending before the Committee on Freedom of Association (CFA) in Case No. 2678, concerning interference in activities of the Educators & Scientists Free Trade Union of Georgia (ESFTUG) and dismissals of trade unionists and the Government's reply thereon. In this respect, the Committee also notes the November 2011 conclusions and recommendations of the CFA (see 361st Report). The Committee also notes the comments made by the Georgian Trade Union Confederation (GTUC) and the International Trade Union Confederation (ITUC) in communications dated 3 September 2010, and 4 August and 10 October 2011, respectively, alleging numerous cases of anti-union discrimination, employers' interference in trade union affairs and violation of collective bargaining rights. The Committee notes that some of their allegations refer to the issues pending before the CFA in Case No. 2663. In this respect, the Committee notes the March 2010 CFA conclusions and recommendations (see 356th Report). The Committee notes the Government's reply to the comments of the ITUC.

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2010. It further notes that, on that occasion, the Conference Committee welcomed the steps taken by the Government to institutionalize social dialogue in the country through the establishment of the Tripartite Social Partnership Commission (TSPC), whose statutes were adopted and secretariat established in March and May 2010, respectively.

The Committee notes that in its report, the Government indicates that in the period from January 2010 to July 2011, the TSPC has met approximately ten times and its tripartite Working Group has held 24 meetings. The Government explains that before each meeting the secretariat of the TSPC elaborates the agenda and transmits it to the social partners for comments. It points out that the main issues discussed by the TSPC are related to the allegations provided by the GTUC regarding cases of violation of trade union rights. The Government further indicates that, in line with the ILO supervisory bodies' recommendations that violations of trade union rights should be investigated by the Government, it had made a decision that such cases should be reviewed in the framework of the TSPC to ensure involvement of all interested parties. For this purpose, the TSPC was empowered to conciliate and mediate labour disputes. The Government informs that the following allegations by the GTUC, ITUC and EI on cases of anti-union discrimination have been discussed by the TSPC: LTD Poti Sea Port case; LTD BTM Textile case; LTD Georgian Railway case; and the ESFTUG case. The Committee welcomes this information. It recalls, however, that in addition to noting the alleged cases of violation of the Convention in practice, it had also raised issues relating to an insufficiency in the legislative framework of an effective and adequate protection against anti-union discrimination and meaningful promotion of collective bargaining. In this respect, it had noted that the abovementioned TSPC tripartite Working Group had been charged with reviewing and analysing the conformity of the national legislation with the findings and recommendations of the Committee of Experts and to propose the necessary amendments. The Committee expressed the hope that any proposed amendments would take into account its comments, which concerned the following issues.

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee had previously noted that section 11(6) of the Law on Trade Unions and section 2(3) of the Labour Code which prohibited, in very general terms, anti-union discrimination, did not appear to constitute sufficient protection against anti-union discrimination at the time of recruitment of workers and at the time of termination of their employment. In particular, the Committee had noted that, pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant and considered that the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities. The Committee had also noted that, according to sections 37(d) and 38(3) of the Labour Code, the employer has a right to terminate a contract at his/her initiative with an employee, provided that the employee is given one month's pay, unless otherwise is envisaged by the contract. The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, the Labour Code did not offer sufficient protection against anti-union dismissals. The Committee therefore trusted that the necessary measures would be taken to amend the abovementioned provisions of the Labour Code so as to ensure an adequate protection against anti-union discrimination. It further requested the Government to indicate the form of compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc.

The Committee notes that the Government reiterates the information it had previously provided by referring to the general prohibition of anti-union discrimination enshrined in the Constitution (articles 14 and 26), the Law on Trade Unions (section 11(6)), the Labour Code (section 2(3)) and the Criminal Code (section 142). The Government considers that the legislation clearly prohibits any type of discrimination, including anti-union dismissals, and sufficiently protects against violations of these rights and is therefore in compliance with the Convention. The Government adds that no

application has been submitted to the relevant governmental agencies for the past several years regarding restrictions of trade union rights. With regard to section 5(8) of the Labour Code, the Government indicates that, in practice, an employee becomes a trade union member after recruitment and that there have been no cases of a person not being recruited because of his/her trade union membership; it therefore considers that this provision is in conformity with the Convention. With regard to section 37(9) of the Labour Code, the Government indicates that this provision does not stipulate that an employer can dismiss a worker without any reason; but rather that one of the grounds for suspending labour relations is the termination of a labour contract, which is possible upon the initiative of one of the parties or on the grounds stipulated by the contract. If a dismissed worker appeals to the court, the employer is obliged to provide arguments and reasons for the dismissal to the court. Furthermore, the Government points out that, according to the Code, in case of termination of employment, an employer is obliged to give at least one-month's pay if higher payment is not envisaged by the agreement between the parties. As to the compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers and downgrading, the Government indicates that such workers have the right to request compensation by appealing to the court and indicating the amount of compensation desired; the court makes a final decision regarding compensation and its amount. The Government concludes by indicating that it does not see the need for initiating amendments to the Labour Code.

The Committee notes the information provided by the Government. It notes, in particular, that on the one hand, the Government indicates that there have been no complaints of restrictions of trade union rights, and on the other, that the allegations of violations of trade union rights pending before the ILO supervisory bodies are being examined by the TSPC. It further notes new allegations of dismissals of trade union officers and founding members submitted by the ITUC in its communication dated 10 October 2011. The Committee recalls that, in terms of *Article 1* of the Convention, workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The Committee recalls that such protection should cover hiring, dismissals and discriminatory measures during employment. With regard to the protection at the time of recruitment, the Committee recalls that workers may face many practical difficulties in proving the real nature of denial of employment, especially when seen in the context of blacklisting of trade union members, which is a practice whose very strength lies in its secrecy. Since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti-union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-recruitment should be made available upon request. With regard to the termination of employment, the Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pays the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient under the terms of *Articles 1 and 3* of the Convention. The Committee underlines that while there exists a variety of systems affording an "adequate" protection against acts of anti-union discrimination, it is essential that the system in place is an efficient one. Thus, would be compatible with the Convention a system establishing preventive machinery by requiring that a dismissal is authorized by an independent body or public authority (labour inspectorate or courts); a system which provides for the reinstatement of an unfairly dismissed worker; or a system providing for compensation for the prejudice suffered as a result of an act of anti-union discrimination and sufficiently dissuasive sanctions imposed on employers found guilty of anti-union discrimination, which also act as an effective deterrent to prevent in practice anti-union dismissals. While noting that general provisions prohibiting discrimination exist in the legislation, in the light of the numerous alleged cases of anti-union discrimination, the Committee considers that the system currently in place in Georgia does not afford an adequate protection. ***The Committee therefore once again requests the Government to take the necessary measures to revise sections 5(8), 37(d) and 38(3) of the Labour Code in consultation with the social partners, so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination taking into account the principles above. It requests the Government to provide information on the measures taken or envisaged in this respect. The Committee further asks the Government to provide detailed information on the application of the Convention in practice, including statistics on the number of confirmed cases of anti-union discrimination, the remedies provided and sanctions imposed, as requested by the June 2010 Conference Committee.***

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

The Committee notes the Government's indication that labour legislation aims at empowering workers to conclude labour agreements to provide for better working conditions and that this Convention has the same objective; accordingly, legislation is in compliance with the Convention. The Government considers that, while the Convention provides for the possibility to carry out collective bargaining between an employer and a trade union, it does not prohibit collective bargaining between an employer and non-unionized workers, even when a trade union exists at the particular undertaking. Consequently, adds the Government, collective agreements concluded with trade unions and agreements between an

employer and non-unionized workers enjoy, under the national legislation in force, an equal standing. The Government points out, however, that unionized workers have several privileges over non-unionized workers. For example, an employer is obliged to bargain collectively with a trade union upon the initiative of the latter, but is not obliged to do so with non-unionized workers; trade unions enjoy certain facilities (premises, check-off facilities, etc), which non-unionized workers do not have. The Government further indicates that it promotes collective bargaining in practice and that the biggest companies in Georgia have collective agreements with the respective trade unions. As for the promotion of collective bargaining under *Article 4* of the Convention, the Government considers that such “promotion” does not necessarily imply legislative measures. The Government further indicates that the Labour Code and the Law on Trade Unions in no way restrict promotion of collective bargaining, but to the contrary, contain the relevant rules, conditions and procedures. The Government concludes by emphasizing that, according to the Labour Code, the right to collectively bargain belongs not only to trade unions, which organize only about 12 per cent of the labour force (2008), but also to other unions or groups of employees. This regulation puts non-unionized workers and those organized in trade unions under equal conditions and thus excludes the discrimination based on trade union membership.

The Committee notes the arguments put forward by the Government, but finds it difficult to reconcile the equal status given in law to collective labour agreements concluded with trade union organizations and agreements concluded with a group of non-unionized workers with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations should be encouraged and promoted with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. ***The Committee therefore once again requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees’ representatives or discriminatory situations in favour of the non-unionized staff and to promote collective bargaining with trade union organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.***

The Committee had previously requested the Government to indicate the number of collective agreements concluded in the country and to provide relevant statistics in relation to the private sector. The Committee notes the Government’s indication that, while it does not have official statistics regarding collective agreements, the top 20 companies in the country have collective agreements with trade unions and provides, in this respect, examples of five companies. ***The Committee requests the Government to continue to provide all relevant information in this respect.***

## Germany

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention as well as the Government’s observations thereon.

*Article 3 of the Convention. Right of workers’ organizations to organize their administration and activities.* 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.

The Committee notes from the ITUC observations that the Düsseldorf Administrative Court handed down a ruling dated 15 December 2010 setting aside the disciplinary punishment of a teacher with civil servant status (*Beamte*) who had participated in a strike. In this regard, the Committee notes with ***interest*** that, in its ruling, the Düsseldorf Administration Court held that, since the general strike prohibition for civil servants in Germany is probably contrary to international law (in particular to the European Convention on Human Rights), the imposition of disciplinary measures for participation in a strike is unacceptable when the relevant civil servant – such as, in the present case, the teacher – does not pertain to the administration of the State (“principle of friendly interpretation towards international law”). The Committee also notes that the Government states in its report that this decision only relates to an individual case and does not advocate a right to strike for civil servants in general. The Government also stresses that it stands by the strike ban for all civil servants (*Beamte*), which constitutes a traditional principle of the civil servants under article 33(5) of the Basic Law and derives from the civil servants’ duty of allegiance and obligation to fulfil their duties as a permanent function (i.e. without interruption) enshrined in article 33(4). According to the Government’s report, the right to strike in the public service depends on the status group – employees in the public service (*Arbeitnehmer des öffentlichen Dienstes*) do enjoy the full right to strike whereas civil servants do not have the right to strike on constitutional grounds. The Committee further notes the Government’s indication that, since the Basic Law does not specify which tasks are to be entrusted to civil servants (*Beamte*), the Government has a certain constitutional leeway in the delegation of the tasks and prefers to use civil servants where the State interferes in the rights of individuals for the public good.

The Committee once again recalls that it has always considered that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. While accepting that the right to strike may be restricted or even prohibited in the public service, the Committee has clearly established that such a limitation may be applied only in the case of public servants exercising authority in the name of the State. The Committee is of the view that teachers, postal workers and railway employees with the status of civil servant (*Beamte*) do not exercise authority in the name of the State and should therefore be allowed, without prejudice to the possibility of establishing a minimum service, to exercise the right to strike, which the Committee understands is available to private sector teachers, postal workers and railway employees as well as to teachers with the status of employee in the public sector (*Arbeitnehmer des öffentlichen Dienstes*). **The Committee requests the Government to indicate in its next report any concrete measures taken or envisaged, in the light of the abovementioned ruling of the Düsseldorf Administrative Court, to ensure that all 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.**

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention as well as the Government's observations thereon.

*Article 4 of the Convention. Right to collective bargaining with respect to conditions of employment of public servants not engaged in the administration of the State, including teachers.* The Committee notes that, in response to its previous comments, the Government states that excluding civil servants (*Beamte*) from collective bargaining is in accordance with the Convention, since the position of public servants is explicitly excluded under *Article 6* of the Convention. The Committee further notes that, according to the Government's report, employees in the public service (*Arbeitnehmer des öffentlichen Dienstes*), e.g. teachers employed under collective agreements in the education services of the Länder, do enjoy the right to bargain collectively, whereas civil servants (*Beamte*) do not have the right to bargain collectively because the legislative regulation of the civil service is a constitutionally endowed traditional principle of the civil service under article 33(5) of the Basic Law and because civil servants (*Beamte*) have the duty to exercise their functions lawfully, impartially and altruistically. The Government stresses that, even for particular groups of civil servants (*Beamte*), collective bargaining which is aimed at concluding collective agreements is incompatible with the principle of the legislative regulation of the civil service, and that this remains valid regardless of the outcome of wage negotiations by employees in the public service (*Arbeitnehmer des öffentlichen Dienstes*). The Committee also notes the Government's indication that to compensate for the inability to enter into collective negotiations, the umbrella organizations of the civil servants' unions take part in the initial preparation of the general regulations pertaining to civil servant law, pursuant to section 118 of the Federal Law on Civil Servants (*Bundesbeamtengesetz* (BBG)) and section 53 of the Law on the Status of Civil Servants (*Beamtensstatusgesetz*). The Government considers that the current system of trade union involvement sufficiently protects the interests of civil servants (*Beamte*) so that no changes in this respect are necessary.

The Committee understands that the position of the Government concerning the right to collective bargaining of civil servants (*Beamte*) is conditioned by the wording of the constitutional provisions. The Committee reiterates 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 also observes that the Government indicates that, contrary to teachers with the status of civil servant (*Beamte*), teachers with the status of employee in the public sector (*Arbeitnehmer des öffentlichen Dienstes*) enjoy the right to collective bargaining (which the Committee understands is also available to private sector teachers). In this regard, the Committee wishes to underline that, pursuant to *Article 6*, the Convention "does not deal with the position of public servants engaged in the administration of the State", and therefore covers all public service workers other than those engaged in the administration of the State. The Committee thus considers that a distinction must be drawn between, on the one hand, public servants who by their functions are directly engaged in the administration of the State (that is, civil servants employed in government ministries and other comparable bodies) as well as officials acting as supporting elements in these activities and, on the other hand, persons employed by the government, by public undertakings or by autonomous public institutions; only the former category can be excluded from the scope of the Convention.

**Recalling that, according to Article 6 of the Convention, public service workers who are not engaged in the administration of the State, including teachers, should enjoy the right to collective bargaining, the Committee once again requests the Government to indicate in its next report the measures taken or envisaged to explore, together with the trade union organizations concerned, ways in which the current system could be developed so as to give full effect to the principles enounced above.**

## Ghana

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

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

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

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

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

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

## Greece

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

The Committee takes note of the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply to GSEE's first communication dated 16 May 2011.

The Committee also takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application of Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission (HLM) proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union would assist the mission in its understanding of the situation [*Provisional Record* No. 18, Part II, pages 68–72]. The Committee takes note of the report of the HLM which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission (EC) and the IMF in Brussels and Washington, DC, in October 2011.

The Committee observes that the majority of the issues raised in the HLM report concern Convention No. 98 and would refer to its comments under that Convention for its general consideration and a more detailed analysis of the situation.

*Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programme.* The Committee observes the concerns raised by the GSEE in its comments in relation to certain legislative

changes or legislative intervention which has effectively restricted the right to strike in the country. The GSEE refers in particular to: (1) the uncertainty of the legality of strike action related to non-wage matters when an arbitral award has been issued on the basic wage; and (2) the renewed use by the Government of civil mobilisation orders to bring an end to legitimate strike action in the maritime sector.

As regards the first point, the Committee observes the following information provided by the Organization for Mediation and Arbitration (OMED) to the HLM:

In case of arbitration, the right to strike was suspended for 10 days. ... In reply to questions raised by the HLM, the OMED indicated that certain questions of interpretation had been left open in the text of the law. For instance, it was not clear whether arbitrators could issue awards on wages as well as allowances. It was also not clear whether in case an employer had recourse to arbitration on the issue of wages, a strike could nevertheless be staged on non-wage matters which were previously part of the collective agreement and over which negotiations had reached a standstill.

***While fully recognizing that the right to strike may be suspended for a restricted period of time during which mediation, conciliation or voluntary arbitration procedures are engaged in, the Committee requests the Government to provide clarification as to whether workers may engage in industrial action despite an arbitral award on wages where the parties are at a deadlock in respect of negotiations on non-wage matters.***

As regards the use of civil mobilization orders to curtail industrial action in the maritime sector, the Committee observes that this matter was recently dealt with by the Committee on Freedom of Association (Case No. 2838). ***The Committee, like the Committee on Freedom of Association, requests the Government to take the necessary steps to ensure that the civil mobilization order is no longer in force so that seafarers may have recourse to industrial action when they arrive at an impasse in negotiations and to ensure that, in the future, the decision to suspend a strike on the grounds of national security or public health is made by an independent body.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

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

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

The Committee takes note of the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010, and 28 July and 18 November 2011, as well as the Government's reply to GSEE's first communication, dated 16 May 2011. The Committee further notes the comments made by the Greek Federation of Bank Employee Unions (OTOE), dated 28 September 2011 and the Hellenic Federation of Enterprises (SEV) dated 23 September 2011.

The Committee takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application of this Convention. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission (HLM) proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union would assist the mission in its understanding of the situation (*Provisional Record* No. 18, Part II, pages 68–72). The Committee takes note of the report of the HLM which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission (EC) and the IMF in Brussels and Washington, DC, in October 2011.

The Committee wishes first to emphasize that the concerns expressed below have been made with a full understanding of the very difficult, challenging and exceptional circumstances which the country has had to face over the last few years. Having reviewed the HLM report, the Committee observes that all parties have made extraordinary efforts to address these difficulties with the highest consideration for ratified international labour Conventions and most especially for those concerning freedom of association and collective bargaining. ***The Committee deeply appreciates these efforts and expresses the firm hope that the Government and the social partners will be able to review all of its comments below in the constructive vein in which they are intended, with the aim of jointly developing a common platform to advance the country in a manner which fully respects organizational rights and the promotion of free and voluntary collective bargaining that can be responsive to the current urgencies.***

Similarly, the Committee welcomes the opportunity that the HLM was given to discuss with the EC and the IMF, as well as the reported openness of these institutions to ILO assistance, in the areas of its mandate, in finding avenues for the advancement of the country that would be in conformity with relevant ratified Conventions. ***The Committee trusts that the Government will be in a position to request relevant assistance from the ILO in the very near future.***

*Article 4 of the Convention. Binding nature of collective agreements and their extension.* The Committee recalls that the 2010 comments of the GSEE criticized, in particular, section 2(7) of Act No. 3845/2010 (Measures for the application of the support mechanism for the Greek economy by euro area Member States and the IMF) which provided that: "Professional and enterprise collective agreements' clauses can (from now on) deviate from the relevant clauses of

sectoral and general national agreements, as well as sectoral collective agreements' clauses can deviate from the relevant clauses of national general collective agreements. All relevant details for the application of this provision can be defined by Ministerial Decision." The GSEE states that this provision paves the way for the dismantling of a solid machinery of collective bargaining which had been functioning smoothly and effectively in the country for 20 years as a result of a "Social Pact" endorsed in 1990.

The Committee observes that the Government refers to the financial crisis and the measures found necessary to tackle it based on certain conditionalities set out in the Memoranda of Economic and Financial Policies and of Understanding on Specific Economic Policy Conditionality. The Government underlines that, for reasons of general public interest, it was necessary to undertake a partial restructuring of the free collective bargaining system, focusing mainly on the expansion of the levels of collective bargaining and the thorough consideration of its issues, so that the core of the trade union freedom and of collective bargaining might not be affected, but rather safeguarded and indeed extended to cases where it was not applicable until now. In this regard, the Government referred to Act No. 3899/2010 enabling "special enterprise-level collective agreements".

The Committee will not develop an analysis of the "special enterprise-level collective agreements" as it understands from the HLM report and the latest communication of the GSEE that these agreements have now been superseded by Act No. 4024 /2011 which, according to the GSEE, has consolidated further the deconstruction of an industrial relations' system that was working effectively to set minimum standards of work for all workers through collective agreements concluded after free negotiations in the private and the wider public sector. In particular, the GSEE contests the abolition of the fundamental protective principle of favourability and the new legislative framework which, it claims, will give rise to the prevalence of firm-level agreements less favourable than the uniform standard of pay and working conditions provided in binding sectoral agreements. In addition, the new legislation eliminates the extension of the scope of sectoral collective agreements and introduces legislative intervention to fully abolish binding collective labour agreements in force in public utility enterprises. Moreover, the GSEE condemns the extension of bargaining rights in this legislation to non-elected "associations of persons" which have no permanent mandate nor the protections afforded to trade unions or even to lawfully elected representatives of workers. The GSEE adds that such associations are not restricted to small enterprises but may also be formed in enterprises with more than 20 workers provided there is no union. The GSEE contends that this new legislation further disempowers the institutional role of the trade union movement and its sectoral federations and weakens their bargaining power in setting minimum protective standards of work uniform to all workers. The GSEE asserts that this framework concedes the dominating role of the employers' managerial prerogative in a labour market that, while greatly flexible, is unprotected and increasingly deprived of binding principles and rules that hitherto ensured the right to decent work. Under the new paradigm, sectoral and occupational collective agreements are binding only on the signatory employer who may, at his or her discretion, leave their sectoral organizations and opt out from the binding effect of the agreement giving rise to unfair competition and the discouragement of workers in exercising their organizational rights. Finally, the GSEE asserts that it is entirely untrue that it and the other social partners were invited to participate in social dialogue related to these measures.

While having not yet received the Government's observations with respect to these latest measures, the Committee observes the serious concern raised on this matter in the conclusions of the HLM report:

While the Government had clearly made great efforts over the last year to ensure that alterations to the industrial relations framework would respect the practices and traditions of the relations between the social partners, the HLM must express its deep concern at the further developments in this area which took place after its visit, and in particular the provisions of Act No. 4024 of 27 October 2011, empowering associations of persons to conclude collective agreements at enterprise level. The HLM understands that association of persons are not trade unions, nor are they regulated by any of the guarantees necessary for their independence. The HLM is deeply concerned that the conclusion of 'collective agreements' in such conditions would have a detrimental impact on collective bargaining and the capacity of the trade union movement to respond to the concerns of its members at all levels, on existing employers' organizations, and for that matter on any firm basis on which social dialogue may take place in the country in the future.

At the outset, the Committee observes with *deep concern* that these changes, aimed at permitting deviations from higher level agreements through "negotiations" with non-unionized structures, are likely to have a significant – and potentially devastating – impact on the industrial relations system in the country. The Committee understands that the Government was given little choice in the current discussions with the lending institutions but to adopt these changes in response to calls for greater flexibility and improved competitiveness of the labour market. The Committee *deeply regrets* however that such far-reaching changes were made without full and thorough discussions with all the social partners concerned with a view to determining the appropriate flexibility to be afforded without wholly risking to undermining the long-established industrial relations in the country. *The Committee expresses the firm hope that the Government and the social partners will be in a position to come together in the very near future to review these measures and elaborate a system that will be relevant to Greece and its traditions. In this regard, the Committee also trusts that the social partners will be fully involved in the determination of any further alterations within the framework of the agreements with the EC, the IMF and the European Central Bank (ECB) that touch upon such aspects which go to the heart of labour relations, social dialogue and social peace, and that their views will be taken fully into account.*

The Committee emphasizes that *Article 4* of the Convention refers to the encouragement and promotion of 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 considers that collective bargaining with representatives of non-unionized workers should only be possible where there are no trade unions at the respective level. The Committee understands from the HLM report that the provision of collective bargaining rights for associations of persons was aimed at filling a void in small enterprises of fewer than 20 workers where enterprise-level unions could not legally be formed given the minimum membership requirement to form a union (20). It nevertheless considers that granting collective bargaining rights to other types of workers' representation which are not afforded the guarantees of independence that apply to the structure and formation of trade unions and the protection of its officers and members is likely to seriously undermine the position of trade unions as the representative voice of the workers in the collective bargaining process. In the current framework, the fact that associations of persons can only be constituted in enterprises where there are no unions provides no guarantees for workers' choice of representation given that unions cannot legally be formed in enterprises of fewer than 20 workers. Given the prevalence of small enterprises in the Greek labour market (approximately 90 per cent of the workforce), as noted by the HLM report, the Committee fears that the entire foundation of collective bargaining in the country may be vulnerable to collapse under this new framework. This is a particular risk given that the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024 /2011 has the effect of nullifying the binding nature of collective agreements. The Committee recalls in this regard the general principle enunciated in Paragraph 3(1) of the Collective Agreements Recommendation, 1951 (No. 91), that collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. Employers and workers bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement. The Committee considers that this recognition of the principle of favourability should apply, according to the circumstances, to lower level collective agreements, unless the same parties are involved in the negotiations.

As regards the elimination of the extension of sectoral or occupational collective agreements however, the Committee, while observing that Paragraph 5 of Recommendation No. 91 further refers to the utility of extending of collective agreements, such determinations are clearly a matter for public policy determination, where appropriate and suited to the conditions of each country. The temporary abolition of extension provisions cannot therefore be considered to be in contravention of the provisions of the Convention.

***The Committee requests the Government to review Act No. 4024 /2011 and article 2(7) of Act No. 3845 /2010 with the social partners concerned so as to bring the collective bargaining framework into line with its comments above both as regards the question of associations of persons and as regards the binding nature of freely concluded collective agreements and to provide detailed information on the steps taken in this regard in its next report.***

***The Committee further requests the Government to provide statistics on the number of associations of persons constituted in the country, the number of agreements concluded by them and their coverage, as well as the number of first-level agreements in contravention with the abovementioned favourability principle.***

***Compulsory arbitration.*** The Committee notes the comments provided by the SEV in relation to the mechanism for compulsory arbitration in the country. The SEV refers in particular to Act No. 3899/2010 which maintains the possibility of unilateral recourse to compulsory arbitration. While the legislation now enables the employer to also have recourse to compulsory arbitration which previously was only permissible for workers' organizations, the SEV contends that the possibility of unilateral recourse remains contrary to the Convention even though either party may now invoke it. According to the SEV, the arbitrator may determine the basic wage in the domain concerned (enterprise, branch, sector, inter-professional or even national). The SEV adds that this has a considerable impact on other benefits, many of which are calculated on the basic wage. Finally, while the text of the law states that all other matters may continue to be the subject of negotiations for the parties, the SEV claims that a tendency to breach this rule has already been demonstrated by the inclusion in arbitral awards of a clause maintaining the previous provisions of the agreement even though these are beyond the competence of the arbitrator. An evaluation of the system with the social partners after three years is envisaged by section 15 of the Act.

For its part, the GSEE also raises issues concerning Act No. 3899 and the changes to the Organization for Mediation and Arbitration (OMED). The GSEE particularly contests the suppression of the previous obligation to accept the mediation proposal before having the right to have recourse to arbitration. In the new system, a party can therefore request arbitration without any proof that they had undertaken the mediation process in good faith; they simply need to participate. The GSEE further contests the restricted competence of the arbitrator to deal only with the basic salary and daily wage determinations and the universal prohibition for trade unions to undertake strike action during the arbitration process. As regards the "retainability clause" – which provides that all the terms included in previous collective agreements and/or arbitration awards of the same legal value in so far as they have not been abolished or amended, shall remain in force and effect and constitute an entirety – the GSEE contends that this is simply aimed at ensuring stability in conditions of work related to crucial issues such as health and safety, working time, elimination of gender discrimination at work, educational leave, trade union contributions, as well as matters relating to the procedure and the terms of collective bargaining, mediation and arbitration. Finally, the GSEE contests the legislative restrictions on the arbitrator which limits any increase that may be made to the basic wage to no more than the base annual rate of European inflation.

The Committee observes from the HLM report that:

The OMED informed the HLM that its basic purpose was to promote and safeguard free and voluntary collective bargaining ... The mediators and arbitrators were independent. In rendering decisions, arbitrators had to take into account among other things, economic conditions and the competitiveness of the sector concerned. Training would be provided to enable them to take into account economic developments ... Recourse to mediation and arbitration was left to the discretion of employers' and workers' organizations. There was no obligation to bring a dispute to the OMED. The prerequisite was to have commenced direct negotiations and to have reached an impasse. Recourse to arbitration could take place either through agreement of the parties or unilaterally, under the following conditions, established in Act No. 3899/2010: (i) any party could resort to arbitration if the other party had refused mediation; (ii) any party could resort to arbitration immediately after the decision of the mediator was issued. The latter provision extended to both parties a facility which had been available only to workers under the previous law. Arbitration could only take place on wages and until 2012, the awards could not exceed the limits set by article 51 of Act No. 3871/2010, i.e. the average EU inflation rate. In case non-wage issues had been regulated by an older collective agreement, they would have to be settled through negotiations.

In the light of the information before it, the Committee understands that the unilateral recourse to compulsory arbitration is limited to the determination of the basic wage at national or sectoral/occupational level following a failed negotiation and an inconclusive mediation process. The Committee further understands that this mechanism is available in a system whereby there is not at present any machinery for minimum-wage fixing, a matter which could be determined by national legislation, following full consultation of the social partners concerned. The Committee therefore considers that the possibility of recourse to compulsory arbitration in relation to the basic wage as set out in Act No. 3899 would appear not to infringe the provisions of the Convention. The Committee further considers that the restrictions placed on the arbitrators in relation to the maximum increase of the basic wage is also a matter that may be determined by the Government in the absence of a common agreement among the parties concerned, especially in the current circumstances of extreme austerity, as an exceptional measure and not exceeding a reasonable period.

As regards the use of a "retainability" clause with respect to non-wage matters, the Committee observes that this is a common principle in certain regions and practised by several countries. The Committee considers that the use of such a clause to ensure continuity with respect to the terms and conditions of employment of individual workers and to avoid a legal vacuum does not pose a problem of compatibility with the Convention. On the other hand, the Committee is of the view that the elements of the collective agreement that concern the relation between employers or their organizations and a workers' organization or workers' organizations should be subject to renegotiation so as to avoid an obligatory and automatic perpetuation of worker representation that may not reflect an evolution in the workers' free and independent choice in this regard. ***The Committee requests the Government to ensure that the "retainability" clause is used in the case of unilateral requests for arbitration in accordance with this principle.***

*Intervention in freely concluded collective agreements.* The Committee further notes the communication of the OTOE which follows up the recommendations made by the Committee on Freedom of Association (CFA) in Case No. 2502. In its last examination of this case, the CFA, having referred the legislative aspects of the case to this Committee, had urged the Government to hold further full and frank consultations on the future of the supplementary pension funds of bank employees and of their assets so that these matters would be determined by mutual agreement of the parties to the collective agreements by which these funds were set up, and to which only they contributed, and to amend Act No. 3371/2005 to reflect the agreement of the parties. The OTOE also transmits a copy of a letter from UNI Europa to the EC, the ECB and the IMF in which UNI Europa strongly opposes the condition set out in the Memoranda of government intervention to eliminate bank employees' premiums which had been the subject of sectoral collective agreements since 1984 and represent part of the fixed salary of ordinary workers in the banking sector. According to UNI Europa, this would translate into a unilateral reduction of bank employees' salaries by 3.4 per cent while increasing bank profits approximately €80 million.

The Committee recalls that the first issue raised by the OTOE – which occurred well before the financial crisis in the country – has already been fully examined by the CFA which, recalling the voluntary nature of collective bargaining, strongly urged the Government to amend Act No. 3371 which enabled unilateral denunciation of the collective agreements in the banking sector on supplementary pension funds and to provide the space for renewed negotiations between the social partners concerned so as to determine the future of these funds. ***The Committee similarly requests the Government to bring the parties together with a view to achieving a mutually acceptable agreement.***

The Committee notes that the Memorandum of Understanding on Specific Economic Policy Conditionality and the Memorandum of Economic and Financial Policy provide: "To support banks in their effort to restructure operations, Government takes steps to limit bonuses and eliminate the so-called 'balance-sheet' premium or other equivalent measures." The Committee recalls, as it did in its previous comment that, if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. ***The Committee requests the Government to provide information in its next report on any steps taken to eliminate the premiums referred to, the extent to which consideration was given to the protection of workers' basic living standards and the duration of the restriction.***

Similarly, the GSEE refers to unilateral interventions in freely concluded collective agreements through: the perpetuation of a general wage freeze with Public Utility Enterprises (DEKO); the general abolition of collective labour agreements setting out the terms of pay and work in all enterprises of the wider public sector to be replaced by the public

sector pay regime regardless of their entirely different existing pay structures; the abolition of collective agreements in the Hellenic Railways Organization and the Athens Urban Transportations and; the reduction in wages for young workers below the applicable collective agreement. ***Recalling the abovementioned principles with respect to the need to take exceptional measures as part of a stabilization policy, the Committee requests the Government to indicate the steps taken to ensure that the above measures are accompanied by adequate safeguards to protect workers' living standards and to carry out a review with the social partners concerned as to their continuing necessity after a determined period of time.***

*Articles 1 and 3. Protection against anti-union dismissal.* More generally, the GSEE refers to a series of measures introducing flexible forms of work which render workers more vulnerable to abusive practices and unfair dismissal (e.g. flexibility in the management prerogative to breach full-time work contracts and unilateral imposition of reduced-term rotation work, extended duration of permissible use of temporary agency work, increased probationary period and extension of the maximum period for fixed-term contracts, etc.). ***The Committee requests the Government to provide its observations on the comments made by the GSEE in this regard and to provide all relevant information, including comparative statistics relating to complaints of anti-union discrimination and any remedial action taken, with its next report.***

***[The Government is asked to reply in detail to the present comments in 2012.]***

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

The Committee takes note of the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply to the GSEE's first communication, dated 16 May 2011.

The Committee takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission (HLM) proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union would assist the mission in its understanding of the situation (*Provisional Record* No. 18, Part II, pages 68–72). The Committee takes note of the report of the HLM which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission (EC) and the IMF in Brussels and Washington, DC, in October 2011.

The Committee observes that the majority of the issues raised in the HLM report concern Convention No. 98, and would refer to its comments under that Convention for its general considerations and a more detailed analysis of the situation.

*Article 5 of the Convention. Promotion of collective bargaining.* The Committee observes that the GSEE refers in its comments to the following steps taken in response to the call for austerity measures which it considers to violate the aim of the Convention to ensure the promotion of collective bargaining progressively extended to all workers, including those in the public service: the imposition of a temporary freeze in career advancement premiums; the imposition of a "labour reserve" concealing collective dismissals of thousands of workers in the public and broader public sector without any negotiation; the imposition of unilateral wage and salary reductions through the establishment of a special solidarity contribution of 2 per cent on regular pay to combat unemployment.

While bearing in mind the very particular circumstances of the recent interventions, the Committee recalls that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants and, where circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected (see 1994 General Survey on freedom of association and collective bargaining, paragraph 264). ***The Committee requests the Government to reply to the latest comments from the GSEE and to indicate the measures taken to ensure the protection of the standards of living of the workers most affected by these interventions. It further firmly hopes that the Government and the social partners concerned will be in a position in the near future to fully discuss the time limitations of the measures imposed and to consider any further measures that may need to be taken in relation to the wages of public servants or the imposition of labour reserves in a manner so as to privilege as far as possible the determination of such matters through collective bargaining.***

***[The Government is asked to reply in detail to the present comments in 2012.]***

## Guatemala

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

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

The Committee notes the Government's report, the discussion in the Conference Committee on the Application of Standards in June 2011 and the 13 cases before the Committee on Freedom of Association (Cases Nos 2203, 2361, 2445, 2609, 2673, 2708, 2709, 2768, 2811, 2840, 2859, 2869 and 2872). The Committee also notes the comments on the application of Convention made by the Trade Union Confederation of Guatemala (UNSI TRAGUA), the General Confederation of Workers of Guatemala (CGTG) and the Trade Union Unity of Guatemala (CUSG) (29 August 2011), and the comments of the Indigenous and Rural Workers' Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) (30 August 2011). The Committee also notes the communication of the International Trade Union Confederation (ITUC), dated 4 August 2011. *The Committee requests the Government to submit the matters raised by these organizations to the National Tripartite Commission and to the other trade union confederations and to provide information in this respect, particularly on the decisions that are taken.* The Committee notes the report of the mission requested by the Committee on the Application of Standards in June 2010, involving the visit of an important and internationally recognized personality with high-level ILO support to examine outstanding issues and make recommendations, which took place from 9 to 14 May 2011.

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

The Committee recalls that for several years it has been noting in its observations serious acts of violence against trade unionists which have gone unpunished and has requested the Government to provide information on developments in this regard.

The Committee notes that in its comments the ITUC, in the same way as the national trade union confederations, continue to highlight serious acts of violence against trade union leaders and members in recent years, including in 2011, and describe a climate of fear and intimidation with a view to undermining existing trade unions and preventing the establishment of new ones. The organizations also emphasized the deficiencies in labour inspection and the crisis in the judicial system. The Committee previously expressed the hope that, in the context of the tripartite agreement concluded during the high-level mission of 2009, all the matters raised with the ILO by national and international federations would be examined and addressed in a tripartite context by the Government and the social partners within the framework of the Tripartite Commission on International Labour Affairs, as well as the Legal Reform Subcommission and the Mechanism for Rapid Intervention in Cases.

The Committee has been noting in recent years the occurrence of numerous acts of violence against trade union leaders and members, ranging from murders, death threats and acts of intimidation to abductions, torture and armed assault using firearms or knives. There have also been cases of unauthorized entry into the homes of trade unionists and trade union premises. According to the trade unions, in certain cases the State has not provided the security measures requested by those under threat and the Office of the Public Prosecutor is not investigating all of the cases indicated, as some complaints have not even been entered into its database. The issue has also been raised of cases of obstacles or administrative hurdles to the establishment or operation of trade unions, and of unions being destroyed when they are in the process of being established. Over 20,000 workers in the public sector have no employment relationship, but instead a civil contract for professional services, and therefore are without trade union rights. Furthermore, according to the trade unions, trade union activity is being criminalized, with penal action being taken against trade unionists for engaging in peaceful demonstrations, and attacks are made on trade unions in anti-union publications and through smear campaigns. They add that the authorities have promoted workers' organizations under their control in parallel to those already existing, and they provide the representatives who participate in the Tripartite Commission, even though they have little claim to being representative. With regard to legal action, they emphasize that the slowness of proceedings and the long delays continue to be a problem. Finally, they indicate that the anti-union climate is reflected in the unionization rate (2.2 per cent of the economically active population, of which the public sector accounts for 87.5 per cent).

The Committee notes that the Committee on Freedom of Association has noted with concern that the allegations presented in the cases before it are extremely serious and include numerous murders of trade union leaders and members, one disappearance, acts of violence (sometimes also against the families of trade union members), threats, physical harassment, intimidation, the rape of a family member of a trade unionist, obstacles to granting legal personality to unions, the dissolution of a union, criminal proceedings for carrying out trade union activities, and major institutional failings with regard to labour inspection and the functioning of the judicial authorities, which have created a situation of impunity in labour matters (for example, excessive delays, lack of independence, failure to comply with reinstatement orders issued by the courts) and in criminal matters (for example, Case No. 2445 and two more recent Cases Nos 2609 and 2859) relating to numerous acts of anti-union violence presented to the Committee on Freedom of Association.

The Committee wishes to refer to the conclusions of the high-level mission which visited Guatemala from 9 to 14 May 2011, which read as follows:

- The mission wishes to recall that the problems of violence referred to by the CEACR are the following:
- Alleged murders of trade union leaders and members over the past five years:
    - 2007: 12;
    - 2008: 12;
    - 2009: 16;
    - 2010: 10; and
    - 2011: two up to the month of May (a few days after the mission, a trade union leader of the SITRABI was murdered).
  - Death threats, abductions, raids, etc., alleged over the past four years:
    - 2008: eight death threats, two attacks against the homes of trade union leaders, a raid against trade union premises and a raid against the home of a trade union leader, and two attempted murders of trade union leaders;
    - 2009: 17 death threats against trade union leaders and executive committees, eight cases of physical assault against trade union leaders and members; an attack against trade union premises and an attack against the home of a trade union leader; and a temporary abduction of a trade union leader; and
    - 2010: four death threats, an attempted murder of a trade union leader, an abduction, involving torture and the rape of a trade union leader, an attack against trade union premises, an attack against the home of a trade union leader, and physical assault against a trade union leader.

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

The mission observed that the situation of violence is generalized, affects trade unionists, employers and other categories and results in around 10,000 violent murders a year (according to data provided by the Presidential Coordinating Commission for Executive Policy in the Field of Human Rights (COPREDEH)) in a country of 11,237,196 inhabitants (according to data provided by the Ministry of Labour). The murder figures for trade union leaders over the past five years show that they are a particularly vulnerable category, although at the present time the most affected sector is that of bus drivers and passengers (on the last day of its work, the mission was able to observe this directly by witnessing an attack with firearms on a bus in which five persons died). The mission was informed by various sources that the main perpetrators of acts of violence are related to common crime, organized crime and, recently, drug trafficking, a crime that has been spreading particularly rapidly in recent years in Guatemala and other Central American countries. The mission was able to observe that a large number of people in the country carry weapons.

The trade union confederations and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) emphasized the weakness of the security services and the judicial system, their concern at the level of violence and their desire to contribute to the eradication of violence and the restoration of the rule of law.

In this context, at the beginning of its work, the mission found that the authorities were only in a position to provide information on investigations concerning a small number of the trade union leaders and members who had been murdered. In various meetings, including those held with certain magistrates and other authorities, the mission was informed that certain murders might be of an anti-union nature. The mission observed that only once investigations have been conducted and those responsible for carrying out, planning and instigating the acts of violence against trade union leaders and members could their anti-union nature be ascertained, and that for that reason it is urgent to conduct expeditious and exhaustive investigations in all cases. The lack of full and up-to-date information on developments in the investigations concerning trade unionists was a matter of concern for the mission, as was the lack of coordination between State services following up these crimes.

For this purpose, the Tripartite Commission on Labour Affairs called for the restoration of the specialized prosecution service for crimes against trade unionists and asked the mission to express its concern to the Office of the Attorney-General in relation to this situation. Sharing these concerns, the mission requested the Public Prosecutor to establish a special prosecution service responsible for investigating these crimes and for an acceleration of the investigations of the 52 murders denounced. The Public Prosecutor appointed a few months ago, with a background in the field of human rights, welcomed these proposals, although the proposals for the restoration of the specialized prosecution service was subject to the outcome of the budget discussions in the Congress. The mission also called on the International Commission against Impunity in Guatemala (CICIG) to collaborate with the Office of the Public Prosecutor to investigate and shed light on these cases. The mission is pleased to note that it received an affirmative response from both parties and the undertaking to carry out these investigations.

The mission indicated to the authorities the importance that these investigations were undertaken taking duly into account the alleged anti-union nature of the cases, as in recent years there has been a certain tendency in investigations to give priority to other motives, and particularly those based "passion". The Public Prosecutor expressed great interest in the possibility of concluding a cooperation agreement with the ILO, which would include activities to provide training to prosecutors on typical contexts of anti-union violence and the factors which give rise to such violence (the Public Prosecutor will soon contact the ILO for this purpose). The mission also suggested that representatives of the Office of the Attorney-General should participate regularly in the meetings of the Tripartite Commission on Labour Affairs with a view to providing information on progress in the investigation of cases of murders of trade union leaders and members. The Office of the Attorney-General and the Tripartite Commission on Labour Affairs welcomed the proposal.

The mission noted the urgent call by society, including employers' and workers' organizations, to address more decisively the impunity and corruption existing in the country and considers that the authorities need to devote much higher levels of resources and take effective measures to eradicate the corruption that permeates the administration of justice. At present, the impunity rate is 98 per cent, according to official sources. The CACIF and the trade unions agree on the need for criminal and labour court procedures concerning anti-union practices to be expeditious and effective.

The Committee also notes with *deep concern* that, according to the ITUC, since the visit by the mission, four more trade union leaders were murdered between July and September 2011.

The Committee notes the conclusions of the Conference Committee in 2011, noting that this is an important case that has been under discussion for many years and that the Government has received numerous technical assistance missions on the various pending issues, and observing with *deep concern* the persistent climate of violence in the country and the growing degree of impunity, and that the figure for trade union leaders and members murdered in recent years shows that they are a particularly vulnerable group. The Conference Committee emphasized the need for further steps to strengthen the judicial authorities, the police and the labour inspection services, and to provide them with greater human and financial resources. The Conference Committee drew attention to the need for a reform with a view to reinforcing the rule of law and the institutions responsible for justice, as well as their independence. The Conference Committee expressed its serious concern at the situation and noted the lack of clear and effective political will of the Government. The Conference Committee considered that all measures needed to be taken on an urgent basis and in tripartite consultation to address the issues of violence and impunity in full coordination with the State authorities concerned and with ILO technical assistance.

The Committee notes the Government's indication in its report, with reference to the pending matters relating to the application of the Convention, that the Tripartite Commission on International Labour Affairs has held various meetings in which ideas have been exchanged and agreements made between representatives of the three sectors of which the Commission is composed. The subjects addressed include in particular the serious acts of violence, the deficiencies of the labour inspectorate and the crisis of the judicial system. The Government adds that the possibility was discussed of providing training to the staff of the Office of the Attorney-General on labour law so as to ensure a better follow-up of cases of crimes against trade unionists, but that with regard to the recruitment of 100 new labour inspectors, it is still necessary for the Ministry of Labour to meet the President of the Republic for the necessary budgetary allocations. The Government indicates that emphasis has also been placed on the reactivation of the Subcommissions on Labour, Legal Reform, Employment Generation Policies, Mechanisms for Rapid Intervention in Cases, the Tripartite Council of the General Labour Inspectorate with a view to following up the various subjects covered by each of the Subcommissions.

With regard to the protection of trade unionists who have received death threats, the Government indicates that, as observed by the high-level mission in 2011, the situation of violence is generalized and that it affects trade unionists, employers and other categories. The figures for the murders of trade union leaders over the past five years demonstrate that they are a particularly vulnerable category, even though at the current time the most affected sector is bus drivers and passengers. The mission was informed that the main sources of violence include common delinquency, organized crime and, recently, drug trafficking, a crime which has been expanding particularly rapidly in recent years, especially in Guatemala and other Central American countries. As a result, the provision of individual protection to trade union leaders is becoming a difficult task both from the viewpoint of financial and logistical resources. Nevertheless, the Government wishes to show its concern for the physical protection of trade union leaders. This is carried out through the Department for the Assessment of Assaults on Human Rights Defenders, composed of the Office of the Attorney-General, the Ministry of Government, COPREDE, the Office of the High Commissioner of the United Nations, the General Directorate of Civil Intelligence (DIGICI), the Investigation Unit for Human Rights Defenders and the Unit for the Protection of Personnel of the Ministry of Government.

With reference to the issue of the slowness and ineffectiveness of the judicial system and the need to shed light on murders and crimes committed against trade unionists, the Government indicates that the Supreme Court of Justice has reiterated the undertaking of the judicial authorities to comply with their constitutional mandate to impart justice with independence, guaranteeing the access of the population to an effective judicial system.

With regard to the Committee's request for the murders of trade unionists to be investigated, the Government indicates that, giving effect to the requests of the ILO high-level technical mission, on 23 May 2011, the Tripartite Commission on International Labour Affairs held a meeting in the Office of the Attorney-General with the Prosecutor General and the Adviser to the Attorney-General, following which, on 26 May 2011, Decision No. 49-2011 of the Office of the Public Prosecutor of the Office of the Attorney-General was issued reactivating the Special Investigation Unit into Crimes against Trade Unionists, which will be composed of an investigator responsible for the Unit, three deputy investigators and one official. The Office of the Prosecutor General referred to the conclusion of an agreement with the ILO for the training of prosecutors. The Government adds that on 27 July a hearing was requested with the Prosecutor General to finalize the agreement for ILO technical assistance, establish a mechanism for the participation of the Office of the Attorney-General in the meetings of the Tripartite Commission, seek information on the establishment of the Support and Follow-up Commission for the Investigating Unit into Crimes against Trade Unionists and request a contact point for the exchange of information on the various cases of violence against trade unionists. This hearing is still awaited.

With regard to the criminal investigations into crimes against trade unionists and the situation of impunity, the Government indicates that the Supreme Court of Justice addressed the matter of the alarming increase in murders and crimes against trade unionists and the lack of progress in the investigations of crimes committed against them, and that the Supreme Court of Justice took measures, within the field of its competence, in response to the generalized violence which not only affects trade unions, but the whole of the country. These measures are: (1) the Supreme Court of Justice, through its Penal Chamber, has taken measures relating to the access to justice of victims, implementing coordination measures between the judicial authorities and a series of support services for victims, through a training programme including municipal victim assistance centres, as well as trained judicial facilitators supported by the judicial authorities; (2) the

creation of courts to try high-risk crimes, as magistrates and investigators are particularly vulnerable to threats and other forms of coercion with a view to influencing them, and the ordinary criminal courts are inadequate to confront the situation: high-impact criminal courts have therefore been established to try high-risk crimes as the best means of responding to the situation of generalized violence in the country and accordingly combating impunity; and (3) with regard to crimes against trade unionists, it is envisaged to entrust one of the existing criminal courts with the specific competence to try crimes against trade unions, with the magistrates and ancillary staff being trained and their awareness raised concerning the function of trade union activity in the country. Similarly, since November 2010, six judicial bodies have been in operation that are specialized in murders and violence against women, including violence occurring at the workplace.

The Committee notes all of the measures, initiatives and ideas of the authorities and particularly welcomes the reactivation of the former Special Investigation Unit into Crimes against Trade Unionists and its strengthening, as well as the will of the Government to develop with the Public Prosecutor a coordination mechanism between the Tripartite Commission and the Office of the Public Prosecutor and that the Supreme Court of Justice, including entrusting one court with specific competence to try crimes against trade unionists, with the provision of training on the motives for anti-union action, in accordance with ILO recommendations, so as to draw a distinction with other situations deriving from the generalized situation of violence affecting the country. The Committee notes the other measures adopted by the Government for institutional coordination to combat anti-union violence, as well as the agreement to establish a commission composed of the Office of the Attorney-General and trade unions to follow-up criminal cases relating to trade unionists.

The Committee is nevertheless bound to emphasize that in recent years the action by the Government to combat anti-union violence has not up to now resulted in decisive and effective improvements. Indeed, the Committee notes, for example, that the ITUC has reported four more murders of trade union leaders since the ILO mission in May 2011. Moreover, the action taken by the Government has not resulted in the compilation of information to be provided to the Committee concerning all of the criminal investigations into the 56 murders of trade union leaders committed since 2007 (information has only been provided on a limited number of cases), as well as the numerous cases of death threats and acts of intimidation. The Committee notes with *deep concern* the gravity of the situation of anti-union violence which has persisted even following successive ILO technical assistance missions and the emphasis placed by the high-level mission on the weakness of the security services and the judiciary, which moreover is permeated by corruption, and an impunity rate of 98 per cent for which there are no prosecutions or effective convictions. The Committee considers that the current penal situation once again confirms the conclusion of the Conference Committee concerning the lack of clear and effective political will of the Government.

The Committee once again draws the Government's attention to the principle that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental human rights, in particular those relating to human life and personal safety, are fully respected and guaranteed; the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee also recalls that excessively slow proceedings and the absence of judgements against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity and which is extremely damaging to the exercise of trade union rights and incompatible with the requirements of the Convention.

*The Committee once again deplores the murders of trade unionists and other acts of anti-union violence and once again firmly requests the Government to: (1) ensure the protection of trade unionists under threat of death; (2) convey to the Public Prosecutor and the Supreme Court of Justice its deep concern at the slowness and inefficiency of the justice system and its recommendations concerning the need to elucidate murders and crimes committed against trade unionists so as to punish the perpetrators; (3) ensure the allocation of sufficient resources to these objectives with the consequent increase in human and material resources, and ensure effective coordination between the various state bodies which may be called upon to intervene in the judicial system, and to provide training for investigators; and (4) to give absolute priority to these matters in Government policy. The Committee invites the Government to undertake a programme of technical cooperation with the ILO with a view to resolving the serious problem of anti-union violence and criminal impunity in relation to crimes against trade unionists.*

*The Committee expresses the firm hope that the Government will take all the necessary measures to guarantee full respect for the human rights of trade unionists and that it will continue to apply the protection machinery to all trade unionists who so request. The Committee also requests the Government to take the necessary steps to ensure that appropriate investigations are conducted by the Office of the Public Prosecutor and the judicial authorities to identify those responsible for acts of violence against trade union leaders and members, and to prosecute and punish them in accordance with the law. The Committee requests the Government to report on all developments in this regard and deplores the fact that up to now the Government has not indicated the stage reached by the investigations into the majority of murder cases. Observing that the Government's information only exceptionally refers to cases in which those responsible have been identified and punished, the Committee expresses concern in this respect and insists that the Government should reinforce the criminal justice system considerably.*

Finally, the Committee emphasizes the importance of the Government giving effect to the recommendations of the Committee on the Application of Standards, which were reproduced above.

### *Legislative problems*

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

- restrictions on the establishment of organizations (the need, under section 215(c) of the Labour Code, to have 50 per cent plus one of those working in the occupation to establish industry trade unions) and delays in the registration of trade unions or the refusal to register them;
- restrictions on the right to elect trade union leaders in full freedom (they need to be of Guatemalan origin and to work in the enterprise or economic activity in order to be elected as trade union leaders, under sections 220 and 223 of the Labour Code);
- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are not declared by the majority of those casting votes, but by a majority of the workers); the possibility of imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel, and the need to determine whether strikes for the purpose of inter-union solidarity are still prohibited (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996); and labour, civil and penal sanctions applicable to strikes involving public officials or workers in specific enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86);
- the Civil Service Bill; in its previous observation the Committee noted a Civil Service Bill which, according to UNSITRAGUA and the National Federation of State Workers' Unions (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee notes the Government's indication that the Bill was withdrawn and that in July 2008 an inter-sectoral consultation committee was established to prepare a Bill that is consistent with the needs of the sectors involved; and
- the situation of many workers in the public sector who do not benefit from trade union rights. These workers, who are under contract under item 029 and others of the budget, should have been recruited for specific or temporary tasks, but are engaged in ordinary and permanent functions and often do not benefit from trade union rights or employment benefits other than wages, and are not covered by social security or by collective bargaining, where it exists. The Committee notes that the members of the Supreme Court of Justice indicated to the high-level mission that, in accordance with the jurisprudence, these workers enjoy the right to organize. Nevertheless, this jurisprudence has not been given effect in national practice, according to technical assistance reports and the comments of the MSICG.

With regard to these matters, the Committee noted previously that, at the proposal of a high-level mission (2008), the Tripartite Commission approved an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98, and that this agreement provides for "an examination of the dysfunctions of the current system of industrial relations" (excessive delays and breach of due process, failure to enforce the law and sentences, etc.) and particularly of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members, as laid down in Conventions Nos 87 and 98, in the light of technical considerations and the comments of a substantive and procedural nature of the Committee. The Committee observed in 2010 that there had been various ILO technical assistance missions.

The Committee notes the Government's indication in its report that the authorities decided, after holding meetings with the trade unions in the public sector, to re-examine in the Congress of the Republic the reform of the Civil Service Act.

The Committee notes the comments of the CACIF challenging its competence in relation to strikes and its principles. The Committee refers to the explanations provided in the 2011 General Survey on fundamental labour rights.

The Committee notes the conclusions of the 2011 high-level mission, which are as follows:

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

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

The Committee notes that the Government has recently established an inter-institutional commission for the preparation of a Bill respecting the outstanding legislative matters, but emphasizes once again that nothing in the Government's report indicates that progress has been achieved in legislative matters. The trade union confederations also indicate that there has been no progress.

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

*Registration of trade unions.* The Committee wishes to refer to the conclusions of the 2011 high-level mission concerning the alleged obstacles to the registration of trade unions, which read as follows:

The Committee of Experts received allegations concerning the obstacles to the registration of 20 trade unions. The workers' sector of the Tripartite Commission on Labour Affairs indicated that 200 applications had been awaiting registration for some time and continued to be pending. The authorities denied this figure and explained that the delay with certain files was related to the negligence of one official for a year and that another person is now responsible for registrations. According to the authorities, 84 applications for registration were lodged in 2011, of which 34 have already been registered, four are in the process of registration and 11 more were signed by the Minister during the week of the mission's visit. The mission emphasized to the Government the need for a rapid solution concerning the registration of the remaining organizations. The mission also suggested the establishment of a proactive registration procedure enabling trade unions with the authorization of their assembly to correct directly in the Ministry legal problems arising during the registration process. According to the General Directorate of Labour, this already happens in practice.

***The Committee however observes that in their comments the trade union organizations indicate that in practice there exist significant obstacles to the registration of trade unions and it therefore invites the Government to discuss this matter in the Tripartite Commission with a view to adopting an approach that allows the rapid resolution with those establishing trade unions of any substantive and formal problems which may arise and facilitates in so far as possible the registration of trade unions.***

#### **Other matters**

*The maquila sector.* For years, the Committee has been noting the comments of trade unions concerning serious problems in the application of the Convention in relation to trade union rights in the *maquilas*.

The Committee previously noted the comments of the ITUC that it is impossible to exercise the right to organize in export processing zones due to the determined opposition of employers. In the 200 *maquilas* that exist, unions have only been established in three of them and the labour authorities are incapable of exercising control over breaches of the law or the failure to give effect to it in this sector. According to the MSICG, the fact that it is impossible to establish organizations in *maquilas* is a result of anti-union practices.

The Committee notes the Government's indication in its latest report that there are seven unions active in *maquila* and textile enterprises, and a collective contract approved for the period 2008–10.

According to the Government, the total number of denunciations in relation to freedom of association and the protection of the right to organize in the *maquila* and other sectors covered by the General Labour Inspectorate in 2009 was 30, most of which are under examination; the number of denunciations relating to freedom of association examined by the General Labour Inspectorate in 2010 was seven, all of which are under examination. The Committee concludes that the general procedures for administrative investigations are too slow and ineffective. The trade union confederations indicate that the total number of denunciations for violations of trade union rights is 129 in 2011.

The Government indicates in relation to trade union rights in *maquilas* that on 24 November 2010, the Inter-institutional Framework Agreement for the Exchange of Information between the Ministry of the Economy and the Ministry of Labour and Welfare was signed within the framework of Decree No. 29-89 of the Congress of the Republic of Guatemala, with the following outcomes: (1) the General Labour Inspectorate has a unified register which forms part of the comprehensive labour system of all entities which benefit from the advantages granted to the enterprises concerned (particularly in relation to taxation) under Decree No. 29-89 of the Congress of the Republic of Guatemala, the Act to promote and develop export activities and the *maquila*; and (2) the Directorate of Commercial Services and Investment of the Ministry of the Economy has a register of cases of entities covered by denunciations to the General Labour Inspectorate. In the Government's view, this allows the cross-checking of information, which makes viable monitoring by the General Labour Inspectorate of compliance by enterprises with labour legislation, which is in turn reinforced by the action of the Directorate of Commercial Services and Investment through its Industrial Policy Department to ascertain that enterprises are making the correct use of the advantages granted by the Ministry of the Economy.

The Committee notes the conclusions of the 2011 high-level mission, according to which:

With regard to the situation of trade unions in the *maquila*, the mission noted the indication by the authorities that there are 740 enterprises in the sector, six unions and three collective contracts covering 4,600 workers out of a total of 110,000 workers. The mission notes that the number of workers in the *maquila* has fallen considerably in relation to previous years (around 300,000). The mission also notes the indication by the authorities that it is a sector which has been subject to special attention to

verify compliance with labour rights and that there is a special unit of the Labour Inspectorate that is particularly active in addressing problems in the *maquila*. The mission considers, based on meetings with trade union federations, which are very concerned at the low level of unionization in the *maquila*, that training activities on freedom of association and collective bargaining should be intensified in the *maquila* sector and it encourages the Government to have recourse to ILO technical assistance in this respect.

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

*National Tripartite Commission.* The Committee noted in 2010 that problems have arisen in this Commission in relation to the recognition by all concerned of the workers' representatives, due solely to a division in UNSITRAGUA.

The Committee wishes to refer to the conclusions of the 2009 high-level mission, which read as follows:

It should firstly be noted that in recent times the trade union map has changed significantly. UNSITRAGUA has been divided into two groups. The mission obtained information from the Trade Union Federation UNSITRAGUA, registered by the Ministry of Labour, which is composed of eight or nine unions affiliated to the historical UNSITRAGUA (not registered, but which groups together around 100 unions), and from the administrative authorities. This information appears in the section of this report dedicated to interviews and will be forwarded to the Committee on Freedom of Association, which is currently examining a complaint, and the Government had requested technical assistance on this matter. The mission noted that the historical UNSITRAGUA (not registered) does not oppose the registration of the Trade Union Federation UNSITRAGUA and that, according to certain authorities in the Ministry of Labour, the application for the registration of the historical UNSITRAGUA is still pending (this is also the belief of the organization). However, the Minister of Labour indicated that, as one year had elapsed since the filing of the application and that there had been no change in the file, it was considered that the process needed to be started again from zero with a view to resolving the legal issues identified (principally the name of the organization and the possibility of the direct membership of workers, and not only of unions).

An important sector of the trade union movement, consisting of the CUSG, CGT and the historical UNSITRAGUA, which are affiliated or close to the International Trade Union Confederation (ITUC), is currently not represented on the Tripartite Commission on Labour Affairs. The mission drew the attention of the authorities to the need to include these organizations in the Commission on Labour Affairs, as tripartite dialogue cannot be undertaken effectively without an essential sector of the trade union movement. The employers' representatives, represented by CACIF, indicated to the mission that they were not opposed to this.

***The Committee requests the Government to ensure that the composition of the workers' representation on the Tripartite Commission is based on strict criteria of representivity and requests the Government to take the necessary measures for that purpose. The Committee notes that the Committee on Freedom of Association at its session in November 2011 requested the Government to include the historical UNSITRAGUA in the National Tripartite Commission and to ensure that this organization is registered without obstacles. The Committee concurs with this recommendation.***

*Statistics and other matters.* The Committee notes that the report of the ILO high-level mission in May 2011, indicates that it would be useful for the Government to provide clear statistics confined to trade unions that are in operation, and not those that have ceased to operate, and making a distinction between the public and private sectors, with a view to indicating the level of trade union membership and the coverage of collective bargaining in both sectors.

***The Committee shares the views of the ILO mission and requests the Government to produce statistics on the unionization rate and the coverage of collective bargaining and other aspects of trade union activities.***

The Committee also notes the mission's indication that, as a follow-up to the recommendations of previous missions, part of the workers' representatives and the employers' representatives of the Tripartite Commission on Labour Affairs submitted a draft legislative text to the Congress for the establishment of an Economic and Social Council, which is under examination. ***The Committee requests the Government to provide information in this respect.***

***[The Government is asked to supply full particulars to the Conference at its 101st Session and to reply in detail to the present comments in 2012.]***

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

The Committee recalls that for many years it has been referring to the following problems of serious restrictions on the exercise of trade union rights in practice:

- the excessive delays in procedures for the reinstatement of trade unionists in accordance with rulings by judicial bodies and the utilization of *amparo* proceedings (for the protection of constitutional rights); this is a general problem and the Committee has received information concerning an average of three years between the preliminary hearing and the trial, which may last for between six and seven years;
- the failure to comply with orders for the reinstatement of dismissed trade unionists;
- the slowness and ineffectiveness of procedures to impose penalties for breaches of labour legislation;

- the need to promote collective bargaining, especially in the *maquilas* sector.

The Committee previously also requested information on the Bill on Civil Service Reform (this question is now dealt with in the context of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)).

With reference to these matters, in its previous observation, the Committee noted that, under the auspices of the high-level mission in 2008, the Tripartite Commission concluded an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98, with the agreement calling for an examination to be carried out of the dysfunctions of the current labour relations system (excessive delays and procedural abuses, lack of effective application of the law and of penalties, etc.), and in particular of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members, as set forth in Conventions Nos 87 and 98 in the light of the technical considerations and substantive and procedural comments of the Committee of Experts.

The Committee also notes the comments on the application of the Convention made by the Trade Union Confederation of Guatemala (UNSITRAGUA), the General Confederation of Workers of Guatemala (CGTG) and the Trade Union Unity of Guatemala (CUSG) in a communication dated 29 August 2011 (in relation to which, the Government's reply refers to imprecise and false indications) and on the trade union membership of certain alleged victims, as well as the comments of the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) in a communication dated 30 August 2011. The Committee further notes the communication of the International Trade Union Confederation (ITUC), dated 4 August 2011, which emphasizes that violations of the Convention occur in both the public and private sectors and include pressure to renounce trade union membership and dismissals as a result of the establishment of unions.

The Committee notes that the communications of the ITUC and the MSICG confirm that the problems referred to above continue at the present time. The Committee observes that the communications of the trade union confederations referred to above emphasize the lack of political will by the Government to resolve the outstanding problems despite the many ILO missions and the fact that year after year the Government is called upon to appear before the Conference Committee on the Application of Standards, where backward steps are noted, as they are in many cases by the Committee on Freedom of Association. The trade union confederations emphasize that the supervisory bodies have indicated that the situation with regard to trade union rights continues to be serious and a cause for concern, and that judicial delays have increased despite the rise in the number of tribunals. They add that non-compliance with court reinstatement orders continues and that the courts do not discharge their functions adequately in relation to the exercise of the right to collective bargaining when trade unions bring legal action. The national trade union confederations provide details of hundreds of cases of anti-union dismissals, as well as many cases of court reinstatement orders which are not given effect. The ITUC links these problems with the climate of violence suffered by trade union leaders.

The Committee notes the Government's indication that the matters raised by the Committee have been discussed in the National Tripartite Commission for years and that tripartite consensus has been reached on some of them, including with regard to certain reforms. Moreover, according to the Government's indications, the Tripartite Commission has reactivated subcommissions to follow-up the various pending issues. The Committee notes the Government's indication that the subject of legal reforms is currently under analysis with a view to reactivating the relevant proposals, and for this purpose an integrated commission is operating under the terms of Government Decisions Nos 158-2011 and 246-2011.

The Committee notes the Government's indication in its report that the labour and social welfare tribunals and chambers discharge the functions assigned to them by Decree No. 1441 issuing the Labour Code (statistical data are attached). With regard to the Committee's comments concerning the "abuse of *amparo* and appeal procedures", the Government indicates that the use made of both procedures is at the exclusive discretion of the parties to procedures relating to labour and social welfare disputes, and that the judiciary cannot deny the constitutional procedure of *amparo* as, in accordance with the corresponding constitutional provisions, "no subjects may not be covered by *amparo*". With regard to the failure to comply with orders to reinstate dismissed trade unionists, the Government indicates that in such cases those concerned have to inform and take action in the labour courts to claim the appropriate legal remedies. With reference to the slowness and ineffectiveness of procedures relating to sanctions for violations of labour legislation, the Government indicates that the General Labour Inspectorate, through the Legal Advisory Section, during the course of 2010 and within the time limits set out by law, filed 1,848 charges with labour and social welfare tribunals against individuals or associations as a result of labour inspections, in which there were found to be certain violations of the legal provisions in force in the country, both in terms of domestic law and those relating to international Conventions, with the total amount of fines imposed for such violations amounting to 2,378,761.63 quetzales. The Government adds that the practice of referring cases of non-compliance to the labour and social welfare tribunals is linked to the fact that in 2004 the Constitutional Court found it unconstitutional for the General Labour Inspectorate to impose administrative financial sanctions on all employers who were in breach of legal provisions. This lack of legal means of enforcement removed from the General Labour Inspectorate its power to enforce compliance with the law, for which reason it is now necessary to pursue violations through judicial procedures. The Committee indicates that in 2011 there were 57 administrative complaints of violations of freedom of association and collective bargaining (there were 55 in 2010 and 145 in 2008). The Committee *regrets* that the Government has not provided statistical data on the duration of legal procedures and the sanctions applied for anti-union acts. ***It requests the Government to provide specific information on these matters.*** With

regard to the need to promote collective bargaining, especially in the *maquila* sector, the Government indicates that there has been a rise, based on the guarantees of freedom of association set out in the Constitution, in the application of ILO Conventions on freedom of association and collective bargaining and that there are currently 11 unions in the *maquila* sector.

The Committee expresses *concern* at the various cases that are before the Committee on Freedom of Association in relation to these matters and also at the very high number of allegations of anti-union dismissals (hundreds in many public institutions and certain private enterprises, according to the trade union confederations) and acts contrary to the right to collective bargaining referred to by the ITUC and MSICG.

*Recalling once again that all of the problems raised are very serious, the successive ILO high-level missions, including the most recent in May 2011, the Committee requests the Government, in consultation with the most representative organizations of workers and employers, to undertake the necessary procedural and substantive reforms to: (1) resolve cases of anti-union discrimination and the slowness of the labour courts (including more effective and rapid proceedings and more dissuasive penalties); (2) promote collective bargaining in view of the worrying figures for the collective accords that are in force (according to the Government, 58 collective accords were concluded between 2008 and 2009, as in Guatemala collective bargaining tends to take place at the level of the enterprise or public institution); and (3) adopt additional measures to improve labour inspection (since, according to the Government, it has not been possible to appoint all of the envisaged new inspectors) and to enable the courts to enforce rulings without delay. The Committee requests the Government to provide information in this regard and hopes to be able to note significant progress in the near future.*

The Committee notes the Government's indication that 64 new unions and 33 new collective labour accords have recently been registered. *Taking into account the lower number of collective accords in the private sector, the Committee requests the Government to promote collective bargaining and to continue to provide information on the number of unions and collective accords, the number of members and of complaints submitted in 2010 and 2011 to the labour inspection services concerning violations of trade union rights. The Committee also requests the Government to provide its observation on the allegations by the MSICG that 444 unions do not currently have a collective accord.*

*In view of the delicate situation relating to the application of the Convention, the Committee expresses the firm hope that the Government and the authorities in general will include compliance with the Convention among their highest priorities.*

## Guinea

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

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

The Committee recalls that in its previous comments the Committee raised a number of points about the national legislation as follows:

- the need for measures to set up an independent body that has the trust of the parties and is able to rule promptly on difficulties encountered in defining the minimum service where the parties are unable to agree as to the minimum service in transport and communications (which are not deemed essential in the strict sense of the term); and
- the need for measures to ensure that compulsory arbitration (established in sections 342, 350 and 351 of the Labour Code) is restricted to cases where the two parties agree to request it, in essential services in the strict sense of the term, or in the event of acute national crisis.

*The Committee trusts that the Government will take the measures requested very shortly, in consultation with the representative organizations of employers and workers concerned, and asks it to provide information on any developments in the situation.*

The Committee reminds the Government that it may seek technical assistance from the Office, if it so wishes.

The Committee recalls that the 2008 International Trade Union Confederation (ITUC) comments reported assaults, by the security forces, on demonstrators and strikers, as a result of which around 40 people died and nearly 300 others were injured, arrests of trade unionists and the destruction of the headquarters of the National Confederation of Workers of Guinea (CNTG). The Committee recalls that a climate of violence in which murders and disappearances of trade union leaders go unpunished, constitutes a serious obstacle to the exercise of trade union rights and that such acts require severe measures to be taken by the authorities. When disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial inquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such acts (see 1994 General Survey on freedom of association and collective bargaining, paragraph 29).

Finally, the Committee noted the comments made by the ITUC, dated 24 August 2010, on the application of the Convention, in particular, the allegations concerning the search of the home of the General Secretary of the CNTG by military forces. The Committee recalls that any search of unionists' homes without a court order constitutes an extremely serious infringement of freedom of association. *The Committee requests the Government to provide its observations on all the comments made by the ITUC.*

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

Finally, the Committee notes the comments submitted by the ITUC, dated 4 August 2011, which refer to matters previously raised by the Committee.

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

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

*Article 1 of the Convention.* Need to include in the national legislation specific provisions: (a) to protect all workers, and not only trade union delegates as provided in the Labour Code, against acts of anti-union discrimination at the time of recruitment and during employment; (b) to provide expressly for appeal procedures and sufficiently dissuasive sanctions against acts of anti-union discrimination and interference; (c) to provide for rapid appeal procedures and sufficiently dissuasive sanctions for violations of section 3 of the draft new Labour Code, which provides that no employer may take into consideration membership of a trade union and trade union activities of workers in making decisions about recruitment, performance and distribution of work, termination of the employment contract, etc.

*Article 2.* Need to include in the draft Labour Code specific provisions on protection against acts of interference in the internal affairs of workers' and employers' organizations, accompanied by efficient and expeditious procedures and sufficiently dissuasive sanctions.

*The Committee trusts that the Government will take the necessary steps to ensure that the provisions of the new Labour Code, which have been under preparation for many years, are fully consistent with Articles 1 and 2 of the Convention. The Committee requests the Government to indicate all progress towards this end in its next report.*

*Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) and requests the Government to provide its reply.*

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

## **Guinea-Bissau**

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1977)**

The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) referring to wage bargaining under the National Tripartite Council for Social Consultation and to the inadequate provisions in the General Labour Act regarding protection against anti-union discrimination. The Committee also notes the comments of 30 August 2011 by the National Workers Union of Guinea (UNTG-CS) referring to the need to strengthen the capacity of the general labour inspectorate and the courts to enforce the labour legislation. *The Committee requests the Government to send its observations thereon.*

*Articles 4 and 6 of the Convention. Agricultural workers and dockworkers.* The Committee noted previously the Government's intention to pursue revision of the General Labour Act, Title XI of which contains provisions on collective bargaining and the adoption of measures to guarantee agricultural workers and dockworkers the rights laid down in the Convention. The Committee notes that, in its report, the Government states that the revision of the legislation is still in process. The Committee noted previously the Government's statement that the draft Labour Code provided for adaptation of the application of its provisions to the specific characteristics of the work performed by agricultural workers and dockworkers. *The Committee requests the Government to provide information on the status of the draft legislation and trusts that it will guarantee for agricultural workers and dockworkers the rights laid down in the Convention.*

The Committee notes that in its report the Government states that there is no specific legislation on this subject, which is dealt with in bodies created for the purpose such as the Standing Committee on Social Consultation. The Committee reminds the Government that it requested information on measures taken to adopt 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 of public servants who are not engaged in the administration of the State. *The Committee once again requests the Government to send information on this matter.*

Lastly, the Committee requested the Government to provide information on any developments regarding the promotion of collective bargaining in the public and private sectors (training and information activities, seminars with the social partners, etc.), and to provide statistics on the collective agreements concluded (by sector) and the number of workers they cover. The Committee notes that the ITUC's comments show that the collective bargaining situation is not very satisfactory. It again 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 negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreement". *The Committee requests the Government to take specific measures to promote greater use in practice of collective bargaining in the private and public sectors, and to report any developments in the situation, indicating the number of new agreements concluded and the number of workers covered. The Committee hopes that the Government's next report will contain full information on the matters raised and on the ITUC's comments.*

*The Committee reminds the Government that it may seek technical assistance from the Office should it so wish, and expresses the firm hope that it will take without delay all measures within its reach to resume constructive dialogue with the ILO.*

## Guyana

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (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 recalls that its previous observation referred to the following questions:

- the need to amend the Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01) in respect to: (1) conferring on the Minister broad powers to refer a dispute in the services listed in the schedule to a tribunal for compulsory arbitration and the sanction (fine or imprisonment) imposed on workers who take part in an illegal strike (section 19); (2) the schedule listing the essential services (which may be revised at the discretion of the Minister) that contains some services that go beyond those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (dockage, wharfage, discharging, loading or unloading of vessels, the services provided by the Transport and Harbours Department and the National Drainage and Irrigation Board cannot be considered essential services in the strict sense of the term). The Committee recalled that the authorities may establish, with the participation of workers' and employers' organizations, a system of minimum service in those services considered to be of public utility; and
- section 19 of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill 2006 that sets higher fines than those provided for in the previous Act and maintains the imprisonment for those workers who take part in an illegal strike.

The Committee had noted the Government's statement to the effect that there is no restriction on the right to strike and that workers who choose to strike are protected by the law. The Committee once again reminds the Government that, by conferring on the Minister broad powers to refer to compulsory arbitration disputes in services, not all of which are essential, and by providing for sanctions (fine or imprisonment) in the event of an illegal strike, the Public Utility Undertakings and Public Health Services Arbitration Act and the Bill introduced to amend it compromise the workers' right to strike which the Committee considers to be one of the essential means available to them to protect their interests.

*The Committee expresses the hope that necessary measures will be taken to amend the legislation so as to bring it in conformity with the Convention. The Committee requests the Government to indicate in its next report any progress made in this respect.*

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

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1966)**

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

In its previous observation, the Committee referred to the recognition of only those unions claiming 40 per cent support of the workers, as set out in the Trade Union Recognition Act. The Committee takes note of the Government's statement that, at the request of the Trades Union Congress, the Trade Union Recognition Act provided for the recognition of unions that were recognized prior to the Act without having to prove that they had majority support (section 32). All unions benefited from this provision which the Government says is no longer applicable as all certificates applicable under this section have been issued. Given that the representativeness of unions might change, the Committee recalls once again that, if no union covers more than 40 per cent of the workers in the bargaining unit, collective bargaining rights should be granted to all the unions in the unit, at least on behalf of their members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). *The Committee hopes that significant progress respecting this issue will be made in the near future and requests the Government to provide information on the results of the consultative process.*

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

## Haiti

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, which refer to matters that have already been raised, as well as to acts of violence by the forces of order against demonstrators and the murder of two trade unionists in the transport sector. In general terms, the Committee recalls that the guarantees set out in international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments, notably the International Covenant on Civil and Political Rights, are genuinely recognized and protected (see

the 1994 General Survey on freedom of association and collective bargaining, paragraph 43). ***The Committee requests the Government to provide its observations on the matters raised by the ITUC in 2010 and 2011.***

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

- Amendment of the legislation.* The Committee recalls that it has been asking the Government for many years to amend the national legislation to bring it into conformity with the requirements of the Convention through:
- the amendment of section 34 of the Decree of 4 November 1983 which gives the Government broad powers of supervision over trade unions;
  - the amendment of sections 185, 190, 199, 200 and 206 of the Labour Code, which allow for compulsory arbitration at the request of only one party to a labour dispute;
  - the amendment of sections 233 and 239 of the Labour Code so as to remove the impediments to the right of association of minors and to allow foreign workers to have access to trade union office, at least after a reasonable period of residence in the country; and
  - the repeal or amendment of section 236 of the Penal Code, under which government consent is required for the establishment of an association of over 20 members. In this regard, the Committee previously recalled that, under *Article 2 of the Convention*, workers and employers, without distinction whatsoever, shall have the right to establish organizations of their own choosing without previous authorization. Consequently, any legislation which requires prior approval at the discretion of the authorities of the statutes and by-laws of representative organizations of workers or employers is incompatible with the provisions of the Convention.

The Committee noted previously that the Government had reported the establishment of a committee to consider the reform of the Labour Code with a view to amending the legal framework. The Government also indicated that the revision of the Labour Code would take into account the Committee's comments on the various matters raised and that, to that end, it was already benefiting from technical assistance from the Office. ***While aware of the difficulties currently facing the country, the Committee trusts that the Government's next report will indicate real progress in the revision of the national legislation to bring it into full conformity with the Convention on all the points raised. The Committee hopes that the Government will continue to benefit from the technical assistance of the Office in this regard and requests it to send a copy of any new text adopted.***

The Committee previously requested the Government to take all the necessary measures to ensure that domestic workers and rural workers explicitly benefit from the right to organize. The Government indicated that workers in the agricultural sector benefit from the same trade union rights as those in the commercial sector and in industry under section 383 of the Labour Code. With regard to domestic workers, a law on the improvement of the living conditions of this category of workers has already been approved by Parliament and would be promulgated soon. ***The Committee notes this information and requests the Government to send a copy of the new Act respecting domestic workers, once promulgated, and to indicate the provisions which recognize the trade union rights that these workers exercise in accordance with the Convention.***

***Finally, the Committee repeats its request to the Government to provide a copy of the Decree of 17 July 2005 amending the 1982 Act issuing the conditions of service in the public service.***

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

*Application of the Convention in practice.* The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 4 August 2011, which emphasize the serious consequences of the earthquake of 12 January 2010 on the exercise of trade union rights and refer to issues already raised by the Committee in its previous observations. Indeed, the Committee noted previously the ITUC's comments, which related, among other matters, to acts of discrimination against trade unionists and interference by certain enterprises in trade union activities – acts which have not been penalized – and reiterated the necessity to carry out legislative reforms. The Committee also noted the comments of the ITUC concerning the weakness of the labour inspectorate and the judicial system with regard to violations of trade union rights. The Committee noted the Government's confirmation of this weakness in stating that the administrative examination of cases may take several weeks owing to the large number of cases and the lack of resources within the administration. However, the Government indicated that no formal complaints related the violations of trade union rights had been lodged with the labour administration. ***The Committee once again requests the Government to provide information on the cases of violations of trade union rights mentioned by the ITUC and to examine with the social partners the measures to be taken with a view to the adoption of rapid and effective mechanisms for the protection of trade union rights.***

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

*Articles 1, 2 and 4 of the Convention.* In its previous comments, the Committee asked the Government to indicate any developments concerning: (i) the adoption of a specific provision establishing protection against anti-union discrimination in hiring practices; (ii) the adoption of provisions generally affording adequate protection to workers against acts of anti-union discrimination (on the basis of union membership or activity), accompanied by effective and expeditious procedures and sufficiently dissuasive penalties; 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, without specifying the nature of such intervention or the cases concerned. ***The Committee trusts that these issues will be taken into account in the context of the work of the "think-tank" for the reform of the Labour Code relating to a new legal framework and the judicial reform mentioned by the Government, and trusts that the Government will refer in its next report to real progress made in the adoption of national legislation which is in full conformity with the Convention.***

The Committee previously asked the Government to supply information on the number of collective agreements in force for rural workers, workers in the informal economy, self-employed workers and domestic workers, and also the coverage

provided by these agreements. The Committee noted the Government's reply that no collective agreements exist in the abovementioned sectors. *The Committee requests the Government to examine, in conjunction with the social partners concerned, ways of promoting collective bargaining for rural workers, self-employed workers, domestic workers and workers in the informal economy. The Committee requests the Government to supply information in this respect.*

*The Committee is aware of the difficulties faced by the country and trusts that the Government will continue to avail itself of the technical assistance of the Office with regard to all the matters raised.*

## Honduras

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

*Comments from workers' and employers' organizations.* The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC) referring to pending legislative issues and to the killing and shooting of trade unionists. The Committee recalls that in 2009, the ITUC referred to the murder of the General Secretary and another official of the Workers' Central Union of Honduras (CTH) on 24 April 2008, the murder of an official of the National Peasant Farmers' Association of Honduras (ANACH) in May 2008, and armed attacks against the President and Vice-President of the AFL Workers' Union of Honduras (SITRAFLH) and the raiding of the headquarters of the Single Confederation of Workers of Honduras (CUTH) in September 2008. The Committee *deplores* these serious allegations relating to acts of violence against trade unionists and notes with *regret* that the Government has not sent comments on these serious allegations and points out that freedom of association can be exercised only in a situation in which fundamental rights are respected and fully guaranteed, particularly those pertaining to human life and safety, and that where there have been attacks on physical or psychological integrity, an independent judicial inquiry should be conducted without delay, as this is a particularly suitable method for fully determining the facts, apportioning responsibility, penalizing the perpetrators and preventing the repetition of such acts. *The Committee asks the Government without delay to send its observations on these comments, and on the comments of 6 October 2009 from the Honduran National Business Council (COHEP).*

Furthermore, the Committee notes the comments made by the Workers' General Central Union (CGT), the Single Confederation of Workers of Honduras (CUTH) and the Workers' Central Union of Honduras (CTH), dated 30 March and 22 August 2011, objecting to the national programme on hourly employment which, in the view of these organizations, has adverse consequences for freedom of association, collective bargaining, employment, wages and weekly rest. Lastly, the Committee notes the comments of 30 September 2011 from the CUTH on the application of the Convention. *The Committee takes note of the Government's reply in relation to these allegations.* The Committee observes that these matters are already examined by the Committee on Freedom of Association.

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

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

The Committee notes the Government's response to all these issues to the effect that: (1) section 472 of the Labour Code allows the existence of two or more unions provided that they are not of the same category; (2) the literacy requirement for membership of the executive body of a union does not apply at the time of communicating changes in executive bodies; (3) there are no initiatives to amend the legislative provisions mentioned by the Committee; and (4) in order to promote collective bargaining and freedom of association, the Secretariat of State for Labour and Social Security has been conducting workshops and publishing handbooks on collective bargaining techniques, along with guidelines on the exercise of freedom of association.

The Committee notes with *regret* that the initiatives to amend the law mentioned by the Government in its previous report (preparation of a bill to reform the Labour Code that included several amendments requested by the Committee) have not been pursued. ***The Committee hopes that the Government will take all necessary steps to bring the Labour Code into conformity with the Convention and trusts that all the points raised by the Committee will be taken into account. It asks the Government in its next report to provide information on any measures taken to this end and reminds it that it may avail itself of the technical assistance of the Office.***

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

*Comments from workers' and employers' organizations.* The Committee notes the comments of 4 August 2011 by the International Trade Union Confederation (ITUC), referring to pending legislative issues already raised, and in particular the lengthy procedures to secure the reinstatement of workers dismissed for carrying out trade union activities. ***The Committee, underlining the seriousness of these issues, requests the Government to send its observations thereon and on the ITUC's comments of 2009 regarding the preparation of a draft Act which might result in collective bargaining being permitted only for unions that represent more than 50 per cent of the total number of employees in the enterprise, as well as the allegations of: (1) anti-union practices in the export processing zones and in various enterprises in the cement and bakery industries; (2) the slow judicial proceedings in cases of anti-union practices; (3) failure to comply with court orders to reinstate trade unionists; and (4) the setting up of parallel organizations by employers.***

The Committee also notes the comments from the General Confederation of Workers (CGT), the Single Confederation of Workers of Honduras (CUTH) and the Confederation of Workers of Honduras (CTH), dated 30 March and 22 August 2011, objecting to Decree No. 230-2010 setting out the national programme of hourly employment, which, in the view of these organizations, has a negative impact on freedom of association, collective bargaining, employment, wages and weekly rest. The Committee further notes the comments of 30 September 2011 by the CUTH on the application of the Convention. Lastly, the Committee notes the Government's reply to these comments by communications dated 9 and 22 November 2011.

In addition, the Committee recalls that the Honduran National Business Council (COHEP) submitted comments on the application of the Convention in 2009. ***The Committee requests once again the Government to send its observations thereon.***

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

- the lack of adequate protection against acts of anti-union discrimination, since the penalties established in section 469 of the Labour Code for persons who interfere with the right to freedom of association, ranging from 200 to 10,000 lempiras (200 lempiras being roughly equivalent to US\$12), are clearly inadequate and a mere token. The Committee notes that in its report the Government states that protection against any act of discrimination liable to undermine freedom of association in the sphere of employment is guaranteed by the provisions of: (1) article 128(14) of the Constitution of the Republic, which confers the right to freedom of association both on employers and on workers; (2) section 517 of the Labour Code, which grants special state protection to workers when they notify to their employers their intention of forming a union and which provides that, from the date of such notification and until receipt of the notice of legal personality, none of the notifying workers may be dismissed or transferred or suffer any impairment of their working conditions without due cause as defined previously by the competent authority; and (3) by the provisions of the Code that impose the penalties indicated by the Committee. The Committee recalls that in its previous observation it noted that section 321 of Decree No. 191-96 of 31 October 1996 establishes penalties for cases of discrimination, but it has received no reply. ***The Committee again requests the Government to indicate specific cases in which this provision has been used to impose penalties for acts of anti-union discrimination.*** It makes this request because, where criminal law sets evidentiary requirements that are demanding, this often results in the non-application of penalties in cases of anti-union discrimination. ***The Committee also requests the Government to take the necessary measures, in consultation with the social partners, to amend the penalties laid down in section 469 of the Labour Code so as to make them dissuasive;*** and
- the lack of adequate and full protection against all acts of interference, and of sufficiently effective and dissuasive sanctions against such acts. The Committee notes that in reply the Government's states that the legislation does contain provisions to provide workers' organizations with adequate protection against all acts of interference by employers, citing as an example section 511 of the Labour Code which bars from membership of executive

committees of enterprise unions or first-level unions or from appointment to trade union office members who, on account of their duties in the enterprise, represent the employer or hold management posts or positions of trust or who are able easily to exercise undue pressure on their colleagues. The Committee points out in this connection that the protection afforded by *Article 2* of the Convention is broader than that of section 511 of the Labour Code and that, in order to ensure that effect is given to *Article 2* of the Convention in practice, the legislation must make express provision for sufficiently dissuasive remedies and sanctions against acts of interference by employers against workers and their organizations. ***The Committee requests the Government, in consultation with the social partners, to take the necessary steps in this regard.***

*Article 6. Right of public servants who are not engaged in the administration of the State to bargain collectively.* The Committee noted in its previous comments the Government's statement that public servants have duties that are limited by law (section 534 of the Labour Code), including the right to submit "respectful statements" containing requests of interest to all members in general, and that section 536 of the Code states that unions of public employees may not submit lists of claims or sign collective agreements but that other official workers' unions are on a par with any others in terms of powers and the filing of claims. The Committee again points out that a system in which public employees may only submit to the authorities "respectful statements" which shall not be the subject of any negotiation, particularly with regard to conditions of employment, is not consistent with the Convention. It points out that, although *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from the Convention's scope, other categories of workers must be able to enjoy the guarantees laid down in the Convention and hence to undertake collective bargaining for their conditions of employment, including pay. ***The Committee requests the Government to take the necessary steps to amend the legislation to take account of the abovementioned principles.***

Lastly, the Committee notes the Government's statement that: (1) in order for the Convention to be applied effectively, the country needs to devise and implement a national strategy for the promotion and dissemination of the rights laid down in the Convention, so as to advocate respect for fundamental principles; (2) improved dialogue between the main players in industrial relations is of vital importance to reaching the necessary agreements for harmonizing the national legislation with the standards of the Convention; and (3) the Secretariat of State for Labour and Social Security has been holding workshops and producing handbooks on collective bargaining techniques for workers belonging to trade unions and the public at large in order to promote collective bargaining and freedom of association. ***The Committee emphasizes in this connection that the problems referred to have persisted for many years and suggests to the Government that it seek technical assistance from the Office in aligning its legislation with the Convention.***

## Hungary

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention, referring in particular to a number of specific acts of anti-union discrimination. ***It requests the Government to provide its observations thereon.***

The Committee also notes that, at the request of six national trade union confederations, the Office has commented on the draft of the upcoming new Labour Code, in particular concerning the need to prohibit acts of interference and to provide for rapid appeal procedures and dissuasive sanctions in case of acts of anti-union discrimination and acts of interference. ***The Committee requests the Government to provide information on the measures taken to bring the draft Code into conformity with the Convention and to supply a copy of the new Labour Code once adopted.***

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. Acts of interference.* In previous comments, the Committee had requested the Government to indicate the measures taken or contemplated so as to adopt specific legislative provisions prohibiting acts of anti-union discrimination and interference. The Committee notes that the Government once again indicates in its report that it considers that the legislation in force, namely the Labour Code and Act No. CXXV of 2003 on equal treatment and the promotion of equal opportunities, set out sufficiently detailed provisions on the prohibition of all acts of interference. In this respect, the Committee notes that section 32 of the Labour Code affords a protection for certain acts of interference, stipulating that only a trade union or an employers' organization that is independent from the other is entitled to conclude a collective agreement. The Committee recalls that legislation should make express provision for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference in order to ensure the application in practice of *Article 2* of the Convention. 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 in order to guarantee their application (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 232). ***In order to give effect to Article 2 of the Convention, the Committee recalls the need to adopt specific legislative provisions prohibiting acts of interference (in particular, those designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to place workers' organizations under the control of employers or employers' organizations through financial or other means), and establishing rapid appeal procedures, coupled with effective and dissuasive sanctions against such acts.***

The Committee further notes the Government's indication that no particular legislative amendment is planned concerning protection against interference, although an expert examination was initiated in 2009 as to opportunities in finding alternative

solutions for the settlement of disputes, which may, depending on the outcome of the tripartite consultations, result in a legislative act that could notably afford a better protection against acts of interference. *In these circumstances, the Committee, recalling its abovementioned comments, also requests the Government to keep it informed of any development concerning the abovementioned expert examination and to provide a copy of any legislation adopted in this respect.*

*Article 4. Representativeness for the conclusion of collective agreements.* The Committee had previously requested information on the system of bargaining agent certification at the sectoral and national levels. The Committee notes that the International Trade Union Confederation (ITUC), in its comments submitted on 24 August 2009, and the Workers side of the National ILO Council (including the National Federation of Autonomous Trade Unions, the Trade Union Group of Intellectuals, the Democratic League of Independent Trade Unions, the National Confederation of Hungarian Trade Unions, the National Federation of Workers' Councils and the Co-operation Forum of Trade Unions) in its comments sent along with the Government's report on 24 November 2009, both indicate that trade unions need to represent 65 per cent of the workforce (for a single union), a threshold which can hardly be achieved under a plural trade union structure, in order to be able to engage in collective bargaining (section 33(5) of the Labour Code), amend or renegotiate the collective agreement (section 37(1) and (2) of the Labour Code). The Committee further notes the Government's indication that: (i) the provisions cited above require a relatively high rate of employees for the conclusion of the collective bargaining agreement, as several representative trade unions are unable to enter into one jointly in a given case; (ii) in such a case, the lack of consensus among the trade unions necessitates the observation of the rules according to which the trade union with the highest rate support will be entitled to enter into the collective bargaining agreement, reaching about two-thirds (65 per cent) share mentioned above; and (iii) as amendments have been made recently to the Act on the legal status of public servants (subsection 4 of section 12/A of Act No. XXXIII of 1992 on the legal status of public servants), according to which a trade union having at least a 50 per cent support may conclude the collective bargaining agreement in a similar case, the Government would be ready to discuss an amendment to section 33(5) of the Labour Code. The Committee recalls that high percentage requirements for the recognition of a collective bargaining agent may impair the promotion and development of free and voluntary collective bargaining. In addition, the Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members (see General Survey, op. cit., paragraph 241). *The Committee therefore requests the Government to indicate in its next report any measures taken or contemplated so as to lower the 65 per cent requirement in section 33(5) of the Labour Code, as well as any measure taken or envisaged in order to ensure that where no union represents 65 per cent of the employees in a bargaining unit, collective bargaining rights are granted to all unions in the unit, at least on behalf of their own members.*

Finally, the Committee had also requested information on developments concerning a draft Bill pertaining to certain aspects of social dialogue. The Committee notes that, according to the Government's report, Act No. LXXIII of 2009, on the National Council for the Reconciliation of Interests ("NCRI Act"), and Act No. LXXIV of 2009, on the Sectoral Dialogue Committees and certain issues of the medium-level social dialogue ("SDC Act"), entered into force on 20 August 2009. The Committee will provide its observations on these two Acts in its next report, once translated by the Office.

## Iceland

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

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. Collective Bargaining.* The Committee recalls that several of its previous comments concerned the issue of compulsory arbitration which has been repeatedly imposed through legislative intervention (Acts Nos 10/1998 and 34/2001) into the collective bargaining process for the determination of the terms and conditions of employment of fishermen. In its previous comments, the Committee noted that this was incompatible with the principle of free and voluntary collective bargaining set out in *Article 4* of the Convention and requested the Government: (i) to avoid having recourse to legislative intervention to impose on the parties a solution which should be the result of free and voluntary collective bargaining; and (ii) noting the Government's indications that it would consult the social partners on actions to be taken, to take concrete steps so as to re-examine thoroughly its current machinery and procedures. *The Committee requests the Government to indicate in its next report any measures taken or contemplated in this regard.*

The Committee previously requested the Government to provide information on the renegotiation of the collective agreements which come up for review in 2007 and 2008, including in the fishing sector. The Committee again recalls that the Conference Committee had expressed the hope in June 2004 that the Government would carry out, in full consultation with the social partners concerned, a review of the implementation in practice in the fishing sector of the mechanisms and procedures in the area of collective bargaining in order to improve those mechanisms. The Committee noted that the Government indicated that the collective agreements originally reached in the fishing sector in October 2004 were renewed in December 2008 and will be in effect until 1 January 2011. *The Committee once again requests the Government to continue to provide information on any progress made in adopting measures, in consultation with the social partners concerned, with a view to improving the current machinery and procedures for collective bargaining so as to promote free and voluntary collective bargaining and ensure that the introduction of compulsory arbitration is avoided in the future.*

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

## India

### **Right of Association (Agriculture) Convention, 1921 (No. 11)** (ratification: 1923)

In its previous observation, the Committee had requested the Government to supply information concerning the number of self-employed workers engaged in agriculture who are trade union members and to provide statistics more generally on the number of agricultural unions registered under the Trade Union (Amendment) Act, 2001. The Committee

notes that in its report, the Government indicates that: (1) the number of agricultural workers employed in the central sphere is negligible and the enforcement in agricultural sectors rests with the State Government; and (2) according to the statistics available from trade unions in India, 2006 (Labour Bureau), there were 274 unions representing 1,311,424 members submitting returns under agriculture, hunting and forestry in 2006.

### **Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1977)**

*Muster assistants (workers that provide water and medical facilities at worksites) employed through the Employment Guarantee Scheme.* In its previous comments, the Committee had requested the Government to provide information on the possibility of the muster assistants' workers to form strong and independent organizations to improve their working conditions and the measures envisaged by the Government to facilitate this objective. The Committee notes that in its report, the Government indicates that this information is still awaited from the State Government of Maharashtra and will be provided once available. **The Committee reiterates its previous request and hopes that this information will be provided with the Government's next report.**

*"Integrated Child Development Scheme" (ICDS).* In its previous observation, the Committee requested the Government to keep it informed of the contribution made by the associations of *anganwadis* (pre-school nurseries) workers to improve employment opportunities for women and conditions of work and life in rural areas. The Committee notes the Government's indication that nearly one million *anganwadi* centres function all over the country. The Government further indicates that All India Federation of Anganwadi Workers and Helpers (AIFAWH) was formed by the Centre of Indian Trade Unions (CITU) at the national convention in Delhi in 1989. The AIFAWH has been making efforts to rally the support of the beneficiaries of the ICDS – the hundreds of thousands of women and children belonging to poor peasants', agricultural workers' and unorganized sector workers' families. The AIFAWH and its affiliated unions in 23 states have not only helped in achieving some benefits for the *anganwadi* employees, but have also created self confidence among these the hundreds of thousands of women workers, most of them working in the villages, hills and urban slums. They have also led to increased awareness about the importance of the ICDS in ensuring the right to food, education and health of children. Members of the AIFAWH actively participate in the joint trade union campaigns and struggles for the improvement of conditions of workers in different sectors, including agricultural workers, peasants and women. The Committee notes this information with *interest*.

*Forest and brick-making workers.* The Committee had previously requested the Government to provide any statistics available in respect of the number of organizations of forest and brick-making workers, the number of workers covered, and any collective agreements which may have been concluded in these sectors. The Committee notes that according to the Government, there are 274 unions in the agriculture, hunting and forestry sector, representing 1,311,424 members. The Committee further notes the Government's indication that the brick-making workers, like forest workers, are covered under the general labour laws, and that the National Human Rights Commission (NHRC), the central trade unions, Bachpan Bachao Andolan (BBA), brick-kiln workers' unions, etc. work to improve labour conditions of the brick-making workers in various ways. Some of these workers are represented by such unions as the Lal Jhanda Klin Workers Union (CITU), the IFTU Brick Klin Workers' Union, the Int Bhatta Majdoor Union (Brick Klin Workers' Union) and others. **While noting this information with interest, the Committee once again requests the Government to provide copies of any collective agreements which may have been concluded in the abovementioned sectors.**

## **Indonesia**

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

The Committee notes the response of the Government to the comments made by the International Trade Union Confederation (ITUC) in 2009. It also notes that in a communication dated 4 August 2011, the ITUC submits new comments which relate to a number of matters already raised by the Committee, as well as violations of the Convention, in particular violence against striking workers and acts of intimidation against union leaders. **The Committee requests the Government to provide its observations thereon.**

*Trade union rights and civil liberties.* In its previous comments, recalling that legitimate trade union activities should not be used as a pretext for arbitrary arrest or detention, the Committee requested the Government to provide information on measures taken, including specific instructions given to the police, so as to ensure that the danger of excessive violence in trying to control demonstrations is avoided, that arrests are made only where serious violence or other criminal acts have been committed, and that the police are called in a strike situation only where there is a genuine and imminent threat to public order. It further requested the Government to take the necessary measures to repeal or amend sections 160 and 335 of the Penal Code, respectively on "instigation" and "unpleasant acts", so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists. The Committee notes that the Government indicates in its report that, in the case of a legal strike, it is only in case of anarchy that the police have the right to perform actions according to the legislation. The Government further indicates that in the absence of anarchy the police have no right of action (arrest or detention) even if the strike is unlawful. The Committee also notes the Government's indication that it is conducting a review of the Penal Code. The Committee further notes that

the allegations contained in the comments submitted by ITUC indicate that excessive violence and arrests in relation to demonstrations and police involvement in strike situations occurred in the country in 2010. ***In this context, the Committee hopes that, in the framework of the review of the Penal Code, sections 160 and 335 will be repealed or amended. The Committee requests the Government to provide information on the developments in this regard, as well as on other measures taken, including specific instructions given to the police, so as to ensure that the use of excessive power 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.***

*Article 2 of the Convention. Right to organize of civil servants.* In its previous comments, the Committee expressed the hope that the Government would adopt an Act guaranteeing the exercise of the right to organize to civil servants, pursuant to section 4 of Act No. 21 of 2000, which proclaims that civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate act, so as to bring the legislation into full conformity with the Convention. The Committee notes the Government's indication that there are no developments with regard to the adoption of such a regulation, but that, in practice, both private and public school teachers formed the Teachers' Association of the Republic of Indonesia (PGRI). ***The Committee reiterates its hope that the Government will adopt an Act guaranteeing the exercise of the right to organize to all civil servants, pursuant to section 4 of Act No. 21 of 2000, and requests the Government to indicate in its next report any progress made in this regard.***

*Right to organize of employers.* In its previous comments, the Committee requested the Government to specify whether employers' organizations could be established independently of the Indonesian Chamber of Commerce and Industry (KADIN). The Committee notes that the Government indicates that, while there is no organization outside KADIN, no stipulation in regulation proscribes employers from establishing organizations other than KADIN, which is the parent organization of employers' organizations. The Government also indicates that APINDO (Indonesian Employers Association), which is affiliated to KADIN, is the employers' organization which is given the authority in the field of industrial relations. The Committee recalls that the designation by its name of a workers' or employers' organization in the legislation for the purpose of consultation or other benefits should be avoided in order to ensure the free exercise of freedom of association and that it would be preferable to make reference to the most representative organization of the concerned sector. The Committee intends to address this issue in depth once Act No. 1/1987 concerning KADIN is fully translated into an ILO official language.

*Article 3. Right of workers' organizations to organize their activities and formulate their programmes without interference by the public authorities. Conditions for the exercise of the right to strike.* In its previous comments, the Committee requested the Government to take the necessary measures to amend section 4 of Ministerial Decree No. KEP.232/MEN/2003, so that a finding as to whether negotiations have failed, which is a condition for the lawful staging of strikes, can be made either by an independent body or be left to the unilateral determination of the parties to the dispute. The Committee notes the Government's comments that section 4 of Ministerial Decree No. KEP.232/MEN/2003 is in accordance with the conditions of employment in Indonesia and that it did not see any difficulties in performing the procedure on strikes. ***The Committee once again requests the Government to amend section 4 of Ministerial Decree No. KEP.232/MEN/2003, so that a finding as to whether negotiations have failed can be made either by an independent body or be left to the unilateral determination of the parties to the dispute.***

*Exhaustion of mediation/conciliation procedures.* The Committee had noted that the time period accorded to mediation/conciliation procedures, as provided for in the Industrial Relations Dispute Settlement Act No. 2 of 2004, could be more than 60 days. It had requested the Government to ensure that this time period would be reduced if the exhaustion of mediation/conciliation was a condition for the lawful exercise of the right to strike. The Committee recalls that conciliation, mediation and voluntary arbitration should have the sole purpose of facilitating bargaining and should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness. ***Noting the Government's information that it is conducting a review of Act No. 2 of 2004 and that currently many strikes have occurred without waiting on the exhaustion of these procedures, the Committee requests the Government to provide information on developments in this regard.***

*Objectives of strikes.* In its previous comments, the Committee requested the Government to take the necessary steps so as to allow trade union federations and confederations to engage in industrial action linked to questions of general social and economic policy. The Committee notes that the Government indicates that it has not made arrangements concerning strikes related to issues of social and economic policies and that it believes that such strikes are categorized as demonstrations regulated in Act No. 9 of 1998 on Freedom of Expression in Public. The Committee recalls that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed to major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living. ***The Committee requests the Government provide with its next report a copy of Act No. 9 of 1998.***

*Restrictions on the right to strike in the railway service.* In its previous comments, the Committee requested the Government to indicate steps taken or contemplated to ensure that the only railway workers encompassed by section 139 of Manpower Act No. 13 of 2003, and so with a limited right to strike, are railway intersection workers. The Committee

notes that the Government confirms that the explanatory note on section 139 of the 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.

*Sanctions for strike action.* In its previous comments, the Committee requested the Government to take the necessary measures in order to amend its legislation to ensure that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. The Committee notes that section 186 of the Manpower Act regulates criminal conviction for violation of sections 137 and 138(1) of the Manpower Act which make provisions in relation to the right to strike. ***The Committee requests the Government to take the necessary measures to amend section 186 of the Manpower Act so as to bring it into conformity with the above principle in accordance with the Convention.***

Recalling that section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003 results in the situation that striking workers were considered to resign by virtue of not having responded to back-to-work orders from employers, prior to a finding by an independent body that the strike in question is illegal, the Committee requested the Government to amend this section to ensure that employers can only issue back-to-work orders to workers after an independent body has determined that the strike is illegal. The Committee notes that the Government indicates that it is conducting a review of Ministerial Decree No. KEP.232/MEN/2003. ***The Committee requests the Government, in the framework of this review, to ensure that section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003 is amended to ensure that employers can only issue back-to-work orders to workers after an independent body has determined that the strike is illegal. The Committee requests the Government to provide information on developments in this regard.***

*Article 4. Dissolution and suspension of organizations by administrative authority.* In its previous comments, the Committee had noted that if trade union officials violate either sections 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. Considering that such sanctions are disproportionate, the Committee requested the Government to indicate the measures taken or contemplated so as to repeal the reference to sections 21 and 31 in section 42 of the Trade Union/Labour Union Act. The Committee also requested the Government to indicate the measures taken or contemplated so as to ensure that organizations affected by measures of dissolution or suspension by the administrative authority have a right of appeal to an independent and impartial judicial body, and that such administrative decisions do not take effect until that body issues a final decision. ***Noting the Government’s indication that it is conducting a review of the Trade Union/Labour Union Act No. 21 of 2000, the Committee expresses the hope that, in the framework of this review, the Government will fully take into account the Committee’s comments. It requests the Government to provide information on developments in this regard.***

***The Committee reminds the Government that it may avail itself of the technical assistance of the Office, if it so wishes, in relation to the issues raised in these comments.***

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: 1957)***

*Articles 1 and 2 of the Convention. Protection against acts of anti-union discrimination and employer interference.* The Committee’s previous comments concerned the need to ensure effective and rapid protection against acts of anti-union discrimination and employer interference in practice. The Committee notes that the Government indicates in its report that three types of measures can be taken by the Labour Inspector to ensure protection against discrimination: (1) education measures (including counselling); (2) investigation and report on cases; and (3) if the employer does not act upon the conclusions of a report of the Labour Inspector, the latter may issue investigation minutes. The Government further indicates that these measures are carried out in accordance with Decree No. 03 of 1984 of the Minister of Manpower, concerning integrated monitoring, which is currently under review.

Moreover, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, concerning in particular anti-union dismissals of union leaders and members, as well as the creation of yellow unions.

It further notes the conclusions and recommendations of the Committee on Freedom of Association (Case No. 2737, 358th Report, November 2010), in which the Committee recalls: (1) that on a number of occasions it examined complaints of anti-union discrimination in Indonesia and has considered that the prohibition against anti-union discrimination in Act No. 21 of 2000 is insufficient; and (2) that while the Act contains a general prohibition in article 28 accompanied by dissuasive sanctions in article 43, it does not provide any procedure by which workers can seek redress. The Committee on Freedom of Association urged the Government to take steps, in full consultation with the social partners concerned, to

amend its legislation to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions against such acts.

The Committee concludes, from the Government's report, that existing measures to ensure effective and rapid protection against acts of anti-union discrimination and employer interference in practice only consist in investigations conducted by an administrative authority. Moreover, the Government does not indicate in its report that dissuasive sanctions against such acts may be imposed.

*Noting that in its report submitted under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Government indicates that it is conducting a review of the Trade Union/Labour Union Act No. 21 of 2000, the Committee requests the Government to take steps, in full consultation with the social partners concerned, to amend its legislation to ensure comprehensive protection against anti-union discrimination in the future, providing for swift recourse to mechanisms that may impose sufficiently dissuasive sanctions against such acts. It requests the Government to provide information on steps taken in this regard. It also once again 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. It further requests the Government to provide a copy of Decree No. 03 of 1984 of the Minister of Manpower. The Committee invites the Government to make full use of ILO technical assistance in these regards, as well as in order to provide training for the authorities competent to deal with cases of anti-union discrimination and employer interference.*

*Article 2. Protection against acts of interference.* The Committee's previous comments concerned the need to amend section 122 of the Manpower Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union shall have the right to represent the workers in an enterprise. The Committee notes that the Government once again indicates that employers and the Government are present only as witnesses during voting and have no effect on the voting by trade unions and workers and that it has therefore not given any consideration to a possible amendment of section 122 of the Manpower Act. *Recalling the need to ensure adequate protection against acts of interference in practice, the Committee reiterates its previous comments and requests the Government to indicate in its next report the steps taken to amend section 122 of the Manpower Act so as to suppress the presence of the employer during voting procedures.*

*Article 4. Promotion of collective bargaining.* In its previous comments, the Committee had requested the Government to amend sections 5, 14 and 25 of Act No. 2 of 2004 concerning industrial relations dispute settlement, which enables 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 that the Government considers that Act No. 2 of 2004 only defines the existence of voluntary arbitration, rather than compulsory arbitration. The Committee observes, however, that Act No. 2 of 2004 refers both to voluntary arbitration and, in sections 5, 14 and 25, to compulsory arbitration by allowing one of the parties to a dispute to file a petition to the Industrial Relations Court. Noting that the ability of one or other of the parties to a dispute, including when there is no arbitration request from the parties, to refer the dispute to the Court constitutes compulsory arbitration, the Committee recalls that compulsory arbitration at the initiative of one party to the dispute cannot be considered to promote voluntary collective bargaining. *The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend sections 5, 14 and 25 of Act No. 2 of 2004 concerning industrial relations dispute settlement so as to ensure that, except in the case of essential services in the strict sense of the term, compulsory arbitration may be imposed only where it is agreed upon by both parties to the dispute.*

*Requirements for the exercise of collective bargaining.* In its previous comments, the Committee noted that, under section 119 of the Manpower Act, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the enterprise's workers on its demands. The Committee noted that unions not attaining 50 per cent support in such a vote could only engage in collective bargaining after a period of six months is passed since the vote. The Committee notes the Government's indication that this issue is under review. *The Committee is therefore bound to reiterate that it considers that these provisions render the exercise of collective bargaining difficult for these unions and once again requests the Government to take the necessary measures to repeal the requirement for a delay of six months before which minority unions may bargain collectively.*

The Committee also notes that the Government indicates that collective agreements must be concluded within 30 days after the beginning of negotiations. In this regard, the Committee wishes to recall that the parties should be able to continue the negotiation of a collective agreement, if they so wish, even after this delay has expired. Furthermore, in case a collective agreement already exists, the parties should be able to start the negotiations of a future agreement as early as they wish before the end of the current one. *The Committee requests the Government to take the necessary measures to ensure that these principles concerning the free and voluntary exercise of collective bargaining are applied and to provide information on any developments in this regard.*

*Federations and confederations.* In its previous comments, the Committee had requested the Government to provide data concerning the number and type of current collective agreements that were signed by federations or confederations of trade unions. The Committee notes that, while the Government confirms that there is no rule or

regulation prohibiting federations and confederations from engaging in collective bargaining, it indicates that there has been no report of federations and confederations having signed collective agreements. ***The Committee requests the Government to ensure that information concerning collective agreements signed by federations or confederations of trade unions is publically available, and to continue to provide information in this regard.***

*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 on the number of collective agreements in force in the EPZs and the percentage of workers covered, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures. While noting the Government's indication that it shall coordinate with local governmental entities in order to be able to provide such information, the Committee notes with *regret* that the Government has not provided the requested information. ***The Committee once again requests the Government to provide in its next report data concerning the number of collective agreements and workers covered by collective bargaining in EPZs, as well as on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation and remediation measures.***

## Iraq

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, which refers to matters previously raised by the Committee, as well as to an order issued by the Ministry of Electricity on 20 July 2010 to prohibit trade union activities of the Electricity Workers' Union, close all its offices, and take control of the union's assets and properties following protests in June which were supported by the Union before being violently put down by the police. ***The Committee requests the Government to provide its observations thereon.***

*Violence against trade unionists.* Previously the Committee, noting the ITUC's 2008 and 2009 comments on the persistence of serious violations of freedom of association, had requested the Government to provide information on the ITUC's allegations of arrests, detentions and acts of violence committed against trade unionists. The Committee notes that the Government reiterates in general terms in its report that there are no violations of trade union freedoms; that trade unionists have never been threatened by a government authority and that, despite the tremendous efforts of the security authorities to protect the population, all citizens are exposed to threats of violence and not only trade unionists. The Committee has stressed on many occasions 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 (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 26) and that the exercise of freedom of association is not compatible with a climate of violence, pressure, fear and threats. ***The Committee once again expresses the firm hope that it will be possible in the near future for trade union rights and the right to collective bargaining to be exercised normally and in observance of fundamental rights, and in a climate free from violence, duress, fear and any kind of threat.***

*Articles 1, 3 and 4 of the Convention.* The Committee had previously noted that, according to the Government, a draft Labour Code had been referred to the Consultative Council (*Majlis Al-Shura*) so that Parliament could examine and adopt the said legislation. The Committee notes that the Government indicates that the new Labour Code is still in draft form and under discussion and shall be reviewed during the different phases of its preparation.

The Committee observes that revised versions of the draft Labour Code were prepared in 2010 and 2011 and takes note of the ILO assistance provided to the Government. The Committee further notes that the rewording of some provisions concerning trade unions has been recommended by the State Council and that all provisions related to trade unions were removed from the 2011 draft Labour Code in order to be included in a special law on trade unions. Taking note of section 22(3) of the Iraqi Constitution which provides that "the State shall guarantee the right to form and join unions and professional associations, and this shall be regulated by law", the Committee recalls the necessity to complete as soon as possible the ongoing process in order to ensure effective respect for the right to organize and collective bargaining. The Committee also recalls that employers' organizations should be granted the same rights as workers' organizations in the legislation. ***Noting the information provided by the Government, the Committee expresses the firm hope that the ongoing legislative reform will take into account all comments made in previous observations and will soon be completed in full conformity with the Convention. The Committee requests the Government to provide in its next report information on progress made in this respect.***

*Anti-union discrimination.* In its previous observation, the Committee had noted that the guarantees laid down in the draft Labour Code for protection against acts of anti-union discrimination applied to trade union founders and chairpersons and to trade union officers but not to trade union members; nor did the draft establish adequate guarantees against discrimination at the time of recruitment. The Committee also noted that, although it covered anti-union dismissals, the draft did not address other adverse measures affecting trade union membership or activities. The Committee had pointed out that protection against acts of anti-union discrimination must apply to trade union members as

well as union officers, and must cover not only dismissal but any other measure amounting to anti-union discrimination (transfer, demotion and other measures that have adverse effects). Furthermore, the protection provided for by the Convention applied upon recruitment, in the course of employment and at the time of separation. The Committee had also recalled that general provisions of the law prohibiting acts of anti-union discrimination were not enough if they were not accompanied by effective and rapid procedures to ensure their application in practice; protection against acts of anti-union discrimination should therefore be ensured by various means adapted to national law and practice that prevent or effectively redress such acts, in particular through sufficiently dissuasive sanctions. The Committee had previously noted with interest the Government's statement that its comments concerning adequate protection against acts of anti-union discrimination had been addressed in the draft Labour Code's chapter concerning trade union organizations. **While noting that provisions concerning trade unions have been removed from the 2011 draft and will be reviewed either in the ongoing legislative reform of the Labour Code or in the framework of a future special law on trade unions, the Committee requests once again the Government to take the necessary steps to ensure adequate protection for members of trade unions and trade union officers against acts of anti-union discrimination in accordance with the principles noted above.**

*Recognition of trade unions for the purposes of collective bargaining.* Previously the Committee had noted that section 142 of the draft Labour Code established a duty to bargain in good faith when a request to open collective negotiations had been submitted by a registered union representing no less than 50 per cent of the workers employed at the establishment or enterprise, or where such a request had been submitted jointly by several registered unions representing no less than 50 per cent of the workers to whom the collective agreement was to apply. The Committee had pointed out that problems may arise where it was established by law that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a union that would fail to secure this absolute majority would thus be denied the possibility of bargaining. The Committee had underlined that if no union – or group of unions, as provided for in section 142 – covered more than 50 per cent of the workers, collective bargaining rights should not be denied to the unions in the unit concerned, at least on behalf of their own members, and had requested the Government to take the necessary steps to amend section 142 of the draft Labour Code accordingly. The Committee had noted with interest the Government's statement that section 142 of the draft Labour Code had been amended to bring it into conformity with the Convention and that a new section 143 had been included to address the Committee's comments on minimum membership requirements for the acquisition of bargaining agent status.

The Committee notes that the Government does not provide specific information in this respect in its report but indicates that the new Labour Code is still in draft form and consequently may be re-examined during the legislative process. **The Committee reiterates its previous comments and expects that the future Labour Code will be in full conformity with the principles above.**

*Article 4. Promotion of collective bargaining.* The Committee had previously referred to the absence, in Act No. 52 of 1987 on trade union organizations, of any provisions to promote collective bargaining and thus give effect to Article 4 of the Convention. The Government had indicated in this regard that the draft Labour Code would provide for the repeal of Act No. 52 of 1987 on trade union organizations. The Government had further stated that section 147 of the draft Labour Code defined a collective labour contract as an agreement between the trade union, on behalf of the workers of the occupations and industries it represents, and the employers concerned. The Committee had requested the Government to confirm whether collective bargaining at the enterprise level was also recognized in the draft Labour Code and had further invited the Government to take appropriate measures to promote collective bargaining, through publications, seminars and other activities designed to increase awareness of its utility.

The Committee notes that the Government confirms in its report that, under the draft Labour Code, collective bargaining at the enterprise level is also recognized for all workers covered by the provisions of the Labour Code. The Government further indicates that the promotion of collective bargaining will be done after the adoption of the Code when a wide mass media campaign will be launched to make the public aware of the Labour Code. **The Committee takes note of this information and invites the Government to start promoting collective bargaining without waiting for the adoption of the Code. It requests the Government to send information on developments in this respect in its next report.**

*Articles 1, 4 and 6.* The Committee had been noting for many years that Act No. 150 of 1987 on public servants, which the Government was planning to repeal, contained no provisions affording the guarantees established in the Convention to public servants and public sector employees not engaged in the administration of the State, and had further observed that the draft Labour Code excluded employees of the public service from its scope. The Committee had previously noted that the Government, in consultation with the social partners and experts from the Office, was drafting a recommendation with a view to including in the new Labour Code provisions on the trade union rights of public sector workers, which would give them the rights provided for in Articles 1, 3 and 6 of the Convention. The Committee previously noted with interest the Government's indication that the draft Labour Code would repeal Act No. 150 of 1987 on public servants, so that public servants would be covered by its provisions.

The Committee notes that the Government reiterates that section 155 of the new draft Labour Code provides for the repeal of Act No. 150 of 1987. The Committee takes note that section 3 of the draft Labour Code specifies that its provisions apply to "workers recruited in the staff of workers in government departments and public sector", "contractual workers with government departments and public sector" but excludes "employees of governmental departments and

public sector". *The Committee requests the Government to take measures to amend this provision in order to fully guarantee to all public servants not engaged in the administration of the State the rights enshrined in the Convention.* The Committee underlines that the right to organize, which is a preliminary condition for the development of collective bargaining, is applicable to all public servants with the sole possible exception of the armed forces and the police. In this connection, the Committee notes with *concern* that, according to the ITUC comments, public sector workers are banned from trade unions and oil unions are technically illegal in Iraq. *The Committee hopes that the abovementioned fundamental rights at work will be recognized for public sector workers in the very near future.*

*Trade union monopoly and interference in trade union activities.* The Committee had previously noted that the Trade Union Organization Act No. 52 of 1987, while not applied anymore, established a de facto monopoly of the Confederation of Iraqi Workers' Unions by forbidding the establishment of other unions or federations, and that decision No. 8750 of 2005 had been used by the Government to freeze the assets of trade unions. Taking into account that texts which have not yet been formally repealed such as Decision No. 8750 can generate uncertainty in law and hinder the development of collective bargaining within the meaning of the Convention and of other trade union activities, the Committee had trusted the Government to formally repeal Act No. 52 and Decision No. 8750. In this regard, the Committee previously noted the Government's indication that the draft Labour Code would repeal this Act, and that the repeal of the decision would be considered once workers' elections have been held and the financial liability for keeping the assets of the Confederation defined.

The Committee notes that the Government indicates in its report that after the changes which were made, and as a result of the developments made in respect of rights and freedoms in Iraq, it would re-examine the Trade Union Organization Act No. 52 and Decision No. 8750, as well as other decisions which conflict with trade union rights and freedoms. The Committee observes however that the 2011 draft Labour Code does not provide for the repeal of Act No. 52, whereas the 2010 draft Labour Code expressly did so in section 168. *In these circumstances, the Committee requests once again the Government to urgently take the necessary measures to repeal Act No. 52 as well as Decision No. 8750 of 2005 so as to ensure trade union multiplicity, and requests the Government to indicate in its next report any developments in this regard.*

## Jamaica

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), in two communications dated 30 September 2009 and 4 August 2011, which mainly refer to matters already raised by the Committee.

*Article 3 of the Convention.* *The right of organizations freely to organize their activities and to formulate their programmes.* The Committee recalls that in its previous observations it referred to the extensive power of the minister to refer an industrial dispute to arbitration (sections 9, 10, and 11(A) of the Labour Relations and Industrial Disputes Act). The Committee notes that the Government reiterates in its report that it is seriously considering the ILO's request to amend these sections and that it hopes that a positive response can be given in its next report. *In these circumstances, the Committee reiterates its hope that sections 9, 10 and 11(A) of the Labour Relations and Industrial Disputes Act will be amended, taking into account that compulsory arbitration to end a collective labour dispute is acceptable only at the request of both parties or in instances where a strike may be restricted or even banned, i.e. in the event of a dispute in the public service involving public servants exercising authority in the name of the State, or in essential services in the strict sense of the term, namely services the interruption of which could endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to indicate any developments in this regard.*

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

The Committee notes the Government's observations in relation to the comments submitted by the International Trade Union Confederation (ITUC) in 2008 concerning trade unions rights in export processing zones (EPZs), and in particular that the areas once regarded as EPZs have ceased activity. The Committee further notes the comments submitted by the ITUC, in a communication dated 4 August 2011, which mainly refers to matters already raised by the Committee.

*Article 4 of the Convention.* The Committee recalls that several of its previous comments referred to the following matters:

- the denial of the right to negotiate collectively in the case of workers in a bargaining unit when these workers do not amount to more than 40 per cent of the workers in the unit or when, if the former condition is satisfied, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the minister has caused to be taken (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and

- the need to take measures to amend the legislation so that a ballot is made possible when one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions, and therefore invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee notes that the Government indicates that, while it has not yet taken steps to amend its legislation regarding these two matters, it will endeavour to pursue the early amendment of the legislation. ***The Committee reiterates its hope that the Government will take the necessary measures in the very near future to amend its legislation, lowering the percentage mentioned and allowing a ballot in cases of disputes concerning representativeness, so as to bring it into full conformity with the Convention. The Committee requests the Government to indicate in its next report any developments in this regard.***

## Japan

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011, ZENTOITSU (All United) Workers' Union on 7 October 2010, the National Confederation of Trade Unions (ZENROREN) dated 21 September 2011, and the Japanese Trade Union Confederation (JTUC–RENGO) dated 30 August 2011 with regard to the issues previously raised by the Committee.

*Denial of the right to organize of firefighting personnel and prison officers.* The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel.

The Committee notes that the Government indicates in its report that a committee on the right to organize of fire defence personnel was established within the Ministry of Internal Affairs and Communications in January 2010 to study the right to organize of firefighting personnel in view of both respect for basic labour rights and assurance of reliability and safety for the people. The Government also indicates that, following consultations, this committee released its report in December 2010; the report ascertained that no practical obstacles in terms of fire service operations could be identified which might arise as a result of granting the right to organize and considered five different methods of restoring the right to organize as well as the option of improving the current Fire Defense Personnel Committee System. The Committee observes the Government's indication that there was no agreement within the committee on the restoration of the right to organize and that a final decision on this issue is yet to be made by the government after further examination based on the state of the civil service reform in consideration of calls for a national debate and the mission of the fire service to protect lives, people and property so as to provide improvement to government services and retain the trust of the population. The necessary examination will be carried out in the future with the basic direction of granting it, in conjunction with the examination of the basic labour rights of local public service employees.

In respect of prison officers, the Committee notes that, while JTUC–RENGO indicates that the Government has not initiated any specific examination on the issue of granting the right to organize to prison officers, the Government states that it has re-examined the right and concluded not to include it in the Reform Bills. The Government reiterated that prison officers are considered to be included in the police and are therefore denied the right to organize in accordance with *Article 9* of the Convention. The Committee recalls once again that the functions exercised by prison officers should not justify their exclusion from the right to organize.

The Committee draws the attention to the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2177 and 2183 (357th Report, paragraphs 727–730) in respect of the right to organize of firefighting personnel and prison officers. It recalls once again the importance it attaches to the right of all workers, including firefighters and prison officers, to form and join organizations of their own choosing. ***The Committee takes note of the measures contemplated by the Government with a view to granting the right to organize to firefighting personnel, as well as the developments in relation to the Basic Concept of the Labour–Employer Relations System of Local Public Service Employees and it trusts that the Government will supply in its next report the additional legislative measures taken or contemplated in order to ensure the right to organize to firefighting personnel, as well as any new developments in respect of prison officers, and, in the meantime, requests the Government to permit the de facto organization of firefighting personnel without penalty.***

*Prohibition of the right to strike of public servants.* The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2177 and 2183 (357th Report, paragraph 730) to the effect that public sector employees, like their private sector counterparts, should enjoy the right to strike, with the possible exceptions of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. Moreover, public employees who may be deprived of this right should be afforded appropriate compensatory guarantees.

The Committee notes that the Government states in its report that an “Advisory Group on Basic Labour Rights (Right to Strike) of National Public Service Employees” was set up in November 2010 under the Minister of Civil Service Reform and issued its report in December 2010. The Committee observes that, according to JTUC–RENGO, the report

presents mechanisms that, while preserving the public interest, encourage autonomous settlement as much as possible even when negotiations fail, including through: (1) the introduction of private labour laws such as the prohibition of strikes in security facilities; (2) the establishment of a framework for public utilities utilizing special mechanisms such as notification of strikes and compulsory arbitration; and (3) introduction of compulsory arbitration mechanisms applied only to the cases critical for the preservation of public interest. The Government further indicates that, in the context of the civil service reform and pursuant to the four civil service reform related bills (“the Reform Bills”) submitted to the Diet on 3 June 2011, an autonomous labour–employer relations system will be introduced granting to national public service employees in the non-operational sector the right to negotiate working conditions and to conclude collective agreements. The Committee observes that the Reform Bills do not recognize the right to strike of public servants and takes note that Supplementary Provision 11 of the Draft Act on Labour Relations of National Public Service Employees, submitted to the Diet on 3 June 2011 as part of the Reform Bills, provides that “taking into consideration the status of enforcement of this Act including the status of operation of collective bargaining and the status of operation of the system for conciliation, mediation and arbitration, and the status of public opinion on the implementation of the autonomous labour–employer relations system, the Government shall examine the right to strike of national public service employees. And then, necessary measures are to be taken based on the outcome of the examination.”

The Committee further notes the Government’s indication that under the new labour relations system, the existing compensatory mechanisms for the denial of the right to conclude collective agreements and the right to strike will be abolished as the right to conclude collective agreements will be granted. While the Reform Bills provide for the suppression of the recommendations functions of National Personnel Authority at the national level, the Basic Concept of the Labour–Employer Relations System of Local Public Service Employees proposes the equivalent suppression of the Personnel Commission recommendation functions at the local level. The Committee further notes that ZENROREN considers that the provision of the bill concerning compulsory arbitration providing that “arbitration procedure shall begin upon the request of the Minister, the Board of Audit or the Prime Minister” would set an obstacle to good labour-management negotiations under a labour relations system that denies the employees’ right to strike.

***The Committee asks the Government to provide information on the progress made in reviewing the question of the right to strike and to indicate in its next report the measures taken or envisaged to ensure that public servants who are not exercising authority in the name of the State and workers who are not working in essential services in the strict sense of the term may exercise this right without sanction, and that those whose right to strike may be restricted (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. The Committee further asks the government to provide detailed information on the compensatory guarantees available to those civil servants who may be deprived of the right to strike under the new labour relations framework being contemplated for the public service.***

The Committee further notes the Government’s response to the ITUC regarding the restrictions to the labour rights of employees of state-run companies, private companies considered to have “high social responsibility” (such as electricity and coal mining businesses), public welfare undertakings (including transportation, postal and communications services, water, electricity and gas, medical and public health, etc.) and Specified Independent Administrative Institutions. 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 and to employees of essential services in the strict sense of the term and that in borderline cases, one solution might be not to impose a total prohibition of strikes, but rather to provide for the maintaining by a defined and limited category of staff of a negotiated minimum service when a total and prolonged stoppage might result in serious consequences for the public (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 158). ***The Committee requests the Government to provide, in its next report, further information on the basic labour rights of employees of state-run companies, private companies with “high social responsibility” and public welfare undertakings and any measures taken or contemplated by the Government to minimize the restrictions on their rights, such as a negotiated minimum service.***

***Reform of the civil service.*** The Committee notes that in Cases Nos 2177 and 2183 the Committee on Freedom of Association requested that the Government continue to take steps to ensure without delay the promotion of full social dialogue aimed at effectively addressing the measures necessary for the implementation of the freedom of association principles embodied in Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee notes that the present Government has taken the following steps since it came into power in September 2009: (1) establishment of an Employee–Employer Relation System Examining Committee composed of academic experts, labour representatives and employer representatives; this committee finalized a report entitled: “Toward measures for an autonomous labour–employer relations system” on 15 December 2009 which compiled findings of case studies of systems where public service employees in the non-operational sector are granted the right to conclude collective agreements in order to provide materials for the Government’s consideration of a new system; (2) the Government submitted to the Diet the “Amendment Bill for the National Public Service Employees Law” on 19 February 2010 which provided for the establishment of central control of personnel affairs of executive public service employees

and, in a supplementary provision, for the establishment of “an institution with the powers and responsibilities needed to implement a transparent and autonomous labour–employer relations system” (the deliberation of the Bill was not completed during the session of the Diet and was dropped in June 2010); (3) the Government adopted on 5 April 2011 the “whole picture of the reform based on the Civil Service Reform Law, etc.” which is a package of government policies on detailed measures and the schedule for the realization of all the reforms specified in the Civil Service Reform Law, including the introduction of the autonomous labour–employer relations system; (4) the Government drafted four civil service reform related bills (“the Reform Bills”) on the basis of the whole picture: the Amendment Bill for the National Public Service Employees Law, the Draft Act on Labour Relations of National Public Service Employees, the Draft Act for Establishment of the Civil Service Office and the Draft Act on Arrangement of relevant Acts Incidental to Enforcement of the Amendment Bill for the National Public Service Employees Law were all submitted to the Diet on 3 June 2011; and (5) on 2 June 2011, the Ministry of Internal Affairs and Communications released its Basic Concept of the Labour–Employer Relations System for Local Public Service Employees.

The Committee notes that, throughout the abovementioned process, the Government held consultations with employees’ organizations including JTUC–RENGO, RENGO–PSLC, ZENROREN and the National Public Service Employee’s Unions (KOKKOROREN) at various levels. The Committee also observes that ZENROREN has expressed its lack of satisfaction with the consultation process and its outcome.

The Committee further notes that, according to the Government, once the Reform Bills are adopted by the Diet, a new framework will be established in the national public service where both parties of labour–employer relations negotiate and determine autonomously the issue of working conditions and promote reform of the personnel management and remuneration system, responding to changing circumstances and new political issues. The Committee particularly notes that this new framework includes granting the right to conclude collective agreements to national public service employees in the non-operational sector, establishing a Civil Service Office and suppressing the National Personnel Authority and its recommendation functions, treatment of the right to strike of national public service employees and basic labour rights of local public service employees. While taking due note of this information and of the progress made by the Government in moving forward the civil service reform process, the Committee observes that, according to JTUC–RENGO, the Reform Bills were not brought under deliberation during the 177th ordinary session of the Diet which ended at the end of August 2011.

Further noting the efforts of the Government to hold systematic consultations with interested parties, including the social partners, the Committee 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 expresses the firm hope that the Government will vigorously pursue its efforts to complete the ongoing civil service reform in a continuing spirit of social dialogue in order to find mutually acceptable solutions to all the issues raised and to bring the law and practice into full conformity with the provisions of the Convention. The Committee requests the Government to continue providing information on the progress made in its next report and to supply relevant laws upon adoption by the Diet.***

The Committee takes note of the observations made by the ITUC concerning the large number of atypical workers in Japan and the practical obstacles to their right to organize and bargain collectively. In this regard, the Committee notes with *interest* the information provided by JTUC–RENGO concerning a judgment in April 2011 by the Supreme Court which links the categorization of workers to the actual conditions of work. ***The Committee trusts that the criteria laid out in this judgment will ensure that the guarantees afforded under this Convention fully apply to all workers, including those who are formally working as subcontract workers or contract labourers.***

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 4 August 2011, ZENTOITSU (All United) Workers’ Union on 7 October 2010, and the National Confederation of Trade Unions (ZENROREN) dated 21 September 2011. It further notes the comments made by the Japanese Trade Union Confederation (JTUC–RENGO) dated 30 August 2011 and communicated with the Government’s report, which touch on issues previously raised by the Committee and highlights recent jurisprudential and policy developments.

*Article 1 of the Convention.* The Committee had previously noted the long-standing dispute and court proceedings arising out of the privatization of the Japanese National Railways (JNR), which were taken over by the Japan Railway Companies (JR). The dispute concerned in particular the decision of the JR not to rehire workers belonging to certain organizations which opposed the privatization plan. The Committee had noted that the last major pending issue concerned outstanding claims for the reinstatement of the 1,047 KOKURO workers and had requested the Government to communicate any judicial determination on this issue. Recalling that this issue is being dealt within the framework of Case No. 1991 before the Committee on Freedom of Association, the Committee notes that the ITUC indicates that, while some workers did not achieve full settlement of their claims, in particular as regards reinstatement, the dispute was finally settled by the Supreme Court on 28 June 2010 with the JR agreeing to pay a total of ¥20 billion in settlement money to

904 workers (¥22 million per worker). The Committee notes with *satisfaction* the information provided by the Government within the framework of Case No. 1991 and to which it refers in its report which sets out the details of the final settlement of this long outstanding case. The Committee expresses its deep appreciation to all those who spared no effort to achieve this result and in some cases accepted compromise solutions in the interest of moving forward in greater harmony.

*Article 4. Collective bargaining rights of public service employees not engaged in the administration of the State in the context of the civil service reform.* 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 takes note of the different steps taken by the Government to establish an autonomous labour–employer relations system, in particular the submission to the Diet on 3 June 2011 of four civil service reform related bills (“the Reform Bills”). The Government indicates that upon the adoption of these bills, a new framework will be established in the national public service where both parties to labour–employer relations negotiate and determine autonomously the issue of working conditions and promote reform of the personnel management and remuneration system, responding to changing circumstances and new political issues. In particular, the Committee notes that the Bill on Labour Relations of National Public Service Employees will grant the right to national public service employees in the non-operational sector to conclude collective agreements if approved by the Diet.

The Committee further notes the following Government's indications with regard to the modalities of the exercise of the right to collective bargaining in the non-operational sector of the national public service: (1) exclusion of administrative vice-ministers, director-generals of agencies and director-generals of bureaus of ministries, as well as police officials and officials working for the Japan Coast Guard and penal institutions – the latter three categories will benefit from appropriate compensatory measures; (2) certification of unions for the purpose of collective bargaining by the Central Labour Relations Commission subject to national public service employees representing the majority of all labour union members; (3) prohibition of unfair labour practices and examination of allegations by the Central Labour Relations Commission; (4) conciliation, mediation and arbitration to be conducted by the Central Labour Relations Commission (including compulsory arbitration); and (5) when a collective agreement entered into requires legislative reform, the Cabinet shall be obliged to submit relevant bills to the Diet or enact or revise relevant cabinet orders. The Committee notes that the Government also indicates that the Bill for Establishment of the Civil Service Office aims at centralizing the personnel administration functions by creating a civil service office responsible for the overall management of personnel and the remuneration system as well as for undertaking negotiations with labour unions as the employer. Another bill was introduced to suppress the National Personnel Authority and its recommendation functions. The Committee notes that, throughout the abovementioned process, the Government held consultations with employees' organizations including JTUC–RENGO, RENGU–PSLC, ZENROREN and the National Public Service Employee's Unions (KOKKOROREN) at various levels.

The Committee notes that the Government indicates in its report that a similar framework has been proposed for local public service employees in the Basic concept of the Labour–Employer Relations System for Local Public Service Employees released by the Cabinet on 2 June 2011 with the following adjustments: (1) exclusion of personnel with restrictions on the right to organize, personnel making important administrative decisions, and personnel working at local public enterprises, etc.; (2) certification by the Prefectural Labour Relations Commission requires that the majority of the members of the union are local public service personnel belonging to the same local government; and (3) relief system overseen by the Prefectural Labour Relations Commission against unfair labour practices shall be established and the Personnel Commission recommendation functions shall be abolished.

The Committee observes that, according to JTUC–RENGO, although the Reform Bills were not brought under deliberation during the 177th ordinary session of the Diet, which ended at the end of August 2011, the Government's reaction is a historical step towards opening the possibility of restoring fundamental workers' rights and has important significance in pushing toward problem-solving. JTUC–RENGO also indicates that the bills regarding local public service employees are expected to be submitted to the Diet as early as possible in order to implement them simultaneously with those for national public service employees and to promote smooth deliberation of all bills. The Committee further observes that ZENROREN has expressed its lack of satisfaction with the consultation process and finds the bills unsatisfactory, in particular the requirement for prior certification of trade unions, exclusion of control and management matters from the subjects for collective bargaining and requirement for the approval of the collective agreement by the Cabinet Council prior to its signing and also that it calls for a more binding system of redress for unfair labour practices taking into account that anti-union discrimination has been persistent in the civil service for over 30 years.

***The Committee expects that the necessary steps will be taken in the very near future so as to ensure collective bargaining rights in the national and local public service with the possible exceptions of public servants engaged in the administration of the State. The Committee firmly hopes that the Government will be in a position to report on concrete progress made in this respect in its next report and requests the Government to provide copies of the bills and indicate their status in its next report.***

While taking into account ZENROREN's claim that the Government unilaterally presented a bill on the reduction of state personnel expenditure allowing it to reduce the salaries of civil servants beyond the NPA recommendations despite

the opposition of some employee's organizations, the Committee notes that the Government states in its report that, for the period until the realization of an autonomous labour–employer relations system, measures for reducing personnel expenses will be examined and bills will be submitted taking into consideration the severe financial national situation. The Government indicates that the Great East Japan Earthquake on 11 March 2011 pressed the Government to further reduce annual expenditures because of the necessity to respond for recovery efforts and the Government decided to introduce, at the same time as the Reforms Bills, a Bill of Temporary Special Provisions on Remuneration for National Public Service reducing the remuneration of national public service employees as a special temporary measure to cut expenses until the new labour relations framework is operational. The Government further indicates that due to the exceptional character of the measure, negotiations were held with the Liaison Conference of National Public Service Employees' Unions ("Liaison Conference") affiliated with JTUC–RENGO, and KOKKOROREN, but agreement was only reached with the Liaison Conference. The Committee observes that JTUC–RENGO states that sincere consultations were held with the Government and the Alliance of Public Service Workers Unions (APU) regarding a new system of revision of wages of national public service employees through negotiation, which was included in the Reform Bills. *Although the Committee understands that many of the measures taken by the Government were intended to remedy the consequences of the earthquake, the Committee expects that, until the new legislation is adopted and implemented, the Government will refrain from taking unilateral measures affecting negatively the remuneration and working conditions of public employees and will continue 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.*

*Article 6. Application of the Convention to public servants.* Taking note that, according to JTUC–RENGO, the translation of *Article 6* of the Convention into Japanese is problematic as "public servants engaged in the administration of the State" was translated by *komuin* (public servants), the Committee recalls that it has adopted a restrictive approach with regard to the exclusion by the Convention of some categories of public servants from its scope. The distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (for example, in some countries, civil servants employed in Government ministries and other comparable bodies as well as ancillary staff 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 and therefore be able to negotiate collectively their conditions of employment including wages (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 199, 200 and 262). *The Committee expresses the firm hope that the Government will take appropriate measures to ensure that all public servants except those engaged in the administration of the State can effectively exercise their rights under the Convention.*

## Jordan

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1968)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, which refer to matters previously raised by the Committee and matters concerning the trade union rights of teachers and migrant workers, as well as the observations provided by the Government in a communication dated 28 November 2011.

*Scope of the Convention.* In its previous comments the Committee had referred to the exclusion of migrant workers, domestic workers and certain classes of agricultural workers from the provisions of the Labour Code, and had noted with interest the Government's statement that it had formulated amendments to the Jordanian Labour Code so as to include migrant workers, domestic workers, and all categories of agricultural workers within the scope of the Labour Code's provisions, and that the draft amendments had been referred to the Council of Ministers in order to initiate the process of adoption. In this respect, the Committee notes that the Government indicates in its report that amendments to the Labour Code of 1996 were adopted in Law No. 26 of 2010. The Committee further notes the Government's indication that all workers are now covered by the Labour Code with respect to freedom of association as the amendments authorized non–Jordanian workers to affiliate to trade unions.

In respect of foreign workers, the Committee notes with *interest* that section 25 of Law No. 26 of 2010 no longer requires Jordanian nationality for membership in trade unions and employers' associations. However, this section maintains the requirement that founding members should be Jordanian nationals. The Committee concludes that, under this new legislation, the right to organize of foreign workers does not seem fully guaranteed as they are not authorized to participate in the establishment of a trade union or an employers' association as founding members or maybe even as leaders. *The Committee requests the Government to provide clarification in this respect in its next report and, if necessary, to take measures to amend this provision in order to fully guarantee the right of foreign workers to be founding members and leaders of trade unions and employers' associations.*

The Committee also observes that section 3 of the Labour Code which excludes domestic workers and some agricultural workers – many of them being foreigners – from coverage does not seem to have been amended by Law

No. 26 of 2010 and that no provisions extending the guarantees of the Convention to domestic workers and agricultural workers could be identified in this law. The Committee notes the Government's indication, in response to the ITUC comments, that domestic workers, cooks, gardeners and their dependents as well as agriculture workers were included in the scope of application of the Labour Code pursuant to section 3(b) of Act No. 48 of 2008 amending the Labour Code and the Laws Nos 89 and 90 of 2009, as well as that specific instructions were issued to strengthen the protection of the rights of these workers, including foreign workers. **The Committee requests the Government to provide clarification in its next report in this regard and to provide the relevant legislation, including the 2008 amendments of the Labour Code.**

The Committee further notes that the new section 98(f) of the Labour Code, introduced by Law No. 26 of 2010 specifies that "(f) To apply for membership in a trade union, the applicant shall be at least 18 years of age". The Committee considers that this provision restricts the trade union rights enshrined in the Convention. **The Committee invites the Government to ensure the right to organize to minors, either as workers or trainees, and to provide information on measures contemplated or adopted in this respect in its next report.**

*Article 2. Protection against acts of interference.* The Committee recalls that it had previously requested the Government to take the necessary measures in order to adopt legislative provisions providing for rapid appeal procedures and sufficiently dissuasive sanctions against acts of interference. The Government indicates, in this regard, that this matter has been taken into consideration in the Labour Code's amendments which include a clear text on prohibiting workers' and employers' organizations' interference by each other directly or indirectly, in their establishment, functioning or administration as well as sufficient dissuasive sanctions.

The Committee takes notes with *interest* of this information and observes that section 97(c) of the Labour Code as amended by Law No. 11 of 2004 effectively prohibits acts of interference. It further observes, however, that sanctions in cases of infringement are fines between 50 and 100 Jordanian dinar (JOD) (US\$70–140) as provided under section 139 of the Labour Code of 1996. **The Committee considers that the amount of the fines does not have a dissuasive effect and requests the Government to take measures in full consultation with the most representative organizations of workers and of employers in order to strengthen these sanctions.**

*Article 6. Right to collective bargaining.* **Finally taking into account the ITUC comments, the Committee requests the Government to provide information on the legal provisions concerning the right to collective bargaining in the public sector, including in the public service.**

## Kazakhstan

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

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee had previously requested the Government to take the necessary measures to amend its legislation so as to ensure the right to organize of judges (article 23(2) of the Constitution and section 11(4) of the Law on Public Associations). The Committee notes that in its report, the Government indicates that under article 23(1) of the Constitution, judges, like other citizens, have the right to freely associate for the purpose of exercising and defending their collective interests, provided that they do not use such associations to influence the administration of justice or for political purposes. The Government argues that the prohibition under article 23(2) of the Constitution, which prevents judges from forming political parties and trade unions, does not restrict the right of judges to join public non-commercial associations. It refers, in particular, to the existence of the Union of Judges of the Republic of Kazakhstan. The Committee notes from the information available to it that this organization pursues such objectives as: strengthening of the judicial independence; provision of social security system and development of judicial self-administration; participation in discussions on court practice and improvement of legislation, etc. The Committee considers that while the Union of Judges acts for the purpose of protection of interests of the judicial community, it is not a workers' organization in the sense of Convention No. 87. The Committee once again recalls that the only exceptions authorized by the Convention are the members of the police and armed forces and that the functions exercised by judges shall not justify their exclusion from the right to organize. **It therefore once again requests the Government to take the necessary measures to amend its legislation so as to ensure that judges, like other workers, can establish organizations for furthering and defending their interests in line with the Convention and to indicate the measures taken or envisaged in this respect.**

The Committee had previously requested the Government to specify the categories of workers covered by the term "law enforcement bodies" whose right to organize is restricted under article 23(2) of the Constitution. The Committee had also requested the Government to ensure that fire service personnel and prison staff enjoy the right to organize. The Committee notes the Government's indication that the term "law enforcement bodies" includes employees of home affairs bodies, the criminal justice system, financial police, the state fire service, customs and the Public Prosecution's Office. The Government clarifies, however, that civilians working in the law enforcement bodies enjoy all the rights guaranteed by the Convention. While noting this information, the Committee once again recalls that firefighters and prison staff should enjoy the right to organize. **It therefore once again requests the Government to ensure that these categories of**

**workers are guaranteed the right to establish and join organizations for furthering and defending their interests and requests the Government to indicate the measures taken or envisaged in this respect.**

*Right to establish organizations without previous authorization.* The Committee had previously noted that pursuant to section 10(1) of the Law on Public Associations, applicable to employers' organizations, a minimum of ten persons is required to establish an employers' organization, and had requested the Government to amend its legislation so as to lower this requirement. The Committee notes that the Government reiterates that a public association may be established at the initiative of no less than ten citizens. **It therefore once again requests the Government to indicate measures taken or envisaged to amend its legislation so as to lower this minimum membership requirement in as far as it applies to employers' organizations.**

With regard to the Committee's previous request to provide observations on comments of the International Trade Union Confederation referring to the allegedly high trade union registration cost, the Committee notes the Government's indication that the cost of registration of a trade union in 2010 was 9,184 tenge (KZT) (US\$62).

*Article 3. Right of organizations to organize their activities and to formulate their programmes.* The Committee had previously requested the Government to take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to employers without their prior approval by a general meeting of workers. It further requested the Government to amend section 298(2) of the Code (according to which, a decision to call a strike was taken by a meeting (conference) of workers (their representatives) gathering not less than half the total workforce, and the decision was adopted if not less than two-thirds of those present at the meeting (conference) had voted for it) so as to lower the majority required to call a strike. The Committee notes with *regret* that the Government's report provides no information in this respect. **It therefore reiterates its previous requests and expresses the hope that the Government will provide in its next report information on all measures taken or envisaged to amend the above sections of the Labour Code. The Committee also once again requests the Government to indicate whether under section 299(2)(2) of the Code, workers or their organizations can declare a strike for an indefinite period of time.**

The Committee had previously requested the Government to take the necessary measures, including through amendment of the relevant legislative provisions, in order to ensure that the prohibition of the right to strike is limited only to civil servants exercising authority in the name of the State. The Committee notes that, in its report, the Government provides clarification on the distinction between "civil service" ("civil servant") and "public service" ("public employee"). Pursuant to the Law on Civil Service, civil servants are employees of state bodies who exercise their official powers for the purpose of implementing the tasks and functions of the State. The Government adds that under section 10(6) of the Law on Civil Service, civil servants may not take part in activities that would hinder the normal functioning of the State, including strike action. Public service, on the other hand, in accordance with section 1 of the Labour Code, is the professional activity of public employees in the exercise of their official powers for the purpose of implementing the tasks and functions of state enterprises and establishments, and providing technical services. The Government adds that while under section 23 of the Labour Code, public employees do not have the right to participate in activities which impede the normal functioning of the public service, this provision does not impose a prohibition of strikes on public servants. The Government emphasizes that the prohibition of strikes applies only to civil servants and not to public servants. The Committee notes that the Law on Civil Service makes a distinction between "political" civil servants and "administrative" civil servants. **Recalling that the prohibition of the right to strike should be limited to civil servants exercising authority in the name of the State, the Committee requests the Government to indicate whether "administrative" civil servants can exercise the right to strike.**

The Committee notes with *regret* that the Government's report contains no information on organizations carrying out "dangerous industrial activities" pursuant to section 303(1) of the Labour Code and the categories of workers whose right to strike is restricted accordingly. **The Committee therefore once again requests the Government to indicate which organizations fall into this category of organizations by providing concrete examples. It further once again requests the Government to indicate all other categories of workers whose right to strike can be restricted by other legislative texts, as stipulated in section 303(5) of the Labour Code, and to provide copies thereof.**

With regard to rail and public transport, the Committee had previously noted that according to section 303(2) of the Labour Code, a strike may be held if the necessary range of services, as determined on the basis of a prior agreement with the local executive authorities, is maintained so as the users' basic needs were met or that facilities operated safely or without interruption. In this respect, the Committee had requested the Government to amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one and that workers' organizations could participate in its definition. The Committee *regrets* that the Government's report contains no information in this respect. **It therefore once again requests the Government to take the necessary measures in order to amend section 303(2) of the Labour Code so as to ensure the application of this principle and to indicate in its next report all measures taken or envisaged in this respect.**

*Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations.* The Committee had previously requested 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 the ban on financial assistance to national trade unions by an international organization. The Committee notes that according to the Government, political parties and trade unions are associations which have a capacity to influence political opinion of the public and state policy in various areas of public

life. The Government argues that for this reason, article 5(4) of the Constitution prohibits foreign persons, including international organizations, from funding political parties and trade unions. The Government considers that this provision guards the State's interest's values and security. The Committee recalls 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 the necessary 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 indicate the measures taken or envisaged in this respect.***

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

*Scope of the Convention.* The Committee had previously requested the Government to specify the categories of workers covered by the term "law enforcement bodies" whose right to organize is restricted under article 23(2) of the Constitution. The Committee had also requested the Government to ensure that fire service personnel and prison staff enjoy the right to organize. The Committee notes that in its report, the Government indicates that the term "law enforcement bodies" includes employees of home affairs bodies, the criminal justice system, financial police, state fire service, customs and the Public Prosecution Office. The Government clarifies, however, that civilians working in the law enforcement bodies enjoy all the rights contained in the Convention. While noting this information, the Committee once again recalls that firefighters and prison staff should enjoy the rights afforded by the Convention. ***The Committee therefore once again requests the Government to ensure that these categories of workers are guaranteed the right to organize and to bargain collectively and requests the Government to indicate the measures taken or envisaged in this respect.***

*Article 2 of the Convention. Protection against acts of interference.* The Committee had previously requested the Government to clarify whether sections 150 and 151 of the Criminal Code, providing that cases of interference in the activities of social organizations and interference in the legitimate activities of workers' representatives which are punishable by a penalty equivalent to up to five times monthly wage or imprisonment, applied both the public and private sectors. The Committee notes the Government's indication that sections 150 and 151 of the Code, apply to both sectors. ***The Committee requests the Government to provide information on the application of abovementioned legislative provisions in practice, including copies of the relevant court decisions.***

*Article 4. Right to collective bargaining.* In its previous comments, the Committee noted that section 282(2) of the Labour Code, regulating collective bargaining procedure at the enterprise level, stipulates that "employees who are not members of a trade union have the right to be represented by either a trade union body or other representatives" and that "when several employees' representatives exist at the undertaking, they may establish a joint representative body" for the purpose of collective bargaining. The Committee requested the Government to amend its legislation so as to ensure that where there exist in the same undertaking both a trade union representative and another representative elected by workers who are not members of any trade union, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. The Committee notes the Government's indication that collective agreements are negotiated by a negotiating commission. The Government explains that worker members of such commissions are designated by a decision of a trade union committee or a meeting (conference) of workers when they are represented by other workers' representatives. The Committee therefore recalls that allowing other workers' representatives to bargain collectively, when there is a representative trade union in the undertaking, could not only undermine the position of the trade union concerned, but also infringe upon the rights guaranteed under *Article 4* of the Convention. ***The Committee reiterates its previous request and expresses the hope that the Government's next report will contain information on the measures taken in this respect.***

The Committee had previously requested the Government to provide information on the application in practice of section 91 of the Code on Administrative Breaches (2001), under which, unfounded refusal to conclude a collective agreement is punished by a fine. The Committee notes that the Government confirms that this legislative provision is in force. ***Recalling that legislation, which imposes an obligation to achieve a result, particularly when sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiation, the Committee once again requests the Government to provide information on the application of section 91 of the Code in practice.***

## **Kiribati**

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

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

The Committee noted with interest that the Kiribati Tripartite Committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee's previous comments. The Committee noted, in particular that, upon adoption of the Trade Unions and Employers' Organizations Amendment Bill, section 21 of the Trade Union and Employers' Organizations Act, will be amended by introducing a comprehensive guarantee of the right to organize for all workers and employers. Moreover, upon adoption of the Industrial Relations Code Amendment Bill, section 39 of the Industrial Relations Code will be amended so that a strike decision can be adopted upon approval by a majority of employees who voted in the ballot. These amendments have been recently approved in the first reading by Parliament. ***The Committee requests the Government to keep it informed of progress made in the adoption of these amendments to section 21 of the Trade Union and Employers' Organizations Act and section 39 of the Industrial Relations Code.***

The Committee also noted, however, that certain issues have not been addressed yet or are still under consideration.

***Article 2 of the Convention. Minimum membership requirement.*** The Committee had previously requested the Government to amend section 7 of the Trade Unions and Employers' Organizations Act so as to lower the minimum membership requirement for the registration of an employers' organization which is set at seven members. The Committee noted, from the Government's report, that due note has been taken of this comment, which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress; the Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section 7 of the Trade Unions and Employers' Organizations Act so as to lower the minimum membership requirement for the registration of an employers' organization.***

***Right of public employees to establish and join organizations of their own choosing.*** The Committee had previously noted that section L.1 of the National Conditions of Service provides that all employees are free to join a "recognized" staff association or union and had requested the Government to amend this section, given that there is no provision in the law relating to the recognition of trade unions. The Committee noted the Government's indication that due note has been taken of this comment which is currently under review with the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. ***The Committee requests the Government to keep it informed of the outcome of consultations and to indicate in its next report any measures taken or contemplated with a view to amending section L.1 of the National Conditions of Service so as to remove the reference to "recognized" staff associations or unions.***

***Article 3. Right of employers' and workers' organizations to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programmes. Right to elect representatives freely.*** In its previous comments, the Committee had noted that there is no provision in the law regarding the right of workers and employers to elect their representatives. The Committee noted the Government's indication that the current practice in which workers and employers elect their representatives, on the basis of their freely drawn constitution, is in line with the Convention. The Government added that it has taken due note of the Committee's comment which is currently under review by the social partners and the Committee will be kept informed of the outcome and measures taken as a result of these discussions. The Committee took due note of this information.

***Compulsory arbitration.*** In a previous direct request, the Committee had requested the Government to amend sections 8(1)(d), 12, 27 and 28 of the Industrial Relations Code so as to limit the possibility of prohibiting strikes and imposing compulsory arbitration only to those cases which would be in conformity with the Convention. The Committee noted from the Government's report that section 12 will be amended upon adoption of the draft Industrial Relations Amendment Bill through addition of a new section 12(A)(1) according to which the registrar may only refer a trade dispute to an arbitration tribunal if: (a) all the parties to the dispute request such referral; (b) the dispute is in the public services involving public servants exercising authority in the name of the State; (c) industrial action has been protracted or is tending to endanger or has endangered the personal health, safety or welfare of the community or part of it; (d) conciliation has failed and the parties are unlikely to resolve the dispute.

In this regard, the Committee once again recalls that compulsory arbitration is acceptable under the Convention only at the request of both parties to the dispute, in essential services in the strict sense of the term, and for public servants exercising authority in the name of the State. The existence of protracted disputes (subsection(c)) and the failure of conciliation (subsection (d)) are not per se elements which justify the introduction of compulsory arbitration. Furthermore, the word "welfare" introduced in relation to essential services (subsection (c)) may include issues which go beyond the health and safety of the population in a strict sense and, in that case, would be contrary to the Convention. ***The Committee requests the Government to amend the Draft Industrial Relations Amendment Bill so as to remove subsection (d) from draft section 12(A)(1)(d), as well as the reference to protracted industrial action and the "welfare of the community" from draft section 12(A)(1)(c) with a view to ensuring that compulsory arbitration is possible only where this is in conformity with the Convention.***

Furthermore, concerning the conciliation and mediation machinery, the Committee considers that it should have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness (see General Survey on freedom of association and collective bargaining, 1994, paragraph 171). The Committee observes in this regard that there are no specific time limits in the Industrial Relations Code for the exhaustion of conciliation proceedings and that sections 8(1)(a), (b), (c) and 9(1)(a) give the Registrar and the Minister the power to prolong the negotiation, conciliation and settlement procedure at their discretion, without any fixed time limits, while according to section 27(1), a strike which takes place before the exhaustion of procedures prescribed for the settlement of trade disputes, shall be unlawful. ***The Committee requests the Government to indicate the measures taken or contemplated to ensure that specific time limits are introduced in the Industrial Relations Code so that the mediation and conciliation procedure is not so complex or slow that a lawful strike becomes impossible in practice.***

***Sanctions for strike action/essential services.*** In its previous comments, the Committee had requested the Government to lift the provision in section 37 of the Industrial Relations Code which has the effect of prohibiting industrial action and imposing heavy penalties including imprisonment in cases where a strike might "expose valuable property to the risk of destruction". The Committee notes with interest that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to lift this provision. ***The Committee requests the Government to provide information on the progress made in the adoption of the Draft Industrial Relations Amendment Bill with a view to removing the provision of section 37 of the Industrial Relations Code which imposes heavy penalties including imprisonment for strikes in case they "expose valuable property to the risk of destruction".***

The Committee also recalls that in its previous comments, it had requested the Government to amend section 37 of the Industrial Relations Code which imposes penalties of imprisonment and heavy fines for strikes in essential services. The Committee noted from the Government's report that the draft Industrial Relations Amendment Bill will amend section 37 of the Industrial Relations Code so as to increase the relevant fines from \$100 to \$1,000 for strikes in essential services and from \$500 to \$2,000 for inciting others to participate in a strike in essential services; at the same time, the prison sentences of one year and 18 months, respectively, for strikes in essential services and incitement to participate, therein, have apparently not been amended.

The Committee further recalls that it had previously requested the Government to amend section 30 of the Industrial Relations Code, which imposes sanctions of imprisonment and heavy fines against unlawful strikes in general. The Committee notes from the Government's report that the prison sentences have been lifted in the draft Industrial Relations Amendment Bill but that the applicable fines have been increased to \$1,000 from \$100 in case of participation in an unlawful strike and have remained at \$2,000 in case of incitement to participate in an unlawful strike.

In this respect, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore, measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee requests the Government to review the draft Industrial Relations Amendment Bill so as to amend sections 30 and 37 of the Industrial Relations Code in the manner indicated above.**

*Articles 5 and 6. Right to establish and join federations and confederations and to affiliate with international organizations of workers and employers.* In its previous comments, the Committee requested information on the provisions which guarantee the right of workers' and employers' organizations to join federations and confederations of their own choice and to affiliate with international organizations of workers and employers. The Committee noted from the Government's report that the draft Trade Unions and Employers' Organizations Amendment Bill will amend section 21(2) of the Trade Unions and Employers' Organizations Act, 1998, so as to provide that workers' and employers' organizations shall have the right to join a federation of trade unions or a federation of employers' organizations and to affiliate with and participate in the affairs of any international workers' organization and to contribute to or receive financial assistance from those organizations. The Committee considers that the term "international workers' and employers' organizations" would be more appropriate than "international workers' organizations" given that the right to affiliate with international organizations should be guaranteed not only to workers' but also to employers' organizations. **It, therefore, requests the Government to amend the draft Trade Unions and Employers' Organizations Amendment Bill and to keep it informed of progress made in the adoption of the Bill with a view to introducing provisions guaranteeing the right of employers' and workers' organizations to establish federations and to affiliate with international organizations of their own choosing.**

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

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

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

The Committee noted with interest from the Government's report that the Kiribati tripartite committee drafted, with the assistance of the ILO, several amendments to national labour laws in order to give effect to the Committee's previous comments. The Committee also noted, however, that certain issues had not yet been addressed in the draft or are still under consideration.

*Application of the Convention.* In its previous comments, the Committee noted that section 3 of the Industrial Relations Code excludes prison officers from the application of the provision concerning collective labour disputes and reminded the Government that prison officers should enjoy the rights and guarantees enshrined in the Convention. The Committee noted from the Government's report that due note had been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. **The Committee hopes that the discussions will lead to the amendment of section 3 of the Industrial Relations Code so that prison officers are not excluded from the rights and guarantees enshrined in the Convention.**

*Articles 1 and 3 of the Convention.* In its previous comments, the Committee had noted that protection against acts of anti-union discrimination existed only at the time of hiring, and requested the Government to take measures to amend the legislation so as to ensure comprehensive protection against such acts during the employment relationship and at the time of dismissal. The Committee had also requested the Government to take measures so that the legislation includes express provisions for appeals and establishes sufficiently dissuasive sanctions against acts of anti-union discrimination for membership or participation in the activities of a trade union.

The Committee noted from the text of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, that section 21 of the Trade Unions and Employer Organisations Act is to be amended by adding a subsection (3) according to which "nothing contained in any law shall prohibit any worker from being or becoming a member of any trade union, or cause a worker to be dismissed or otherwise prejudiced by reason of that worker's membership or participation in the activities of a trade union". Furthermore, according to subsection (4) no employer shall make it a condition of employment of any worker to neither be nor become a member of a trade union and any such condition in any contract of employment shall be void. The Committee also noted that according to subsection (5), "[a]ny employer who contravenes subsection (4) ... shall be liable to a fine not exceeding US\$1,000 and to a term of imprisonment not exceeding six months". The Committee noted that, whereas sufficiently dissuasive sanctions were provided for in relation to subsection (4), no sanctions were established in relation to a violation of subsection (3). **The Committee therefore requests the Government to indicate in its next report the measures taken in order to modify the provisions of the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so that sufficiently dissuasive sanctions are imposed where a worker is dismissed or otherwise prejudiced because of his or her trade union membership or participation in the activities of a trade union.**

*Articles 2 and 3.* In its previous comments, the Committee noted that, in the national legislation, no specific legal provisions dealt with the issue of mutual interference between employers' and workers' organizations and that there were no

rapid procedures and sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations. The Committee noted from the Government's report that due note had been taken of this comment which is currently under review by the Ministry of Labour, the Kiribati Chamber of Commerce and Industry and the Kiribati Trade Union Congress. The Government will inform the Committee on the outcome and measures taken as a result of these discussions. ***The Committee hopes that the review currently under way will lead to measures to modify the draft Act to Amend the Trade Unions and Employer Organisations Act, 1998, so as to introduce provisions which ensure adequate protection against acts of interference in the establishment and functioning of trade unions as well as rapid procedures and dissuasive sanctions in this respect, in accordance with Articles 2 and 3 of the Convention.***

*Article 4.* The Committee noted with interest, that upon adoption of the Trade Unions and Employer Organisations Amendment Bill, section 41 of the Industrial Relations Code would be amended by introducing a comprehensive guarantee of the right to engage in collective bargaining over wages, terms and conditions of employment, the relations between the parties and other matters of mutual interest; this guarantee will apply to every trade union or group of trade unions and also cover public servants under the national conditions of service. Moreover, the amendment provides that regulations may be made generally for the effective exercise of the right to collective bargaining, recognition of most representative organizations and the regulation of collective agreements. ***The Committee requests the Government to indicate in its next report the progress made in the adoption of the draft amendment to section 41 of the Industrial Relations Code. It further requests the Government to specify the provisions which guarantee this right to federations and confederations and to indicate in the future any regulations adopted to promote the effective exercise of the right to collective bargaining.***

Furthermore, the Committee's previous comments concerned sections 7, 8, 9, 10, 12, 14 and 19 of the Industrial Relations Code, which allow referral of any trade dispute to compulsory arbitration at the request of one party or by decision of the authorities. The Committee is addressing this issue under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

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

## Liberia

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in communications dated 29 August 2008 and 24 August 2010 concerning the application of the Convention and, more particularly, allegations of serious violence against strikers and the closure of a trade union radio station. Noting that in previous comments, the ITUC had already referred to threats, arrest and prosecution of strikers, the Committee recalls that all appropriate measures should be taken by the Government to guarantee that trade union rights can be exercised in safe and secure conditions and in a climate free of violence, pressure, fear and threats of any kind. ***The Committee requests the Government to provide its observations in reply to all the abovementioned allegations of the ITUC in its next report.***

In its previous observation, the Committee had recalled that, for many years, it had been asking the Government to take the necessary steps to amend or repeal the following provisions, which were inconsistent with *Articles 2, 3, 5 and 10 of the Convention*:

- 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 had also noted that Decree No. 12 of 30 June 1980 prohibiting strikes had been repealed. The Committee notes that the Government indicates in its report that a new Labour Code – titled Decent Work Bill (2009) – has been drafted but still needs to be finalized and that a copy of it will be attached to the next report. More particularly, the Committee notes that the Government indicates that: (i) Chapter 9, Part Two of the Decent Work Bill attempts to fully address the issues surrounding strikes and lockouts; and (ii) issues arising under sections 4506 and 4601-A of the Labour Practices Law are addressed in Chapter 2 (section 6(a)) of the Decent Work Bill which provides that "all employers and workers, without distinction whatsoever, may establish and join organizations of their own choosing without prior authorization, and subject only to the rules of the organization concerned". ***The Committee requests the Government to take the necessary measures to ensure that the Decent Work Bill will be enacted in the very near future and will repeal all the provisions of the legislation that had previously been identified as in violation of ILO Conventions, including section 4102 of the Labour Practices Law.***

***The Committee requests the Government to provide in its next report information on any development in this respect, as well as a copy of the Decent Work Bill once adopted and of the law which repealed Decree No. 12 of 30 June 1980 prohibiting strikes.***

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

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 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 notes the comments submitted by the International Trade Union Confederation (ITUC), in a communication dated 24 August 2010, on the application of the Convention, in particular as regards the failure to implement a

collective agreement on the living and working conditions of workers in rubber plantations and other issues previously raised by the Committee. *The Committee requests the Government to provide its observations thereon in its next report.*

In its previous observation, the Committee, noting that a new Labour Code – entitled the Decent Work Bill – was being finalized, had expressed the hope that this reform process would take into full consideration the matters it had been commenting upon for many years, which concern the need for:

- legislation guaranteeing to workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- legislation guaranteeing to workers' organizations adequate protection against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- legislation guaranteeing the right to collective bargaining to employees in state-owned enterprises and public servants who are not public officials engaged in the administration of the State.

In its previous observation, the Committee had noted that, according to the Government, the Decent Work Bill will fully protect the workers and their organizations against anti-union discrimination both at the time of recruitment and during the employment relationship, as well as against acts of interference by the employers and their organizations, and will also ensure the right to collective bargaining of state-owned enterprise employees. *The Committee once again expresses the firm hope that the Decent Work Bill will give full effect to the Convention in line with its comments abovementioned, including that concerning the right to collective bargaining of public servants not engaged in the administration of the State, and requests the Government to provide a copy of the Decent Work Bill once adopted.*

*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 comments submitted by the International Trade Union Confederation (ITUC), dated 4 August 2011.

*Article 3 of the Convention. Right of organizations to freely organize their activities and formulate their programmes.* In its previous comments, the Committee noted that under sections 45(3) and 47 of the Labour Relations (Amendment) Bill, 2006 (LRA 2006), in cases of strikes or lockouts, the parties may at any time apply to the Industrial Relations Court for a determination as to whether a threatened or actual strike or lockout involves an essential service. In this respect, the Government indicated that the social partners considered that a clear list of what should be considered an essential service under the Labour Relations Act (LRA) should be established and that a provision had been included in the LRA 2006 for the establishment of a subcommittee of the Tripartite Labour Advisory Council mandated to determine a list of essential services under the LRA. The Committee requested the Government to provide information on any development concerning the establishment and composition of the subcommittee and the advancement of its work. The Committee notes that the Government indicates in its report that consultations with the social partners regarding the establishment of the subcommittee and the start of its work are in progress. *The Committee requests the Government to transmit the final version of the LRA 2006 with its next report as well as detailed information on any development concerning the establishment of the subcommittee of the Tripartite Labour Advisory Council and the start of its work.*

## Mali

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

The Committee notes the comments dated 4 August 2011 from the International Trade Union Confederation (ITUC) concerning, in particular, the matters examined by the Committee on Freedom of Association (CFA) (Case No. 2756). It notes the conclusions and recommendations of the CFA relating to this case (see 359th Report), especially the recommendation requesting the Government to take the necessary measures to allow the Confederation of Workers' Union of Mali (CSTM) to participate in those tripartite consultation bodies in which it has expressed interest and the recommendation requesting the Government to organize as soon as possible the occupational elections provided for in the Labour Code, taking into account the principles of freedom of association.

The Committee endorses the conclusions and recommendations of the Committee on Freedom of Association. *Underlining the importance of these issues, the Committee requests the Government to provide information on any further developments in this regard.*

## Malta

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

The Committee notes that the Government's report does not provide any new information in respect of its previous observation.

*Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes.* In its previous comments, the Committee noted that under section 74(1) and (3) of the Employment and Industrial Relations Act 2002 (EIRA), where disputes have been referred to conciliation to promote an amicable settlement of a trade dispute and conciliation has not resulted in a settlement, one of the parties may notify the Minister and the Minister shall refer the dispute to the Tribunal for settlement.

The Committee recalls that compulsory arbitration to end a collective labour dispute is only accepted if it is at the request of both parties involved in a dispute, or in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***In this respect, the Committee requests once again the Government to take the necessary measures to amend section 74(1) and (3) of the EIRA to ensure the respect of these principles. The Committee requests the Government to indicate any developments in this regard and to indicate in its next report any measures taken to bring its legislation into conformity with the Convention.***

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)**

The Committee notes that the Government's report does not provide information on the specific issues raised. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention.* The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). The Committee had noted from the Government's report that public officers have the right to appeal to the Public Service Commission, an independent body (the members are appointed by the President of Malta acting on the advice of the Prime Minister given after a consultation with the Leader of the Opposition and they cannot be removed except for inability or misbehaviour causes) established under section 109 of the Constitution of Malta. The Committee also notes from the Government's report that the Public Service Commission's primary role is to ensure that disciplinary action taken against public officers is fair, prompt and effective. ***The Committee requests the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also once again requests the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of port workers and public transport workers.***

*Articles 2 and 3. Protection against acts of interference.* The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts given that the EIRA does not expressly protect employers' and workers' organizations from acts of interference by one another, in each other's affairs. ***The Committee once again requests the Government to indicate in its next report, the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts.***

*Article 4. Collective bargaining.* The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement (see 342nd Report of the Committee on Freedom of Association, Case No. 2447, paragraph 752). ***The Committee once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.***

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

## Myanmar

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)**

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 31 August 2011.

The Committee further notes the conclusions of the Conference Committee on the Application of Standards of June 2011. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention. The Committee further observes that an article 26 of the ILO Constitution complaint in relation to the application of this Convention is pending for decision before the Governing Body.

*Legislative framework.* In its previous comments, the Committee recalled the issues it has been raising over the years with respect to the complete absence of a legislative framework in which the rights under the Convention can be exercised. The Committee recalls that it had not only urged the Government to adopt legislation which would enable workers to freely establish the organization of their own choosing, but had also emphasized the urgent need to repeal a number of legal texts, which continue to seriously impinge upon the freedom of association rights in the country.

The Committee notes with *interest* from the Government's report that, following advice from the ILO, the Labour Organizations Law was adopted by the Parliament (Hluttaw) on 16 September 2011 and signed and enacted by the President on 11 October 2011. The Committee observes that the Law contains provisions on the establishment of labour organizations, their functions and duties, rights and responsibilities, including the right to strike. Moreover, it notes with *interest* that the law provides for the repeal of the 1926 Trade Union Act. It further understands that a Bill proposing the repeal of the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers is before the Parliament.

***The Committee expresses the firm expectation that the Labour Organizations Law will come into force immediately and be applied in practice so as to ensure to all workers in the country the long-awaited legal framework in which they may exercise the rights set out in the Convention.***

As regards the provisions of the new legislation, recalling that, under *Articles 2 and 5* of the Convention, trade union diversity must remain possible in all cases (General Survey on freedom of association and collective bargaining, 1994, paragraphs 91–93), the Committee observes *with concern* that the English translation of the legislation appears to refer to a single labour confederation (sections 6, 7, 11, 12, and 14). ***The Committee requests the Government to indicate whether more than one confederation may indeed be formed and recognized under the new Labour Organizations Law.***

The Committee further observes with *concern* that section 40(b) appears to enable the exercise of strike action only following the approval from “the relevant labour federation”. The Committee considers that the right to strike should not be subjected to legislative restrictions which would place the authority to permit strike action with higher-level workers' organizations regardless of the rules of the organizations concerned or the affiliation of the lower-level organization. ***The Committee requests the Government to indicate the steps taken to amend this section so as to ensure the right of all workers' organizations, including at the basic level, to organize their activities and formulate their programmes in full freedom.***

In addition, the Committee observes with *concern* that section 26 provides that the basic labour organization shall allocate monthly contributions to the higher labour organizations, federations and confederation as prescribed by the relevant labour federation. ***Recalling that Article 3 of the Convention protects the right of workers' and employers' organizations to organize their administration without interference by the public authorities includes in particular their autonomy and financial independence and the protection of their assets and property, the Committee requests the Government to take the necessary measures to amend this section so as to ensure that the transmission of funds to a higher-level worker's organization is a matter wholly for determination by the organizations themselves and without any legislative or other intervention on the part of the Government.***

The Committee will address the new Labour Organizations Law in more detail at its next meeting when it expects further information to be provided by the Government in its report due on the manner in which the Law is implemented in practice and on the adoption of any relevant regulations or instructions.

The Committee further recalls its previous comments in relation to the broad exclusionary clause of article 354 of the Constitution which subjects the exercise of freedom of association rights “to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality”. ***The Committee expresses the firm expectation that with the entering into force of the Labour Organizations Law the Government will take all necessary steps to ensure that this article is not used to permit restrictions on the rights consecrated in the Convention and requests the Government to provide all relevant information on the practical application of the Labour Organizations Law.***

Finally, the Committee recalls its previous comments with respect to the following legal texts: (i) Order No. 6/88 of 30 September 1988 which provides that “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); (ii) Order No. 2/88 which 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; (iii) the Unlawful Association Act of 1908 which 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); and (iv) the 1929 Trade Disputes Act which contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

In its previous comment, the Committee had noted the Government's indication that the Hluttaw would take the necessary measures, after the 2010 elections, to repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act, as well as Declaration No. 1/2006. The Committee observes, however, that, in its latest report, while recalling that these matters are being discussed in the Hluttaw, the Government states that the Orders are important in ensuring law and order and community peace and tranquillity and that the Unlawful Association Act is necessary in protecting against illegal armed forces. The Committee recalls in this regard the serious concerns that it has raised for many years in respect of these texts and their use to imprison workers for their relations with trade unions as observed in complaints before the Committee on Freedom of Association (see Case No. 2591, 349th Report). **Further noting the Government's indication before the November 2011 Governing Body that these texts will be repealed once the Bill on Peaceful Assembly and Procession which is before the Parliament is promulgated, the Committee urges the Government to take without delay the necessary measures for the repeal of Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they may no longer be applied in a manner that would infringe upon the rights of workers' and employers' organizations, and to provide a copy of the Law on Peaceful Assembly and Procession as soon as it is adopted.**

*Civil liberties.* As in its previous observations, the Committee once again notes the shared concern of the Conference Committee concerning the continued imprisonment of many people due to their exercise of freedom of expression and of association, despite repeated calls for their release. The Committee recalls in this regard the Conference Committee's urgent call to the Government to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations and to ensure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee **deeply regrets** that the Government only reiterates the information provided in its previous reports that these persons were not workers and states that these persons continue to serve their prison sentence.

The Committee welcomes however the latest information provided by the Government that Myo Aung Thant has been released after serving 13 years in prison for having maintained contacts with the Federation of Trade Unions of Burma (FTUB). The Committee further notes the information provided by the Government that Tin Hla has been provided medical treatment for tuberculosis in Insein Central Prison and is in good health.

The Committee, however, notes with **regret** that the Government has not provided the information requested in its previous observation in relation to the other persons alleged to be serving sentences for their exercise of freedom of association (Khin Maung Cho (aka Pho Toke), Nyo Win, Kan Myint, Thein Win, Tin Oo, Kyi Thein, Chaw Su Hlaing, U Aung Thein, Khin Maung Win, Ma Khin Mar Soe, Ma Thein Thein Aye, U Aung Moe, and Naw Bey Bey).

The Committee recalls that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, the Committee recalls that while trade unions are expected under *Article 8* of the Convention to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention", the authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

**The Committee urges the Government to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of their basic civil liberties and freedom of association rights and to provide detailed information on the steps taken in this regard in its next report and on the whereabouts and health status of all the abovementioned detained workers.**

*Extension of ILO mandate.* The Committee notes that the Conference Committee has once again suggested that the Government accept an extension of ILO presence to cover the matters relating to the Convention. The Committee notes with **regret** the Government's indication in its latest report that an extension of the ILO presence to cover the matters related to the Convention was still not required given that the Labour Organizations Law has been approved and the formation of workers' organizations will proceed from that. The Committee considers however that it is precisely within this new configuration that the Government will be in most need of assistance to effectively ensure that all parties understand the new framework of rights and responsibilities and implement it in the true spirit of the Convention. **The Committee therefore once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests it to provide information on any developments in this respect.**

**The Committee requests the Government to furnish a detailed report on all concrete measures taken, with the full and genuine participation of workers and employers from all sectors of society regardless of their political views, to**

*implement the Labour Organizations Law and enact any additional measures necessary so that all workers and employers may fully and effectively exercise their rights under the Convention without interference from the public authorities.*

*[The Government is asked to report in detail in 2012.]*

## Netherlands

### Aruba

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

*Article 3 of the Convention.* In its previous comments, the Committee had asked the Government to amend or repeal section 374(a)–(c) of the Penal Code and section 82 of Ordinance No. 159 of 1964, which prohibited the right to strike by public employees under threat of imprisonment.

The Committee had noted that, in the Government's opinion, the abovementioned provisions are in conformity with the Convention, as they do not prohibit public employees from striking. According to the Government, section 374(a) of the Penal Code refers to imprisonment or fine of a public official in the case when he or she, while performing his or her duties, acts with the aim to cause stagnation or to permit the continuation of stagnation, neglects or refuses to perform labour corresponding to his or her inherent duties as a public official. The Government further indicated that section 82(2) of Ordinance No. 159, which states that punishment may be exacted on public employees who neglect or refuse to perform labour as any good public official is expected to perform is aimed at an individual's refusal to perform his or her duties, and not at collective or individual strikes. The Government further indicated that the Penal Code will not be affected by a revision of the labour legislation as the Penal Code falls under the competency of the Ministry of Justice. However, the Code is currently under evaluation by a special committee established in March 2003. It is estimated that its work will be completed in approximately two years. After the evaluation period, the work on the suggested amendments will commence.

The Committee recalled that, in its 1992 report, the Government acknowledged that strikes by public employees, including teachers in the public sector, were forbidden by law (section 347(a)–(c) of the Penal Code and section 82 of Ordinance No. 159 of 1964), although in practice public employees had resorted to strikes on several occasions and that the local courts had considered such strikes to be legal on condition that they were justified. The Committee recalled that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services would become meaningless if legislation defined the public services or essential services too broadly. The Committee considers that the prohibition should be limited to public servants exercising authority in the name of the State or to services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. *Noting that the Government does not provide any information on this issue in its report, the Committee, recalling that in its previous observation, it had noted that the Penal Code was currently under evaluation, once again hopes that the Code, as well as section 82 of Ordinance No. 159, will be reviewed in accordance with the Committee's comments and asks the Government to indicate any progress in this respect. The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.*

## Nicaragua

#### **Workers' Representatives Convention, 1971 (No. 135) (ratification: 1981)**

The Committee notes the comments of 30 August 2011 from the Confederation Trade Union Unification (CUS) of Nicaragua, referring to the dismissal of 1,664 trade union officials in breach of trade union immunity, the elimination of 128 trade union organizations in various government ministries and a prohibition barring some trade union officials from entering public institutions in order to carry on their activities. *The Committee requests the Government to send it observations on these matters in its next report.*

## Niger

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

*Articles 1, 2, 4 and 6 of the Convention. Scope of application. Public servants.* The Committee notes that magistrates, lecturers and researchers in universities and similar institutions, staff of administrations, services and public establishments of the State that are industrial or commercial in nature, staff of the customs, water and forestry services, and staff of the National Academy of Administration and Magistracy, territorial communities and the parliamentary administration are excluded from the scope of Act No. 2007-26 of 23 July 2007 issuing the General Public Service Regulations (section 41), as amended by Act No. 2008-47 of 24 November 2008. *The Committee requests the*

**Government to indicate the legislative provisions which guarantee the application of the provisions of the Convention to these categories of public servants.**

*Articles 2 and 3. Protection against acts of anti-union discrimination and acts of interference against public servants.* The Committee notes that section 14 of the General Public Service Regulations provides that public service employees enjoy the rights and freedoms recognized by the Constitution and that they may establish and join professional trade unions and hold office therein under the conditions laid down by the regulations in force. The Committee notes that neither the General Public Service Regulations nor Decree No. 2008-244/PRN/MFP/T of 31 July 2008, implementing Act No. 2007-26 of 23 July 2007 issuing the General Public Service Regulations, contains any provisions which explicitly prohibit acts of anti-union discrimination or interference or which ensure adequate protection for workers' organizations against acts of anti-union discrimination or interference by means of prompt and effective penalties and procedures. **The Committee requests the Government to indicate whether any regulations are in force which ensure such protection for public servants.**

*Article 6. Collective bargaining right for public servants.* The Committee notes that section 33 of the General Public Service Regulations provides for the existence of a public service advisory council which has competence for examining all general issues relating to the public service. The Committee further notes that, under section 329 of Decree No. 2008-244/PRN/MFP/T of 31 July 2008 implementing the Act issuing the General Public Service Regulations, pending the appointment of the most representative professional organizations of established and contractual public servants, the staff representatives within the public service advisory council, the boards for the promotion and establishment of officials and the disciplinary council are appointed by the minister responsible for the public service in accordance with the relevant provisions relating to branch, category and/or grade. The Committee considers that the determination of the most representative organizations for the purposes of consultation must be undertaken according to precise and objective criteria pre-established in the legislation since such an appraisal should not be left to the discretion of governments so as to avoid any possibility of bias or abuse. **The Committee requests the Government to take the necessary measures as soon as possible, by legislative or other means, to ensure that the determination of the representativeness of public service trade unions for consultation purposes is undertaken according to criteria which are in conformity with the principles of freedom of association.**

However, the Committee recalls that all public servants not engaged in the administration of the State should not only be consulted in the context of joint committees but also enjoy the right to collective bargaining with respect to their conditions of employment. **The Committee requests the Government to take steps to guarantee the right to collective bargaining to these public servants and to provide information on any measures taken towards this end.**

## Nigeria

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

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention, referring in particular to violence against and arrest of union members in the oil and health sectors, as well as police repression of workers participating in meetings and dismissals of strikers. The Committee recalls that the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association. **The Committee requests the Government to provide its observations in this respect, as well as on the 2008 and 2009 ITUC comments.**

The Committee further notes the Government's reply to the 2010 comments made by the ITUC, in particular that eight suspects were arrested in connection with the assassination of the Lagos Zonal Chairman of the National Union of Road Transport Workers, that the Government concludes from the police report that the assassination has been carried out as a result of internal squabbles within the trade union leadership and that update on the case will be provided as soon as possible. **The Committee requests the Government to provide the updated information referred to as well as detailed information on the results of the investigations being carried out with respect to the serious allegations of violence against trade unionists and on the results of any judicial proceedings in this regard, and, in case of conviction, to ensure that any sentence imposed on the perpetrators is implemented.**

The Committee notes the debate which took place within the Conference Committee in June 2011, in particular the request for ILO technical assistance made by the Government representative, and expresses the hope that such assistance will occur in the near future so as to enable the Government to take appropriate measures, in full consultation with the social partners, for the rapid adoption of the necessary legislation to bring the law and practice – including as regards export processing zones (EPZs) – into conformity with the Convention. The Committee notes with *regret* that the Government has failed to provide the information requested by the Conference Committee on the steps taken in this regard and the legislation adopted.

*Article 2 of the Convention. Legislatively imposed trade union monopoly.* In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee notes that the Government states in its report that the Trade Union (Amendment) Act 2005 has addressed this concern by, inter alia, stating in section 2 that "... membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member", and that union membership is therefore voluntary including in national practice backed by jurisprudence. Observing that section 3(2) of the Trade Union Act has not been amended by the language of the 2005 Trade Union (Amendment) Act, the Committee considers that the maintenance of the restriction in section 3(2) contradicts the voluntary union membership stipulated in section 12(4) of that Act. The Committee reiterates that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45), and that it is important for workers to be able to establish a new trade union for reasons of independence, effectiveness or ideological choice. ***It therefore once again requests the Government to amend section 3(2) of the principal Trade Union Act taking into account the aforementioned principles.***

*Organizing in export processing zones (EPZs).* In its previous comments, the Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity is still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the EPZs. The Committee had also noted the ITUC's comments, according to which section 13(1) of the EPZ Authority Decree 1992 makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZs. The Committee notes the Government's indication that: (i) the Export Processing Zone Act does not preclude unionization and all workers in the EPZs are free to join trade unions and to bargain collectively; (ii) the Government has been in discussion with the EPZs on the issue of accessibility of EPZs to trade union leadership, inter alia at the Oil and Gas Sector Stakeholders Forum held in March 2010 where the EPZs affirmed the intention not to impede trade unionism in the EPZs; and (iii) the Government's desire to eventually nullify the negative impression of an unprotected workforce in the EPZs is captured in Part 111 of the Guidelines on Labour Administration Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector recently published by the Federal Ministry of Labour and Productivity. In this regard, the Committee notes with *interest* the Government representative's statement before the Conference Committee that the recently issued Ministerial Guidelines seeks to prevent anti-union discrimination against any worker in the EPZs and will remain in force until the Export Processing Zone Law is amended. ***Taking due note of the efforts made and the commitment of the Government to tackle the issue, the Committee requests the Government to transmit a copy of the abovementioned Ministerial Guidelines and to continue taking the necessary steps, including by amending relevant EPZ legislation, to ensure in the near future that EPZ workers enjoy the right to establish and join organizations of their own choosing, as provided by the Convention. It further requests the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations are granted reasonable access to EPZs.***

*Organizing in various government departments and services.* In its previous comments, the Committee requested the Government to amend section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee noted that this section was not amended by the Trade Union (Amendment) Act. The Committee had noted that according to the Government's statement, the Collective Labour Relations Bill, pending before the lower chamber of Parliament would address this issue. The Committee notes that, according to the Government's Report, section 11 is retained in the interest of the nation, but there currently exist Joint Consultative Committees functioning in similar and correlative capacities as trade unions, and, in a further effort to address the issue, the Collective Labour Relations Bill which is in its final stage of being passed into law would concisely proffer local remedy for the concern. The Committee cannot but *regret* the Government's intention to retain section 11 of the Trade Union Act "in the interest of the nation". The Committee once again recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments of the armed forces. Furthermore, the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey, op. cit., paragraphs 55 and 56). ***The Committee therefore urges the Government to reconsider its position and take the necessary measures to amend section 11 of the Trade Union Act, so as to ensure conformity with the Convention. The Committee also requests the Government to send a copy of the Collective Labour Relations Act, once it is adopted.***

*Minimum membership requirement.* The Committee had previously expressed its concern over section 3(1) of the Trade Union Act requiring 50 workers to establish a trade union. The Committee considered that even though this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises. The Committee notes the Government's indication that section 3(1)(a) applies to the registration of national unions, and that at the enterprise level, there is no limit to the number of people to establish a trade union. ***Taking note of this information, the Committee requests the***

**Government, for the purpose of clarification, to take measures to amend section 3(1) to ensure that this requirement does not apply to the establishment of trade unions at the enterprise level.**

*Article 3. Right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. Export processing zones (EPZs).* The Committee recalls that it had previously requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to freely organize their administration and activities and to formulate their programmes without interference by the public authorities, including through the exercise of industrial action. The Committee notes that the Government confines itself to restating its earlier position that the EPZ authority is not opposed to trade union activities and that the Federal Ministry of Labour and Productivity is still in discussion on this issue. ***The Committee is therefore bound to reiterate its previous request and expects that the necessary measures will be taken without delay so as to ensure that workers in EPZs enjoy the rights under the Convention.***

*Administration of organizations.* The Committee recalls that, in its previous comments, it had requested the Government to amend sections 39 and 40 of the Trade Union Act in order to limit the broad powers of the registrar to supervise the union accounts at any time and to ensure that such a power was limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. The Committee notes the Government's statement that the provisions of the new labour legislation on this issue will be made available when passed into law. ***The Committee expresses the firm hope that the Collective Labour Relations Act will fully take into account its comments and will be adopted without delay.***

*Right to strike. Compulsory arbitration.* The Committee had noted that section 30, as amended by subsection (6)(d) of the Trade Union (Amendment) Act, continues to rely on the Trade Disputes Act to restrict strike action through the imposition of a compulsory arbitration procedure leading to a final award. Furthermore, the Committee noted the ITUC comments, according to which section 4(e) of the EPZ Authority Decree 1992 impedes trade unions from handling the resolution of disputes between employers and employees by granting this responsibility to the authorities managing these zones. The Committee notes that, according to the Government's report: (i) the right to strike is not inhibited as arbitration is only one of the steps in the dispute resolution machinery; (ii) the award by the Industrial Arbitration Panel is not absolute but can be appealed according to the law by any party to the dispute and thus subjected to further adjudication by referral to the National Industrial Court; and (iii) that there is currently a widespread national interest in alternative dispute resolution. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). The Committee points out that compulsory arbitration leading to a binding award amounts, even if the award is appealable, to a prohibition to exercise the right to strike, which seriously limits the means available to trade unions to further and defend the interests of their members. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 7 of Decree No. 7 of 1976, amending the Trade Disputes Act in order to limit the possibility of imposing compulsory arbitration to only essential services in the strict sense of the term, public servants exercising authority in the name of the State or in the case of acute national or local crisis. Also, the Committee requests the Government to amend section 4(e) of the EPZ Authority Decree 1992 in order to guarantee the autonomy of the bargaining partners without giving the right to the authorities to impose compulsory arbitration.***

*Majority required to declare a strike.* The Committee had noted that section 6 of the Trade Union (Amendment) Act amends section 30 of the principal Act by inserting subsection (6)(e), which requires the observance of a simple majority of all registered trade union members for the calling of a strike. The Committee notes that the Government indicates that section 30(6)(e) is an effort to ensure the democratization of trade union activities. The Committee considers that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (see General Survey, op. cit., paragraph 170). ***It therefore requests the Government to take the necessary measures to amend the new section 30(6)(e) accordingly, so as to bring it into conformity with the Convention.***

*Restrictions relating to essential services.* The Committee had noted with concern that section 6 of the Trade Union (Amendment) Act relies on the definition of "essential services" provided for in the Trade Disputes Act (1990) to restrict participation in a strike. Specifically, the Trade Disputes Act defines "essential services" in an overly broad manner so as to include, among others, services for or in connection with: the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, the postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Committee notes the Government's statement that it has taken note of the Committee's comment especially concerning the need to establish minimum services in such services considered as providing public utilities in the event of industrial action. The Committee recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). ***It once again requests the Government to take the necessary measures in the near future to amend the Trade Disputes Act's definition of "essential services", without prejudice to the possibility of establishing a system of minimum service in services which are of public utility.***

*Restrictions relating to the objectives of a strike.* The Committee had noted with concern section 30 of the Trade Union Act as amended by section 6(d) of the Trade Union (Amendment) Act, limiting legal strikes to disputes constituting a “dispute of rights”, defined as “a labour dispute arising from the negotiation, application, interpretation of a contract of employment or collective agreement under the Act or any other enactment or law governing matters relating to terms and conditions of employment”, as well as to a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer. The Committee notes the Government’s indication that although a distinction is made between a dispute of right and a dispute of interest in national practice, trade unions have been known to embark on industrial actions on issues considered as dispute of interests without Government taking any action against them. The Committee considers that the practice described by the Government conflicts with the legislation, which excludes any possibility of a legitimate strike action to secure collective bargaining agreements or to protest against the Government’s social and economic policy affecting workers’ interests. The Committee recalls that organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and the standard of living (see General Survey, op. cit., paragraph 165). **Therefore, the Committee requests the Government to take the necessary measures to align section 6(d) of the Trade Union (Amendment) Act with national practice, so as to ensure that workers enjoy the full right to strike and, in particular, that workers’ organizations may have recourse to protest strikes aimed at securing collective bargaining agreements or criticizing the Government’s economic and social policies without sanctions.**

*Other restrictions.* The Committee had noted that section 42(1)(B) of the Trade Union Act, as amended, requires that “no trade union or registered federation of trade unions or any member thereof shall in the course of any action compel any person who is not a member of its union to join and strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike”. The Committee observed that this section appears to provide for two prohibitions: firstly, with regard to compelling non-union members to participate in a strike action and, secondly, the prohibition to obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike. The Committee notes from the Government’s report that the Government has nothing against peaceful picketing which is lawful under section 42 of the Trade Union Act but cannot accept attempts to coerce non-willing workers and the general public because of the possible negative implications of such acts (e.g. breakdown of law and order). The Committee takes note of the information supplied concerning the first prohibition. The Committee considers however, with regard to the second prohibition, that the broad wording of this section could potentially outlaw any gathering or strike picket. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitation on the means of action open to trade union organizations. In addition, given that aircraft-related services, with the exception of air traffic controllers, are not in themselves considered to be essential services in the strict sense of the term, a strike of workers in that sector or related services should not be the subject of an overall ban, as could be implied from the wording of this section. **The Committee therefore requests the Government to take the necessary measures to amend section 42(1)(B) so as to bring it into conformity with the Convention and the above principles, so as to ensure that any restrictions placed on strike actions aimed at guaranteeing the maintenance of public order are not such as to render any such action relatively impossible or ban it for certain workers beyond those in essential services in the strict sense of the term.**

*Sanctions against strikes.* The Committee had noted that section 30 of the Trade Union Act, as amended by section 6(d) of the Trade Union (Amendment) Act 2005, makes strikers liable to the possibility of both paying a fine and being imprisoned up to six months, which might lead to a penalty which is disproportionate to the seriousness of the violation. The Committee notes the Government’s indication that the sanctions imposed by section 6(d) are not targeted at the strike action or any other form of industrial action per se; that the section was enacted to ensure that due processes are followed before a strike is declared and to provide for opportunities and time for the exhaustion of other optional trade dispute resolution machinery before calling a strike; and that in practice, the Government has often safeguarded the interest of the workers after industrial actions by incorporating in the terms of settlement that no workers shall be victimized for any reason connected with acts or omissions committed during the course of industrial action. While taking note of the information supplied by the Government concerning the intention of the provision and normal practice, the Committee considers that, under section 6(d), participants in a peaceful but illegal strike could still be sentenced to a prison term. In this regard, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.**

*Article 4. Dissolution by administrative authority.* In its previous comments, the Committee had requested the Government to amend section 7(9) of the Trade Union Act by repealing the broad authority of the Minister to cancel the registration of workers’ and employers’ organizations, as the possibility of administrative dissolution under this provision

involved a serious risk of interference by the public authority in the very existence of organizations. The Committee notes that the Government confines itself to reiterating its earlier position that the issue has been addressed by the Collective Labour Relations Bill which is currently before the National Assembly. ***The Committee expresses the firm hope that the Collective Labour Relations Act will be enacted without further delay and adequately address the issue.***

*Articles 5 and 6. Right of organizations to establish federations and confederations and to affiliate with international organizations.* The Committee had noted that section 8(a)(1)(b) and (g) of the Trade Unions (Amendment) Act 2005 requires federations to consist of 12 or more trade unions in order to be registered and had requested practical information. The Committee notes from the Government's report that there are currently, two national-level federations of trade unions, namely the Trade Union Congress and the Nigeria Labour Congress (NLC) with certificates issued by the Government accordingly. ***The Committee requests the Government to provide information on the practical application of the provisions of Articles 2, 3 and 4 of the Convention to federations and confederations of employers' and workers' organizations.***

***Noting the Government representative's statement before the Conference Committee that five Labour Bills had been drafted with the technical assistance of the ILO, the Committee expresses the firm hope that appropriate measures will be taken to ensure that the necessary amendments to the laws referred to above are adopted in the very near future in order to bring them into full conformity with the Convention. It requests the Government to indicate the measures taken or envisaged in this respect.***

***Lastly, the Committee requests the Government to accept an ILO mission in order to tackle the pending issues. In the meantime, the Committee urges the Government to conduct an independent investigation into the allegations made by the ITUC in the previous years and to provide information on its outcome.***

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention, referring in particular to specific acts of anti-union discrimination, in particular dismissals, in the oil sector and in the education services and of anti-union interference on the part of Government authorities in the health and education sectors. ***The Committee requests the Government to provide its observations thereon, as well as on the comments submitted by the ITUC in 2010 which referred to anti-union practices in the oil sector and in financial institutions, including non-union contract clauses.***

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

The Committee noted the comments on the application of the Convention made by the ITUC in a communication dated 26 August 2009. The ITUC states that in the private sector collective bargaining rights are restricted by the requirement of government approval: collective agreements on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Councils Act. The ITUC also refers to acts of anti-union discrimination, including threats of dismissal made to trade unionists in several companies in the banking sector. ***The Committee requests the Government to provide its observations respecting these matters.***

The Committee noted the comments submitted by the ITUC in a communication dated 29 August 2008, concerning refusals to negotiate with trade unions, acts of interference by employers, anti-union practices against workers' representatives, including dismissals. ***The Committee requests the Government to submit its observations thereon and to reply to the matters raised by the Committee's previous comment.***

*Bill on collective labour relations.* The Committee noted the Government's statement, according to which the National Assembly has not yet passed the bill on collective labour relations. The Committee recalls that ILO technical assistance has been provided to the authorities and hopes that the future legislation will be in full conformity with the requirements of the Convention. ***The Committee requests the Government to send the new law once adopted.***

*Comments made by the Organization of African Trade Union Unity (OATUU) and the International Confederation of Free Trade Unions (ICFTU) (now ITUC) on the application of the Convention.* The Committee notes the comments, which concerned in particular the fact that: (1) certain categories of workers are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the prison service and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer; (3) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts according to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (4) section 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (5) section 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the export processing zones (EPZs). ***The Committee requests the Government to send its reply on these comments.***

Concerning the abovementioned point (1), the Committee observed that the Committee on Freedom of Association had underlined that the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of Article 9 of Convention No. 87 (see 343rd Report of the Committee on Freedom of Association, paragraph 1027). ***The Committee requests the Government to amend section 11 of the Trade Union Act (1973) so that these categories of workers are granted the right to organize and to bargain collectively, as well as for all public employees not engaged in the administration of the State.***

***The Committee underlines the seriousness of the matters previously raised.***

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

*The Committee requests the Government to accept an ILO mission in order to tackle the pending issues. In the meantime, the Committee urges the Government to conduct an independent investigation into the allegations made by the ITUC in the previous years and to provide information on its outcome.*

## Pakistan

### **Right of Association (Agriculture) Convention, 1921 (No. 11)** (ratification: 1923)

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

The Committee notes the comments made by the Pakistan Workers' Federation (PWF) in a communication dated 30 July 2010, reporting that agricultural workers have no right to freedom of association.

In its previous observations, the Committee observed that small agricultural holdings which do not run an establishment, or farmers working on their own or with their family, appeared to be excluded from the Industrial Relations Ordinance (IRO) 2002 and therefore from the provisions on freedom of association. The Committee noted that the 2008 Industrial Relations Act (IRA), which amended the 2002 IRO, was an interim law due to lapse on 30 April 2010. The Committee also noted that a tripartite conference had to be held to draft a new legislation in consultation with all stakeholders.

The Committee had noted that the Government indicated that the 2002 IRO did not expressly exclude agricultural undertakings from its application and that there are no restrictions whatsoever on the workers employed in agriculture to form a trade union and that although no trade union of agricultural workers was registered, there were numerous agricultural workers' associations in place to safeguard their interests. The Committee also had noted that the Government enacted the 18th Constitutional Amendment, which transferred responsibility for labour issues from the federal to the provincial governments. The Committee further noted that on 18 June 2010, the High Court of Sindh (Karachi), referring to the 18th Constitutional Amendment, confirmed that the 2008 IRA stood repealed and concluded that the 1969 IRO was now once again in force. The Committee recalls in this respect that it had previously noted that while agriculture was not expressly excluded from the IRO 1969, it was not expressly included and that the definitions given in the IRO could be interpreted as excluding small agricultural workers like self-employed farmers, sharecroppers, tenants and smallholders, from its application. *The Committee expresses the firm hope that new legislation will be adopted in the very near future in full consultation with the social partners concerned. The Committee further hopes that any adopted legislation will be in full conformity with the Convention. It requests the Government to provide a copy of the relevant legislative texts once they have been adopted.*

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

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

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

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2011. It notes, in particular, that the Conference Committee requested the Government to provide to the Committee of Experts, for its examination this year, detailed information on the progress made in bringing the national legislation and practice into full conformity with freedom of association principles as well as all provincial laws relevant to the application of the Convention. The Committee notes with *regret* that the Government's report has not been received.

#### **Comments of trade union organizations.**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) on 4 August 2011 alleging acts of violence (attacks, kidnapping, torture, killings) against trade unionists. The Committee recalls that in its previous comments, it had noted the 2010 comments submitted by the All Pakistan Federation of United Trade Unions (APFUTU) regarding the difficulties in registering trade unions for the industries established in the City of Sialkot, as well as the comments submitted by the ITUC alleging acts of violence against protesters, night-time raids, arrests and harassment of trade union leaders and members, as well as other violations of the Convention. The Committee noted in particular the ITUC's comments concerning the requirement that any gathering of more than four people be subject to police authorization and its impact on trade union activities, as well as the denial of the right to strike to workers in export processing zones (EPZs) and the possibility to impose penalties of imprisonment against illegal strikes, go-slows and picketing activities. The Committee *regrets* that the Government provided no observations thereon. It therefore once again recalls that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations, and that workers have the right to participate in peaceful demonstrations to defend their occupational interests. *The Committee urges the Government to conduct an independent investigation into all of the abovementioned serious allegations of violence against trade unionists and to report on the outcome and the measure taken to punish those found responsible.*

The Committee notes the comments submitted by the Pakistan Workers Confederation (PWC) in a communication dated 21 November 2011 referring to the legislative issues raised by the Committee below.

### Legislative issues

The Committee recalls that in its previous observation, it had noted that the Industrial Relations Act (IRA), 2008 (which was an interim legislation) had lapsed and that the Government had enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions were devolved to the provinces. In this respect, the Committee expressed the hope that any new legislation, whether at the provincial or national levels would be adopted in full consultation with the social partners concerned and that such instruments would be in full conformity with the Convention.

The Committee notes the November 2011 conclusions of the Committee on Freedom of Association (CFA) in Case No. 2799 (362nd Report) where the latter noted that a new Industrial Relations Ordinance (IRO) was promulgated by the President of Pakistan in July 2011 following tripartite consultations. The CFA also noted the Government's indication that on 12 October 2011, the IRO was introduced to the National Assembly in order to make it into an Act of Parliament.

The Committee notes that the IRO, 2011, regulates industrial relations and registration of trade unions and federation of trade unions in the Islamabad Capital Territory and in the establishments which cover more than one province (section 1(2) and (3)). It notes with *regret* that most of its previous comments on the IRA, 2008, have not been addressed by the promulgation of the IRO, 2011.

*Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations.* The Committee notes that the IRO excludes the following categories of workers from its scope of application:

- workers employed in services or installations exclusively connected with, or incidental to the armed forces of Pakistan, including the Factory Ordinance maintained by the federal Government (section 1(3)(a));
- workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)) ;
- members of the security staff of Pakistan International Airlines Corporation (PIAC) or drawing wages in pay group not lower than Group V in the PIAC establishment (section 1(3)(c));
- workers employed by the Pakistan Security Printing Corporation or the Security Papers Limited (section 1(3)(d));
- workers employed by an establishment or institution for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis (section 1(3)(e));
- agricultural workers (section 1(3) read together with section 2(x) and (xvii));
- workers of charitable organizations (section 1(3) read together with section 2(x) and (xvii)).

The Committee recalls that by virtue of *Article 2* of the Convention, workers, without distinction whatsoever shall have the right to establish and join organizations of their own choosing. ***The Committee requests the Government to take the necessary measures in order to ensure that the legislation guarantees the abovementioned categories of employees the right to establish and join organizations of their own choosing to further and defend their social, economic and occupational interests.***

*Managerial employees.* The Committee also notes that, pursuant to section 31(2) of the IRO, an employer may require that a person, upon his or her appointment or promotion to a managerial position, shall cease to be and shall be disqualified from being a member or an officer of a trade union. The Committee considers that such restriction is compatible with freedom of association provided that two conditions are met: first, that the persons concerned have the right to establish their own organizations to defend their interests; and second, that the category of managerial staff is not so broadly defined as to weaken the organization of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership. ***The Committee requests the Government to take the necessary measures to ensure that the abovementioned provision is not applied in practice in a manner contrary to the principle above.***

*Rights of workers and employers to establish and join organizations of their own choosing.* The Committee notes that section 8(2)(a) of the IRO provides that only trade unions of workers engaged or employed in the same industry may be registered. The Committee recalls that such restrictions may be applied to first-level organizations, on condition that these organizations are free to establish inter-professional organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 84). ***The Committee requests the Government to take the necessary measures to ensure that trade unions affiliating workers of different professions and/or enterprises could establish inter-professional organizations of workers and affiliate with federations and confederation of their own choosing.***

The Committee further notes that section 62(3) of the IRO provides that after the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such a unit. The Committee considers that while a provision requiring certification of a collective bargaining agent for a corresponding bargaining unit is not contrary to the Convention, workers' right to establish and join trade union organizations of their own choosing implies the possibility to create – if the workers so choose – more than one organization per bargaining unit.

***The Committee therefore requests the Government to take the necessary measures to amend this provision so as to bring it into conformity with the Convention.***

The Committee notes that pursuant to section 8(2)(b) of the IRO, no other trade union is entitled to registration if there are already two or more registered trade unions in the establishment, group of establishments or industry with which that trade union is connected, unless it has, as members, not less than 20 per cent of the workers employed in that establishment, group of establishments or industry. ***Considering that this minimum membership requirement is too high, the Committee requests the Government to ensure that it is reduced to a reasonable level and that no distinction as to the minimum membership requirement is made between the first two or more registered trade unions and the newly created unions.***

The Committee notes that under the new IRO, the right to represent workers in any proceedings, the right to check-off facilities and the right to call a strike are granted only to collective bargaining agents, i.e. the most representative trade unions (sections 20(b) and (c), 22, 33, 35 and 65(1)). The Committee considers that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the granting of privileges extending beyond that of priority in representation for such purposes as collective bargaining or consultation by the Government or for the purpose of nominating delegations to international bodies. In other words, this distinction should not have the effect of unduly influencing the choice of organization by workers and of depriving those trade unions that are not recognized as being among the most representative of the essential means for defending the occupational interests of their members. ***The Committee therefore requests the Government to take the necessary measures to amend the IRO so as to ensure that the abovementioned rights are extended to all trade unions.***

***Article 3. Right to elect representatives freely.*** The Committee notes that the IRO contains several sections concerning disqualification from holding a trade union office. First, under section 18, a person who has been convicted and sentenced to imprisonment for two years or more for an offence involving moral turpitude under the Pakistan Penal Code shall be disqualified from being elected as, or from being an officer of a trade union, unless a period of five years has elapsed after the completion of the sentence. The Committee recalls in this respect that conviction for an act, the nature of which is not such as to be prejudicial to the performance of trade union duties, should not constitute grounds for disqualification from trade union office (see General Survey, op. cit., paragraph 120). Second, under section 44(10), the National Industrial Relations Commission ("Commission") has the power to disqualify a trade union office bearer from holding any trade union office for the unexpired term of his or her office and for the term immediately following, for violation of its order to stop a strike (this point is further discussed below). Third, the same sanction is also provided for in section 67(5) of the IRO for committing an unfair labour practice under section 32(1)(a)–(c) and (e). The Committee notes that section 32 lists a wide range of actions, which include acts by a worker to persuade other workers to join or refrain from joining a trade union during working hours; induce any person to refrain from becoming members or officers of a trade union by conferring or offering to confer any advantage for such persons; commence, continue, instigate or incite others to take part in, or expend or supply money to, or otherwise act in furtherance or support of, an illegal strike or a work slowdown, etc. The Committee recalls that legislation which establishes excessively broad ineligibility criteria by means of a long list, including acts which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention (see General Survey, op. cit., paragraph 120). ***In light of the above, the Committee requests the Government to take the necessary measures to amend the IRO so as to bring it into accordance with the principles above.***

In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting, as candidates, persons who have been previously employed in the banking company. The Committee had noted the Government's statement that a bill to repeal section 27-B of the Banking Companies Ordinance of 1962 had been submitted to the Senate. The Committee notes the Government's statement to the Conference Committee that the Federal Cabinet at its meeting held on 1 May 2010 approved the repeal of this provision and that the final legislation is under preparation. ***The Committee once again expresses the firm hope that the relevant amendment will be adopted in the near future and requests the Government to transmit a copy thereof.***

***Right of workers' organizations to organize their administration and to formulate their programmes.*** The Committee notes that section 8 of the IRO regulates in detail the internal functioning of trade unions. Specifically, its subsection 1(j) provides that the constitution of a union should provide for a term for which a trade union officer may be elected and specifies that it should not exceed two years; and subsection 1(l) provides for the frequency of meetings of a union's executive and general body. The Committee further notes that under section 48(2) of the IRO, the Commission has a power to order a person who has been expelled from a trade union to be restored to its membership or to order that he or she be paid out of the union funds such sum by way of compensation or damages as the Commission thinks just. The Committee considers that all of these matters should be left for an organization to decide and regulate. ***It therefore requests the Government to take the necessary measures in order to amend the IRO in this respect.***

The Committee notes that section 5(d) of the IRO confers on the Registrar the power to inspect the accounts and records of a registered trade union, or investigate or hold such inquiry into the affairs of a trade union as he or she deems

fit. The Committee considers that problems of compatibility with the Convention arise when the administrative authority has the power to audit the trade union's accounts, to inspect such accounts and records and demand information at any time (see General Survey, op. cit., paragraph 126). ***The Committee requests the Government to take the necessary measures in order to ensure that the supervision of internal administration of organizations is limited to the obligation of submitting annual financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law, which itself should not infringe the principles of freedom of association.***

The Committee notes that section 65(2) and (3) of the IRO provides that "no party to an industrial dispute should be entitled to be represented by a legal practitioner in any conciliation proceedings under this Ordinance" and that representation is possible in the proceedings before the Commission, or arbitrator, only with the permission of the Commission or the arbitrator, as the case may be. The Committee considers that legislation which prevents workers' and/or employers' organizations from using the services of experts such as lawyers and agents to represent them in administrative or judicial proceedings is not in conformity with *Article 3* of the Convention. ***It therefore requests the Government to take the necessary measures to amend the IRO so as to ensure that workers and employers' organizations are allowed to be represented by lawyers in administrative or judicial proceedings should they so desire.***

***Right to strike. Types of strike action.*** The Committee notes that under section 32(1)(e) of the IRO, a go-slow appears to be an unfair labour practice. The Committee is of the opinion that restrictions as to the forms of strike action (including go-slow) can only be justified if the action ceases to be peaceful (see General Survey, op. cit., paragraph 173). ***The Committee therefore requests the Government to take the necessary measures in order to amend the IRO so as to ensure that a peaceful work slowdown is not considered to be a prohibited unfair labour practice.***

***Prohibition of strikes.*** The Committee notes that section 42(3) of the IRO provides that, where a strike lasts for more than 30 days, the Government may, by an order, prohibit such a strike, provided that a strike can also be prohibited at any time before the expiry of 30 days if it "is satisfied that the continuance of such a strike is causing serious hardship to the community or is prejudicial to the national interests". The Committee further notes that under section 45 of the IRO, the Government can prohibit a strike related to an industrial dispute of national importance (subsection (1)(a)), or in respect of any public utility services (subsection (1)(b)), at any time before or after its commencement. A strike carried out in contravention of an order made under this section, as well as section 42 noted above, is deemed illegal by virtue of section 43(1)(c). The Committee notes that Schedule I, setting out the list of public utility services includes services such as oil production, postal services, railways and airways. The Committee recalls that the prohibition of strikes can only be justified: (1) in the public services only for public servants exercising authority in the name of the State; (2) in the event of an acute national or local emergency; or (3) in the essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee considers that the wording of sections 42(3) and 45(1) (a) is too broad and vague to be limited to such cases and that the abovementioned services listed in Schedule I cannot be considered essential in the strict sense of the term. ***The Committee requests the Government to take the necessary measures in order to amend the IRO so as to ensure that any prohibition or restriction imposed on the right to strike is in conformity with the principles above.***

***Compulsory arbitration.*** The Committee notes that following a prohibition of the strike by the Government pursuant to the above-noted sections 42 and 45 of the IRO, the dispute is referred to the Commission for adjudication. The Committee further notes that section 42(2) of the IRO authorizes a "party raising a dispute", either before or after the commencement of a strike, to apply to the Commission for adjudication of the dispute. Pending adjudication, the Commission can prohibit the continuation of the existing strike action (section 61). The Committee recalls that a provision, which permits public authorities or either party to unilaterally request the settlement of a dispute through compulsory arbitration leading to a final award, effectively undermines the right to strike by making it possible to prohibit virtually all strikes or to end them quickly. Such a system seriously limits the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and to formulate their programmes and is not compatible with *Article 3* of the Convention (see General Survey, op. cit., paragraph 153). ***The Committee therefore requests the Government to take the necessary measures to amend the IRO so as to ensure that recourse to compulsory arbitration is possible only in cases where the exercise of the strike can be restricted or even prohibited or at the request of both parties to the dispute.***

***Sanctions.*** The Committee notes that under section 32(1)(e) of the IRO, commencing, continuing, instigating others to take part in, or expending or supplying money to, or otherwise acting in furtherance or support of an illegal strike or a go-slow is an unfair labour practice punishable by a fine of up to 30,000 rupees and/or imprisonment which may extend to 30 days. When the person convicted of such an offence is a trade union office bearer, he or she can be disqualified from holding a trade union office for the unexpired and immediately following terms, in addition to any other punishment which the court might award (section 67(4) and (5)). The Committee further notes that section 44(10) of the IRO provides for the following sanctions for contravening a Commission's order to call off a strike: dismissal of the striking workers; cancellation of the registration of a trade union; and debarring of trade union officers from holding a trade union office for the unexpired and immediately following terms. The Committee emphasizes that sanctions for strike action can be imposed only if the prohibitions or restrictions on the right to strike are in conformity with the principles of freedom of association. The Committee further considers that the use of extremely serious measures, such as dismissal of workers and cancellation of trade union registration implies a grave risk of abuse and constitutes a violation of freedom of

association. With regard to penal sanctions, the Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and on no account should measures of imprisonment be imposed. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. ***The Committee requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principles above.***

***Article 4. Dissolution of organizations.*** The Committee notes with **concern** the numerous cases where a registration of union may be cancelled under the IRO. In particular, the Committee notes that the registration of a trade union shall be cancelled if the Commission so directs, following a complaint made by the Registrar that the trade union has contravened the provisions of the Ordinance or its constitution, or failed to submit its annual returns to the Registrar, or obtained less than 10 percent of total votes polled in an election for determination of a collective bargaining agent (section 11(1)(a), (d), (e), (f) and (g) of the IRO). The Committee also notes that under section 16(5) of the IRO, if the statement of expenditure of a union is found incorrect following an audit of annual return, the Registrar shall initiate before the Commission the proceeding for the cancellation of the union registration. The Committee further notes that under section 44(10) of the IRO, the registration of a trade union can be cancelled for contravening the Commission's order to call off a strike. Furthermore, the Committee notes that under section 11(5) of the IRO, if a person who is disqualified under section 18 a person who has been convicted and sentenced to imprisonment for two years or more for committing an offence involving moral turpitude under the Pakistan Penal Code) is elected to be an officer of a registered trade union, the registration of such a union shall be cancelled if the Commission so directs. The Committee recalls that the cancellation of a registration of an organization and its dissolution in view of its serious and far-reaching consequences is a measure which should occur only in extremely serious cases. With regard to section 11(5), the Committee furthermore considers that, although the conviction for an act, the nature of which calls into question the integrity of the person concerned may represent grounds for disqualification for trade union office, that should not constitute a reason for cancellation of trade union registration, which is tantamount to dissolution of the union. To deprive workers of their trade union organization because of illegal activities previously carried out by one of its leaders is, in the Committee's opinion, a disproportionate sanction which violates the rights of workers to organize under *Article 2* of the Convention. ***The Committee therefore requests the Government to take the necessary measures to amend the IRO so as to bring it into conformity with the Convention taking into account the principles above.***

The Committee notes that under the IRO, the Commissions' decision directing the Registrar to cancel the registration of a union cannot be appealed in court (section 59 of the IRO). The Committee recalls that cancellation of a trade unions' registration should only be possible through judicial channels and that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association. The Committee further emphasizes that judges should be able to deal with the substance of a case to enable them to decide whether or not the measure of dissolution would not be in violation of the rights accorded to occupational organizations by Convention No. 87. ***The Committee requests the Government to take the necessary measures to amend the IRO so as to ensure that any decision to cancel trade union registration can be appealed in court.***

***Export processing zones (EPZs).*** With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been finalized in consultation with the stakeholders and would be submitted to the Cabinet for approval. ***The Committee once again requests the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, or a copy thereof if they have been adopted.***

***The Committee expects that all necessary measures will be taken rapidly to bring its national legislation into full conformity with the Convention and requests the Government to provide information on all steps taken or envisaged in this respect. It further requests the Government to provide with its next report copies of all other provincial laws regulating industrial relations and trade union rights at the provincial level.***

The Committee recalls that it had previously requested the Government to indicate whether Presidential Ordinance No. IV of 1999, which amended the Anti-Terrorism Act by penalizing illegal strikes or slowdowns with up to seven years of imprisonment, had been repealed. The Committee notes the Government's statement in the Conference Committee that the Ordinance is no longer in force.

The Committee notes the Punjab Industrial Relations Act (PIRA), 2010. The Committee **regrets** that this legislation appears to restrict the rights of workers to organize by excluding several categories of workers from its scope of application, and restricting the rights of workers to establish organizations of their own choosing without previous authorization and their right to strike. The Committee will examine the PIRA, 2010, in detail in the framework of the next reporting cycle.

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, referring to the similar issues as raised in its 2010 communication and in particular, the allegations of anti-union dismissals and acts of interference in trade union internal affairs by employers (intimidation, non-recognition and blacklisting of trade unions and its members), as well as denial of collective bargaining in export processing zones (EPZs). Noting that no observations have been provided by the Government thereon, the Committee recalls that it is the Government's responsibility to ensure the application of the Convention in law and in practice. ***It therefore once again requests the Government to provide its observations on the ITUC allegations.***

The Committee notes the comments submitted by the Pakistan Workers Confederation (PWC) in a communication dated 21 November 2011 referring to the legislative issues raised by the Committee below.

The Committee recalls that in its previous observation, it had noted that the Industrial Relations Act (IRA), 2008 (which was an interim legislation), had lapsed and that the Government had enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions were devolved to the provinces. It had further noted that in line with the June 2010 decision of the High Court of Sindh (Karachi), the Industrial Relations Ordinance (IRO) of 1969 was back in force. In this respect, the Committee recalled that it had previously commented upon on a number of significant restrictions on the right to organize under the IRO 1969 and expressed the hope that any new legislation, whether at the provincial or national levels would be adopted in full consultation with the social partners concerned and that such instruments would be in full conformity with the Convention.

The Committee notes that in its report, the Government indicates that the provinces were in the process of adopting their labour laws. The Government also indicates that the Federal Government will ensure through the Council of Common Interests that all provincial laws are in conformity with the Constitution and ratified ILO Conventions. The Committee notes the Punjab Industrial Relations Act (PIRA), 2010. The Committee ***regrets*** that this legislation appears to restrict the right of workers to organize by excluding several categories of workers from its scope of application, and restricting workers' collective bargaining rights. The Committee will examine the PIRA 2010 in detail in the framework of the next reporting cycle. ***The Committee requests the Government to provide with its next report copies of all other provincial laws regulating industrial relations and trade union rights at the provincial level.***

The Committee notes the November 2011 conclusions of the Committee on Freedom of Association (CFA) in Case No. 2799 (362nd Report) where the latter noted that a new Industrial Relations Ordinance (IRO) was promulgated by the President of Pakistan in July 2011 following tripartite consultations. The CFA also noted the Government's indication that on 12 October 2011, the IRO was introduced in the National Assembly in order to make it into an Act of Parliament.

The Committee notes that the IRO 2011 regulates industrial relations and registration of trade unions and federation of trade unions in the Islamabad Capital Territory and in the establishments which cover more than one province (section 1(2)(3)). It ***regrets*** that most of its previous comments on the IRA 2008 have not been addressed by the promulgation of the IRO 2011.

### ***Scope of application of the Convention.***

***IRO 2011.*** The Committee notes that by virtue of its section 1(3), the IRO maintains the same exclusion from its scope of application as previously existed under the IRO 2002 and IRA 2008 (agricultural workers, workers of charitable organizations, workers employed by the Pakistan Security Printing Corporation or the Security Papers Limited, etc.), as examined in detail by the Committee in its observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee recalls that the only categories of workers which can be excluded from the application of the Convention are the armed forces, the police and public servants engaged in the administration of the State. ***The Committee therefore requests the Government to take the necessary measures in order to amend the IRO so as to ensure that all workers, with the only possible exception of the armed forces, the police and public servants engaged in the administration of the State, enjoy the rights enshrined in the Convention.***

With regard to the latter category of workers, the Committee notes that the IRO does not apply to workers employed in the administration of the State other than those employed as workmen (section 1(3)(b)). ***The Committee requests the Government to specify and provide examples of categories of workers employed in the administration of the State excluded from the scope of application of the IRO.***

***Export processing zones (EPZs).*** With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) draft Rules, 2009, had been finalized in consultation with the stakeholders and will be submitted to the Cabinet for approval. ***The Committee once again requests the Government to provide detailed information on the progress made in adopting the Export Processing Zones (Employment and Service Conditions) Rules, 2009, or a copy thereof if they have been adopted.***

***Article 1 of the Convention. Protection against acts of anti-union discrimination. Banking sector.*** The Committee had previously requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, imposing sanctions of imprisonment and/or fines on the grounds of the exercise of trade union activities during

office hours. In its report, the Government indicates that the Federal Cabinet at its meeting held on 1 May 2010 approved the repeal of this provision and that the final legislation is under preparation. *The Committee once again expresses the firm hope that the relevant amendment will be adopted in the near future and requests the Government to transmit a copy thereof.*

*Autonomous bodies and corporations.* The Committee had previously requested the Government to amend section 2A of the Services Tribunal Act so as to ensure that workers engaged in autonomous bodies and corporations such as the Pakistan Water and Power Development Authority (WAPDA), railway, telecommunication, gas, banks, the Pakistan Agricultural Storage and Supply Corporation (PASSCO), etc. could redress their grievances in labour courts, labour appellate tribunals and the National Industrial Relations Commission (NIRC) in cases of unfair labour practices committed by the employer, and to provide copy of the amendment once adopted. The Committee notes the Government's indication that section 2A of the Services Tribunal Act has been repealed and these workers can approach the labour courts in cases mentioned above. The Committee notes with *satisfaction*, from a copy of the text of the amendment available to it, that section 2A of the Act has been repealed.

*Article 4. Collective bargaining.* The Committee notes that it results from section 19(1) of the IRO that if a trade union is the only trade union at the enterprise, but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment. The Committee recalls that it had previously requested the Government to amend similar sections which existed under the IRO 2002 and IRA 2008. *The Committee therefore requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as a collective bargaining agent, collective bargaining rights are granted to the existing union, at least on behalf of its own members.*

The Committee notes Chapter IV of the IRO concerning "participation of workers". It notes, in particular, that under section 23, shop stewards are either nominated (by a collective bargaining agent) or elected (in the absence of a collective bargaining agent) in every undertaking employing over 25 workers to act as a link between the workers and the employer, to assist in the improvement of arrangements for the physical working conditions, etc. (section 24). Furthermore, section 25 provides for the works councils (bipartite bodies), which are established in every undertaking employing over 50 workers. Section 25 lists the functions of such councils and further provides that the management shall not take any decision relating to working conditions, as specified in subsection (5), without the corresponding advice from workers' representatives, which could be nominated (by a collective bargaining agent) or be elected by workers employed by the enterprise in question (in the absence of a collective bargaining agent). Finally, section 28 provides for the joint management boards to look after the fixation of job and piece-rate, planned regrouping or transfer of workers, laying down the principles of remuneration and introduction of remuneration methods, etc. The worker representatives in such boards are nominated by a collective bargaining agent if there are one or more trade unions at the enterprise, or are chosen from amongst workers of the relevant undertaking, if there is no collective bargaining agent. In the light of the abovementioned provision contained in section 19 of the IRO, the Committee considers that the position of a single trade union not enlisting over one third of workers employed at the relevant establishment or group of establishments (and therefore, as indicated above, not enjoying collective bargaining rights) may be undermined in practice by other worker representatives represented at the above mentioned bodies, the functions of which have an impact upon the regulation of terms and conditions of employment. *The Committee therefore requests the Government to take the necessary measures to amend its legislation so as to ensure that the position of such trade unions is not undermined by the existence of other workers' representatives.*

## Panama

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)***

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

The Committee notes the Government's reply to the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010 (concerning allegations in the context of Cases Nos 2677 and 2706 examined by the Committee on Freedom of Association (CFA), and the comments from the National Council of Private Enterprise (CONEP) dated 29 May 2009 (concerning allegations made in the context of Case No. 1931 examined by the CFA).

Moreover, the Committee notes the comments from the General Autonomous Confederation of Workers of Panama (CGTP) and the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) dated 17 August 2011, concerning issues which are already the subject of examination by the Committee and by the CFA, as well as the detailed response of the Government in this respect. The Committee also notes the comments from the National Confederation of United Independent Unions (CONUSI) dated 14 October 2011, in connection with the Government's report.

The Committee notes the discussion that took place within the Committee on the Application of Standards of the International Labour Conference in June 2011, and also the fact that in its conclusions it urged the Government to draw

up, as a matter of urgency and with ILO technical assistance and stepping up social dialogue in this regard, a draft of specific provisions to amend the legislation and bring it into conformity with the Convention. The Committee notes that the Government accepted the visit of a technical assistance mission and hopes that this will go ahead in the near future.

The Committee recalls that it has been making comments for many years on the following issues:

*Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations.*

- Sections 179 and 182 of the Single Text of Act No. 9, as amended by Act No. 43 of 31 July 2009, establishing, respectively, that there may not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province. The Committee notes the Government's indication in its report that the Directorate for Administrative Careers, attached to the Ministry of the Presidency, has established a commission for reform of the Act governing administrative careers, with a view to aligning the latter to the ratified Conventions and that these amendments will be submitted to the executive body for examination and consideration. The Committee notes that CONUSI states that the trade union movement is not certain that a bill is being drawn up to bring the legislation into conformity with the Convention. ***The Committee hopes that any draft reform of the legislation will be the subject of consultations with the social partners and requests the Government to provide information in its next report on any developments in this respect.***
- The requirement of too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at the enterprise level, by virtue of section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), and the requirement of a large number (40) of public servants to establish an organization of public servants under section 182 of the Single Text of Act No. 9. The Committee notes the Government's statement that: (1) the figures mentioned are accepted by the principal workers' confederations and federations in the country, which have considered that any reduction thereof would result in the creation of parallel trade unions, which goes against the principle of trade union representativeness; (2) the number of ten members for establishing a professional employers' organization is a figure favoured by representatives of the employers; (3) in order to modify these figures there must be tripartite consensus and to date no interest has been shown in reducing these figures but it will be a subject for discussion in the context of the tripartite social dialogue to be launched by the Government with the Labour Foundation (FUNTRAB); and (4) as regards public servants, the commission for reform of the Act governing administrative careers is also tasked with amending section 182 of the Single Text of Act No. 9 and the proposed amendments will be submitted to the executive body for study and consideration. ***The Committee hopes that, in the context of the announced tripartite dialogue, the Government will take every possible measure to reduce the minimum number of members required so that workers, employers and public servants are able to establish their organizations, and requests the Government to keep it informed of any further developments in this respect.***
- The denial to public servants (non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving) of the right to establish unions. The Committee notes the Government's indication that the commission on reform of the Act governing administrative careers also intends to amend section 179 of the Single Text of Act No. 9 and that the amendments will be submitted to the executive body for examination and consideration. ***The Committee requests the Government to provide information on any further developments in this respect.***

*Article 3. Right of organizations to elect their representatives in full freedom.*

- The requirement to be of Panamanian nationality in order to serve on the executive board of a trade union. The Committee notes that the Government repeats its indication that to bring the legislation into conformity with the Convention, it would be necessary to amend the Political Constitution, and that foreign workers enjoy all benefits resulting from the collective agreements of the enterprises where they work and may participate as members in unions respecting the rights which may derive from their employment relationship. In the Committee's view, the national legislation should allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 118). ***Since this is a case of unjustifiable discrimination, the Committee again requests the Government to take the necessary measures to make the required amendments taking into account the principle referred to above.***
- The right of organizations to organize their administration. In its previous comments the Committee asked the Government to take the necessary measures to amend section 180-A of Act No. 24 of 2 July 2007 amending Act No. 9 on administrative careers, so as to abolish the requirement for public servants who are not affiliated to associations to pay ordinary trade union dues for the benefits derived from the collective agreement, with the possibility of providing instead for the payment of a lesser amount than the ordinary trade union contribution for the benefits derived from collective bargaining. In this regard, the Committee notes with ***satisfaction*** that section 180-A became section 187 of the Single Text of 29 August 2008, which was, in turn, repealed by Act No. 43 of 31 July 2009.

*Right of organizations to organize their activities and to formulate their programmes in full freedom.*

- Denial of the right to strike in export processing zones (section 49B of Act No. 25 of 1992) and denial of the right to strike in enterprises of less than two years' standing (section 12 of Act No. 8 of 1981). In its previous observation the Committee noted that the Ministry of Labour and Employment Development (MITRADEL), together with the Ministry of Trade and Industry (MICI), had been working to formulate amendments on this subject, resulting in the formulation of a preliminary draft bill to amend section 49 of Act No. 25 of 1992 and to repeal section 12 of Act No. 8 of 1981. The Committee notes with **satisfaction** the Government's reference to the adoption of Act No. 32 of 5 April 2011, which repeals section 12 of Act No. 8 of 1981 and amends section 49B of Act No. 25 of 1992 in such a way that workers or their respective organization in export processing zones are permitted to exercise the right to strike once the conciliation process has been completed (section 55 of Act No. 32 of 5 April 2011).
- Denial of the right to strike for public servants not exercising authority in the name of the State. In its previous observation the Committee asked the Government to take the necessary measures to ensure the right to strike of public servants who do not exercise authority in the name of the State. The Committee notes the Government's indication that both the Constitution (article 69) and the Single Text of 29 August 2009 (section 137) guarantee the right to strike of public servants.
- The ban on federations and confederations from calling strikes and on strikes against the Government's economic and social policy, and the unlawfulness of strikes that are unrelated to an enterprise collective agreement. The Committee notes the Government's statement that: (1) federations and confederations participate in public demonstrations relating to economic and social policies of the Government and it is common practice for the workers to exert means of pressure, such as strikes, when they are opposed to any measures affecting their sector; and (2) the workers and the employers have not raised the possibility of amending the legislation on these subjects, nor is there any consensus between the social partners. The Committee recalls that federations and confederations should have the right to strike and that organizations responsible for defending workers' socio-economic and occupational interests should, as a rule, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic 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 the General Survey, op cit., paragraph 165). ***The Committee underlines the importance of the legislation being clearly aligned to the practice which, according to the Government, exists in the country and requests the Government to provide information on any further developments in this matter.***
- The authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in private transport enterprises (sections 452 and 486 of the Labour Code). The Committee notes the Government's indication that: (1) forced or compulsory arbitration in the transport sector is a measure to which the State may have recourse in urgent situations of possible disruption to public order as the only alternative for serving and mediating in the resolution of a collective labour dispute; and (2) the intention of section 452 is to prevent the interruption, as a result of the negotiations held by the parties to the dispute, of the State's constitutional right to provide citizens with the most important public services which must be guaranteed by law, and so arbitration to avoid strike action is a mechanism for dialogue which prevents the public from suffering economic losses. However, the Committee observes that the legislation provides for the maintenance of a minimum service in the event of a transport strike. The Committee recalls that compulsory arbitration to end a collective labour dispute or a strike is acceptable if it is at the request of both the parties involved in the dispute or in cases where the strike in question may be restricted or even prohibited, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population. ***The Committee therefore once again requests the Government to take the necessary steps to amend the legislation so as to provide that compulsory arbitration in collective disputes in the transport sector is only possible at the request of both parties or under the abovementioned circumstances.***
- The obligation to provide minimum services with 50 per cent of the staff in the transport sector, and the penalty of summary dismissal of public servants for failure to comply with minimum services in the event of a strike (sections 155 and 192 of the Single Text of 29 August 2008, amended by Act No. 43 of 31 July 2009). The Committee notes the Government's statement that the abovementioned provisions do not, in principle, affect the exercise of the right to strike since: (1) summary dismissal is possible in the event of banned or illegal strikes; and (2) the obligation to provide minimum services with 50 per cent of the staff applies to "essential public services", such as food provision, water and electricity, transport, etc. The Committee recalls that transport is not an essential service in the strict sense of the term; nevertheless, it is a public service of fundamental importance and in the event of a strike the imposition of a minimum service could be justified. However, given that the 50 per cent figure provided for in the legislation might be excessive, the Committee recalls that minimum services should be limited to activities that are strictly necessary to cover the basic needs of the population or to satisfy the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear, and that since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service; in the event of any disagreement as to the number and

duties in relation to the minimum service, such disagreement should be settled by an independent body enjoying the confidence of the parties. **Observing that a number of the abovementioned services cannot be defined as essential services in the strict sense of the term, the Committee again requests the Government, taking into account the principles described above, to take the necessary steps to ensure the respective legislative amendments and to provide information in its next report on any further developments in this respect.**

- Legislation interfering with the activities of employers' and workers' organizations (sections 452.2, 493.4 and 494 of the Labour Code) (closure of the enterprise in the event of a strike and prohibition of entry to non-striking workers). The Committee observes that section 493.4 of the Labour Code, as amended by Act No. 68 of 26 October 2010, does not provide in the event of a strike for free entry for non-striking workers. The Committee notes the Government's indication of its intention to examine the standard with a view to analysing the points raised and to consider in what manner the abovementioned provisions may be amended. **The Committee requests the Government to provide information in its next report on any further developments in this respect.**
- The obligation for non-members to pay a solidarity contribution in recognition of the benefits derived from collective bargaining. In its previous observation the Committee noted that section 2 of Act No. 68, amending section 405 of the Labour Code, provides that "the collective agreement shall apply to all persons who work in the categories covered by the agreement, in the enterprise, commerce or establishment, even though they are not members of the union. Non-unionized workers who benefit from the collective agreement shall be obliged, during the period covered by the collective agreement, to pay the ordinary and extraordinary dues agreed by the union, and the employer shall be obliged to check such dues off from wages and forward them to the union." The Committee considered that "solidarity" dues in view of the benefits derived from collective bargaining by workers who are not members of the unions concluding a collective agreement are not contrary to the provisions of the Convention; nevertheless, such dues should be set at an amount which does not prejudice the right of workers to join the trade union organization of their choosing. The Committee notes the Government's statement that it shares the opinion that legislation should be adopted establishing that these dues should be set at an amount which enables workers to join the trade union organization of their choosing and the reform resulting from section 2 of Act No. 68 should be subject to tripartite revision. The Committee emphasizes that in a previous paragraph it noted with satisfaction the legislative changes in the public sector relating to solidarity dues and considers that the same system should apply to the private sector. **The Committee requests the Government to provide information on any further developments in this matter.**
- The automatic intervention of the police in the event of a strike. In its previous observation the Committee noted that section 3 of Act No. 68 amends section 493(1) of the Labour Code, which provides, in its amended form, that "once the strike has commenced, the Regional or General Labour Inspectorate or Directorate shall immediately give orders for the police authorities to duly guarantee or protect persons and property". The Committee considered, in cases of strike movements, that the authorities should resort to the use of the public forces only in grave situations or those in which public order is seriously threatened. The Committee notes the Government's statement that in reality the public forces are used or the police units are ordered to appear only in cases where strikes assume a non-peaceful appearance in which the integrity of persons, property of the enterprise or public order are affected, and not with the aim of suspending the strike or in cases where strikes assume a peaceful form. **The Committee therefore requests the Government to consider the possibility of amending the legislation in such a way that, in conformity with the practice indicated by the Government, the public forces may only intervene in cases where strikes lose their peaceful character. The Committee requests the Government to provide information in its next report on any further developments in this respect.**

## Philippines

### **Rural Workers' Organisations Convention, 1975 (No. 141) (ratification: 1979)**

The Committee recalls that its previous comments concerned section 241(c) and (p) of the Labor Code which requires unions to organize members into locals and chapters, and to hold elections of local and national officers directly and by secret ballot, under penalty of dissolution or officer expulsion. The Committee further recalls that since 1999, the Government has been indicating its intention to review the Labor Code with a view to bringing it into conformity with the principles of freedom of association.

The Committee notes that in its report, the Government indicates that the Department of Labor and Employment is initiating a review of labour laws and legislation, including section 241(c) and (p) of the Labor Code, so as to align them with the ILO Conventions ratified by the Philippines. It further notes the Government's indication that this process is on the priority agenda of the Department of Labor and Employment aimed to respond to the labour market realities through policy reforms. **The Committee expresses the hope that section 241(c) and (p) of the Labor Code will be amended in the near future so as to allow rural workers' organizations the right to choose the organizational structure they deem appropriate and requests the Government to transmit a copy of the amendments.**

## Romania

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)** (ratification: 1958)

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

The Committee notes the debate which took place within the Conference Committee in June 2011 and welcomes the Government's commitment to continue to avail itself of ILO technical assistance.

The Committee also notes the Government's reply to the 2010 comments made by the Block of National Trade Unions (BNS) concerning the application of the Convention. The Committee also notes the comments made by the BNS and the National Trade Union Confederation (CNS CARTEL ALFA) received on 10 June 2011 and the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011, as well as the Government's observations on both communications.

In its previous comments, the Committee had noted from the Government's report that the legal framework on labour and social dialogue was under review. In this regard, the Committee notes from the information provided by the Government to the Conference Committee that Act No. 53/2003 (Labour Code) has been substantially amended by Act No. 40/2011, and that Act No. 62 concerning social dialogue was adopted on 10 May 2011. The Committee observes that Act No. 62 of 10 May 2011 concerning social dialogue abrogates the following pieces of legislation: (i) Act 54/2003 on trade unions; (ii) Act No. 130/1996 on collective agreements (except its sections 26–39, which will be abrogated on the date of issuance of the Order to be adopted under section 177 of the Social Dialogue Act); and (iii) Act No. 168/1999 on the settlement of labour conflicts.

*Articles 1, 2 and 3 of the Convention. Protection against acts of anti-union discrimination and acts of interference.* The Committee had previously noted that, according to the ITUC, sanctions for anti-union activities are rarely imposed in practice due to loopholes in the Penal Code. The Committee had further noted the indications of the ITUC that the procedure for lodging a complaint appears to be too complicated and the authorities do not prioritize the trade unions' complaints, and that the labour inspectorates do not always respect the confidentiality of the complaints. The Committee notes that the ITUC reiterates its comments as regards the non-application of sanctions in practice. **The Committee once again requests the Government to provide in its next report, taking into account the new legislation, statistical information or at least the maximum information available on the number of cases of anti-union discrimination brought to the competent authorities, the average duration of proceedings and their outcome, as well as the sanctions and remedial measures applied.**

Furthermore, in its previous comments, the Committee had noted from the ITUC comments that in recent years, certain employers have made employment conditional upon the worker agreeing not to create or join a union. The Committee had requested the Government to discuss this situation with the most representative organizations of workers and employers. The Committee notes that the BNS also denounces that some employers require documents that are officially published and seriously obstruct the right to organize, and that the ITUC alleges that a number of anti-union dismissals have occurred in the media sector. The Committee has noted from the oral information provided by the Government to the Conference Committee the Government's commitment to organizing a meeting with the social partners on the subject of anti-union discrimination after the Conference. The Committee notes from the Government's report that the tripartite meeting has been postponed due to the appointment of the new Minister of Labour. **The Committee welcomes the Government's formal commitment to initiate tripartite discussions in this regard, trusts that the meeting will be organized in the very near future and requests the Government to provide information on its outcome and on any agreed follow-up measures.**

Regarding the legal framework of the protection against acts of interference, the Committee notes that, in the context of sanctions for acts of anti-union discrimination, the Government refers to section 220(1) and (2) of the Labour Code (according to which union officials are protected by law against any form of constraint or limitation in the exercise of their functions and cannot be dismissed during their term of office for reasons related to their mandate) and section 218 of the Social Dialogue Act (according to which the constraint or limitation of union officials in the exercise of their functions is punished with a prison term of three months to two years or with a fine; the remaining paragraphs deal with acts of constraint in the context of strike action). The Committee further notes that section 10 of Act No. 62 of 10 May 2011 concerning social dialogue prohibits the modification or termination of employment on the ground of union membership or activity. The Committee observes that the new legislation does not seem to foresee sanctions in the case of violation of section 10 of the Social Dialogue Act and section 220(2) of the Labour Code. **The Committee requests the Government to clarify this point.** Should it be confirmed that the new legislation does not provide for sanctions for the violation of section 10 of the Social Dialogue Act and section 220(2) of the Labour Code, the Committee wishes to recall that the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. **The Committee requests the Government to take the necessary measures to guarantee full protection against acts of anti-union discrimination including by imposing sufficiently dissuasive sanctions.**

Concerning protection against acts of interference, the Committee had requested, in its previous comments, information on the penalties against acts of interference which were prohibited under sections 221(2) and 235(3) of Act No. 53/2003 and Act No. 54/2003. The Committee had noted from the Government's report that under Act No. 54/2003, such acts were punished with imprisonment from six months to two years or a fine between RON2,000 and RON5,000 (approximately US\$600 to US\$1,600). Considering that these fines might, in some cases, not be sufficiently dissuasive, the Committee had requested the Government to take the necessary measures to increase the amount of the existing sanctions so that they constitute a sufficient deterrent against all acts of anti-union discrimination. The Committee notes with *satisfaction* that acts of interference are now prohibited by section 218 of Act No. 53/2003 (Labour Code) as amended and section 7(2) of Act No. 62 of 10 May 2011 concerning social dialogue, and that under section 217(1)(a) of the Social Dialogue Act, acts of interference by public authorities or employers and employers' organizations are punished with a fine between RON15,000 and RON20,000 (approximately US\$4,700–\$6,300).

*Article 4. Right to collective bargaining. Bargaining level.* The Committee notes that the BNS and the CNS CARTEL ALFA deplore that the labour law reform has caused the national-level collective agreement and the branch-level collective agreement to disappear and allege that section 128(1) of the new Social Dialogue Act, according to which collective agreements may be negotiated at enterprise level, at the level of a group of enterprises and at the level of sector of activity (an entity to be determined by the Government according to section 1(r)), is contrary to the Convention. The Committee notes from the Government's reply that, the bargaining levels have been laid down by law, taking into consideration the legitimacy of the bargaining parties as conferred by the criteria of representativity, in the absence of other practical arrangements and due to fears expressed by the social partners as regards the negative impact of a lack of regulation in the field; and that, following discussions with the social partners, it was decided that the sectors of activity will be determined exclusively by the social partners. ***The Committee requests the Government to indicate whether the new legal provisions allow the parties, if they so wish, to negotiate and conclude, in addition to sectoral agreements, collective agreements at the national level. The Committee also requests the Government to communicate comparative statistics for the period 2008–12 on the coverage of collective bargaining.***

*Criteria of representativity.* The Committee notes that the BNS criticizes that the criteria for being deemed representative set forth in section 51 of the new Social Dialogue Act are arbitrary and in breach of the free will of the parties, highlighting the representativity criteria at national level (cumulating membership of at least 5 per cent of the labour force and territorial structures in more than half of the national municipalities) and at enterprise level (membership of at least 50 per cent plus one of the workers of the enterprise). The Committee notes from the Government's reply that the representativity criteria at national and sectoral levels have not been revised but have remained the same. It also notes the Government's indication that the representativity criteria at enterprise level have been amended (the Committee understands that previously the membership requirement was of at least one third of the workers of the enterprise) in order to: (i) comply with the principle of application erga omnes of the clauses of the collective agreement; (ii) ensure the legitimacy of the trade union to negotiate and represent the interests of all the workers of the enterprise; and (iii) to avoid the frequent conflicts arising under the old legislation among unions contesting the representativity established by the tribunal – the resolution of these conflicts, of which one had been previously reported by the BNS, had in some cases exceeded the competence and level of training of the local authorities. ***Recalling that, under a system where 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, if no union secures this absolute majority, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members, the Committee requests the Government to amend the legislation in order to guarantee the application of this principle.***

Moreover, the Committee notes that, according to section 135(1)(i), in enterprises without a trade union meeting the representativity criteria, if an enterprise-level union exists and is affiliated to a federation meeting the representativity criteria in the relevant sector of activity, the negotiation of a collective agreement will be carried out by the representatives of that federation together with the elected workers' representatives. The Committee considers that this provision could infringe upon the principle of the free and voluntary collective negotiation and therefore the autonomy of the bargaining partners. ***It requests the Government to provide information on the application of section 135 in practice.***

*Articles 4 and 6. Right to collective bargaining. Collective bargaining with public servants not engaged in the administration of the State.* In its previous comments, the Committee had noted from the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 that in the public budget sector which covers all public employees, including those who are not engaged in the administration of the State (e.g. teachers), the following subjects are excluded from the scope of collective bargaining: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee had noted from the Government's report that the salary rights in the budget sector were settled by Act No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds which stipulates that the fixation of salaries is exclusively by law and that it cannot be negotiated. The Committee previously recalled that all public servants who are not engaged in the administration of the State should enjoy the guarantees provided for in *Article 4* of the Convention with regard to the promotion of collective bargaining. The Committee had further recalled that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by

adequate safeguards to protect workers' living standards. Therefore, the Committee had requested the Government to indicate in its next report if Act No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds is considered as an exceptional measure within the context of an economic stabilization policy, if adequate safeguards were established in order to protect workers' living standards and if it provides for a limited length of application.

The Committee notes from the information provided by the Government the adoption of Act No. 284/2010 on Unitary Salaries of the Staff Paid from Public Funds, which abrogated Act No. 330/2009 and entered into force on 1 January 2011. The Committee notes that Act No. 284/2010 continues to stipulate that the fixation of salaries in the public budget sector is exclusively by law (section 3(b)) and that no salaries or other pecuniary entitlements exceeding the provisions of this law can be negotiated through collective agreements (section 37(1)). The Committee notes that the Government highlights section 32 of Act No. 284/2010, which provides that the level of hierarchy coefficients for the categories of wages provided in this law will be revised periodically depending on the evolution of the wages existing in the Romanian labour market, so that public sector wages can be set at a competitive level, within the limits of financial sustainability. The Committee further notes the Government's indications that the conditions of work and employment in the public budget sector have never been excluded from the scope of collective bargaining; that the system of unitary salaries for staff paid from public funds was established in common accord with the trade unions in order to correct the serious budgetary imbalance and deficit that irresponsible collective negotiations of salaries at the level of each public institution had generated; and that no constitutional, European or international requirements could oblige governments to pay to staff paid from public funds salaries – whether negotiated or not – that exceed the financial sustainability of the state budget.

The Committee observes with **concern** that Act No. 284/2010, which replaces Act No. 330/2009, continues to globally preclude collective bargaining on salary rights and pecuniary entitlements in the public budget sector. While taking into consideration the Government's statement on the need to ensure the financial sustainability of the state budget, the Committee underlines that the Convention does not impose an obligation on the Government to regularly achieve results as regards the negotiation of salary and economic clauses of collective agreements in the public sector. The Committee is therefore bound to reiterate that, while *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, all 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 and pecuniary entitlements. The Committee takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants; where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected. In other words, a fair and reasonable compromise should be sought between the need to preserve as far as possible the autonomy of the parties to bargaining, on the one hand, and measures which must be taken by governments to overcome their budgetary difficulties, on the other. The Committee draws the Government's attention to the fact that legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish an overall "budgetary package" within which the parties may negotiate monetary or standard-setting clauses or those which give the financial authorities the right to participate in collective bargaining alongside the direct employer would be compatible with the Convention, provided they leave a significant role to collective bargaining (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 264). **The Committee requests the Government to take the necessary measures in full consultation with the social partners and, if necessary, with technical assistance from the Office, to bring national law and practice into conformity with Article 4 of the Convention and the abovementioned principles, so as to ensure that wages and pecuniary entitlements are included in the scope of collective bargaining for the public service workers covered by the Convention, and recalls that this collective bargaining of salaries in the public service could take place prior to the discussion of the budget legislation and could be global and not necessarily at the level of each public institution.**

*Information on the impact of the new legislation.* In its conclusions, the Conference Committee requested the Government to provide detailed information and statistics relating to the impact of the recent legislative changes on the application of the Convention. The Committee notes that the Government states that this evaluation will only be possible at the end of 2012 so that the Government could only report on the impact of the new legislation in its report due in 2013. **The Committee trusts that the Government will submit the requested information in its next report.**

## Rwanda

### **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)**

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

*Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* In its previous comments, the Committee noted that: (1) articles 11, 33, 35, 36, 38 and 39 of the Constitution of

4 June 2003 guarantee freedom of expression and association for state employees, as for all other citizens; (2) Law No. 22/2002 of 9 July 2002, on the General Statute for the Rwanda public service, is silent on the right of public servants to organize and to collective bargaining, although section 73 of the Law provides that public servants and the staff of public enterprises enjoy rights and freedoms on the same basis as other citizens; (3) the procedures for the implementation of section 73 of Law No. 22/2002 are still to be determined, and the scope of the relevant provisions of the Labour Code respecting occupational organizations need to be extended to state officials; and (4) although the Government indicated that there are unions of public servants in Rwanda, the legal void as regards the right to organize of this category of workers could give rise to problems in practice. The Committee noted that, under the terms of section 3 of the new Labour Code, “every person employed under the general statutes for the Rwanda public service or every person under specific statutes shall not be subject to the provisions of this law, except for matters that may be provided for by Prime Minister’s orders”. It further noted that, according to the Government’s report, the process is under way of revising the General Statute governing public civil servants. The Committee recalls that public servants shall enjoy the right to establish and join organizations of their own choosing to further and defend their interests. ***The Committee trusts that the revision of the General Statute governing public civil servants will be completed in the near future and that it will take duly into account the above principle so as to ensure that public servants enjoy the guarantees laid down in the Convention. It requests the Government to provide a copy of the Law once it has been adopted.***

***Article 3. Right of organizations to organize their administration and activities and to formulate their programmes in full freedom.*** The Committee noted that section 155(2) of the new Labour Code refers to an order of the Minister responsible for labour to determine “indispensable services” and the conditions of exercising the right to strike in these services. In its report, the Government had indicated that the order is prepared following consultations with the National Labour Council and that the text is still at the draft stage. ***The Committee requests the Government to provide a copy of the order once it has been adopted.***

The Committee noted that, under the terms of section 124 of the Labour Code, any organization requesting recognition as the most representative organization has to authorize the labour administration to check the register of its members and property. In this respect, the Committee recalls that the control exercised by the public authorities over trade union finances should not go beyond the requirement for the organizations to submit periodic reports. ***The Committee trusts that the Government will take the necessary measures to amend section 124 of the Labour Code taking into account the above principle.***

***The Committee notes the comments of 24 August 2010 by the International Trade Union Confederation (ITUC) and asks the Government to provide its observations thereon.***

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

Lastly, the Committee notes the comments of 4 August 2011 by the ITUC which refer to matters already raised by the Committee.

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

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1988)***

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

***Articles 1 and 2 of the Convention.*** In its previous comments the Committee asked the Government to take steps to establish sufficiently dissuasive penalties for acts of anti-union interference and discrimination. The Committee noted that, according to the provisions of section 114 of the new Labour Code, any act which infringes the provisions providing protection against acts of discrimination and interference shall constitute an offence and incur the payment of damages. The Committee noted that the amount of damages has not been fixed, except for wrongful termination of an unemployment contract, as laid down by section 33 of the Code. In the latter case, the damages vary from three to six months’ wages, and may amount to as much as nine months’ pay where the worker has more than ten years’ service with the same employer, or where staff delegates or union representatives are concerned. ***The Committee requests the Government to provide further information on the amount of damages applicable for acts of discrimination against trade union members or officials, other than the dismissal of trade union representatives.***

***Article 4.*** With reference to its previous comments concerning compulsory arbitration in the context of collective bargaining, the Committee noted with regret that the collective dispute settlement procedure provided for in section 143 ff. of the new Code culminates, in cases of non-conciliation, in referral to an arbitration committee whose decisions may be the subject of an appeal to the competent jurisdiction, whose decision shall be binding. The Committee recalls that, except for the cases of public servants engaged in the administration of the State and essential services in the strict sense of the term, arbitration imposed by the authorities or at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established by the Convention, and thus the autonomy of bargaining partners (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). ***The Committee requests the Government to take the necessary steps to amend the legislation in such a way that, except in the circumstances referred to above, a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority only with the agreement of both parties.***

Moreover, with reference to its previous comments, the Committee noted that section 121 of the Code provides that, at the request of a representative organization of workers or employers, the collective agreement shall be negotiated within a joint committee convened by the Minister of Labour or his delegate or the competent labour inspector. The Committee recalls that such a provision may well restrict the principle of free and voluntary negotiation of the parties within the meaning of the Convention, and even of being applied where one party wishes to have a new collective agreement even before the existing agreement has expired. ***The Committee requests the Government to take steps to amend section 121 of the Labour Code so that recourse to a joint committee for negotiating a collective agreement is possible only with the agreement of both parties.***

With regard to the question of the extension of collective agreements, the Committee noted that, under section 133 of the Labour Code, at the request of a representative workers’ or employers’ organization, whether or not it is a party to the agreement or on its own initiative, the Minister of Labour may make all or some of the provisions of a collective agreement binding on all employers and workers covered by the occupational and territorial scope of the agreement. ***The Committee requests the Government to take the necessary steps to amend the legislation so that the extension of collective agreements is the subject of in-depth tripartite consultations (even where provision is made, as is the case in section 136 of the Code, for the parties affected by the application of an extended collective agreement to file a request for an exemption with the Minister of Labour).***

*Article 6.* With reference to its previous comments, the Committee noted that, under section 3 of the Code, any person governed by the general or individual public service regulations is not subject to the provisions of the Code other than for matters determined by an Order of the Prime Minister. *The Committee regrets that the national authorities have not taken the opportunity afforded by the reform of the Labour Code to guarantee the right to collective bargaining for public servants covered by the Convention and requests the Government to indicate any measures taken or contemplated to this end.*

*Finally, the Committee requests the Government to supply information in its next report on the activities of the National Labour Council with regard to collective bargaining, on the number of collective agreements concluded, and on the sectors and numbers of workers covered.*

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

Finally, the Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, which refer to matters previously raised by the Committee, as well as mass dismissals in the tobacco sector. *It requests the Government to provide its observations thereon.*

## Samoa

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 2008)**

The Committee notes that the Government indicates in its first report that tripartite partners have drafted a new Labour and Employment Relations Bill (2010) (“the draft Bill”) to address all issues related to the Convention. The Committee notes that the draft bill is still in the process of being developed and has benefited from ILO technical assistance. *The Committee expresses the firm hope that the legislative reform will take into account all comments made below and will soon be completed in consultation with the social partners. The Committee requests the Government to provide information on the progress made in its next report and to supply the new law once adopted.*

*Articles 1–6 of the Convention.* While observing that the draft Bill contains provisions which in general are in conformity with the Convention, the Committee notes that the protection afforded is not complete in all points. *The Committee requests the Government to ensure that the draft Bill includes:*

- the prohibition of all acts of anti-union discrimination (in taking up employment, during employment, and at the time of termination of employment) and effective and expeditious procedures of redress and sufficiently dissuasive sanctions;
- the prohibition of all acts of interference by workers’ and employers’ organizations or each other’s agents or members in their establishment, functioning or administration, including in particular acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations by financial or other means, with the object of placing such organizations under the control of employers or employers’ organizations; and effective and expeditious procedures of redress and sufficiently dissuasive sanctions;
- the recognition of the right to collective bargaining of workers’ and employers’ organizations to all workers with the sole possible exception being the armed forces, the police and public servants engaged in the administration of the State; and
- the recognition of the principles of voluntary and free collective bargaining and the related prohibition of compulsory arbitration except in the public service (in respect of public servants engaged in the administration of the State) and in essential services in the strict sense of the term, that is services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

## Sao Tome and Principe

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

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

*Article 3 of the Convention. Right of organizations to organize their activities and formulate their programmes.* The Committee recalls that it has been commenting for a number of years on the need for the Government to take steps to amend the provisions of Act No. 4/92, which refer to the following issues:

- the majority required for calling a strike is too high (section 4 of Act No. 4/92);
- with regard to minimum services, it is important, in the event of disagreement in determining such services, that the matter be settled by an independent body and not by the employer (section 10(4) of Act No. 4/92);
- the hiring of workers without consultation with the trade unions concerned to perform services essential to maintain the economic and financial viability of the enterprise should it be seriously threatened by a strike (section 9 of Act No. 4/92); and
- compulsory arbitration for services which are not essential in the strict sense (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (postal, banking and loan services; section 11 of Act No. 4/92).

*The Committee asks the Government to take steps to amend the abovementioned legislative provisions so as to bring the legislation into line with the Convention and to indicate, in its next report, any measures adopted in this respect. The Committee also asks the Government to indicate whether federations and confederations are able to exercise the right to strike.*

*Finally, noting that Law No. 4-2002 of 30 December 2002, allows requisition of workers in cases of strikes in non-essential services, the Committee requests the Government to take measures to modify the legislation so as to guarantee that the requisition of workers is only possible in the essential services in the strict sense of the terms.*

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

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

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

*Articles 1 and 2 of the Convention.* In its previous comment the Committee asked the Government to indicate what sanctions may be imposed against acts of discrimination that undermine freedom of association and acts of interference by employers and their organizations in workers' organizations and vice versa. The Committee noted the Government's indication that there is no legislation that lays down penalties for acts of anti-union discrimination. *The Committee therefore requests the Government once again to take the necessary steps to adopt appropriate legislation which imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and acts of interference committed by employers against trade union organizations, in conformity with the provisions of the Convention. The Committee requests the Government to indicate whether specific legal protection exists for trade union members should they be subjected to acts of anti-union discrimination on the basis of their participation in legitimate trade union activities.*

*Article 4.* The Committee notes the Government's statement concerning the adoption of a new Constitution, a copy of which will be sent to the Office. The Committee observes that the right to collective bargaining is recognized in Act No. 5/92 of 28 May 1992 concerning trade unions but is not itself governed by legislation. The Committee also notes the Government's statement that collective bargaining does not apply to the public service. The Committee notes the Government's indication in various reports on the bill concerning the legal framework of collective bargaining that this bill has still not been adopted. In these circumstances, the Committee reiterates the importance of the bill being adopted as soon as possible and of the right to collective negotiation of their conditions of work and employment being secured to all workers in the public and private sectors, including public servants. *The Committee requests the Government to indicate the progress of the legislative procedures relating to the adoption of the bill and to take all possible steps to ensure its adoption in the very near future, in consultation with the most representative organizations of employers and workers.*

*Application in practice.* Finally, the Committee notes the Government's statement that no collective agreements currently exist in the country owing to geographical factors. *The Committee requests the Government to avail itself of technical assistance from the ILO to resolve this major issue.*

The Committee notes the Government's statement that the Labour Directorate of the Ministry of Labour might act as an intermediary between the parties to collective bargaining, including in order to ensure the effectiveness of the agreement. *The Committee requests the Government to provide further information on the role of the Labour Directorate in the collective bargaining process.*

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

## **Sierra Leone**

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

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

*Articles 1 and 2 of the Convention.* *Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference.* The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. *Noting that, according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.*

*Article 4.* *The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.*

The Committee notes that, since 1992 when a draft Industrial Relations Act was under discussion, the Government only provided a report in 2004. *The Committee therefore requests the Government to furnish a detailed report on the application of the Convention, accompanied by copies of any legal texts concerning freedom of association adopted since 1992.*

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

## Swaziland

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

*Trade union comments.* The Committee notes the communication dated 4 August 2011 from the International Trade Union Confederation (ITUC) concerning the issues under examination, as well as allegations of continued repression of trade union activities in various sectors as well as police brutality against trade unionists. The Committee recalls that rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. ***The Committee urges the Government to ensure that this principle is respected and requests it to provide its reply to the ITUC communication.***

With regard to comments from the ITUC previously noted by the Committee that the Public Service Bill infringed upon the organizational rights of public sector workers, the Committee notes the communication dated 31 August 2011 from the Swaziland Federation of Trade Unions (SFTU) alleging the lack of political will to solve a number of issues under examination, including the fact that the Public Service Bill is continuing its legislative framework without being referred back to the Social Dialogue Committee as advised by the ILO. The Committee also notes from the Government's report that the Bill is presently being debated by the House of Senate, after the social partners were given the opportunity to lobby the Senate on July 2011, and the assistance of an ILO expert which gave a presentation at the request of the Senators. The Government adds that, once the Bill is passed and promulgated into law, the parties would still have the possibility to propose amendments. ***The Committee expects that the Public Service Bill will be in full conformity with the provisions of the Convention with regard to the rights of public service workers. The Committee requests the Government to transmit a copy of the Bill once it is promulgated into law.***

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

The Committee notes the discussion which took place in the Conference Committee in June 2011. The Committee observes that the Conference Committee took note of a number of steps taken by the Government following the high-level tripartite mission which visited the country in October 2010. However, the Conference Committee firmly called upon the Government to intensify its efforts to institutionalize social dialogue and anchor genuine social dialogue through durable institutions at various levels of the Government, which could only be assured in a climate where democracy reigned and fundamental human rights were fully guaranteed. It urged the Government, in full consultation with the social partners and with the ongoing technical assistance of the ILO, to establish time frames for addressing all issues on an expedited basis. In this regard, the Conference Committee requested the Government to elaborate a roadmap for the implementation of the long-called-for measures.

*Legislative issues.* The Committee takes due note of the adoption and promulgation of the Industrial Relations (Amendment) Act of 2010 (Act No. 6 of 2010), a copy of which was transmitted by the Government. The Committee notes with ***satisfaction*** that the Act amends a number of provisions of the Industrial Relations Act (IRA), upon which it has been commenting for many years. In particular, the Committee observes that the new Act:

- provides for the right to organize for domestic workers, by including domestic service in a household or a private house within the definition of “undertaking” (section 2(b) and (c) of the Act);
- removes the restrictions on the nomination and eligibility of candidates for trade union office in section 29(1)(i) of the IRA (section 3 of the Act);
- shortens the compulsory dispute settlement procedures provided in section 85(4) of the IRA by limiting the period for arbitration to 21 days (section 5 of the Act); and
- ensures that the supervision of strike ballots by the Conciliation, Mediation and Arbitration Commission (CMAC) provided for in section 86 of the IRA may only occur upon request by an organization in terms of its statute or constitution (section 6 of the Act).

*Other legal issues still pending.* The Committee recalls that it has been requesting the Government for many years to amend the IRA to recognize the right to strike in sanitary services, and establish only a minimum service with the participation of workers and employers in the definition of such a service. The Committee previously noted that the Essential Services Committee had engaged in discussion with the trade union and the Staff Association on the determination of the minimum service that should be provided with respect to sanitary services. It observes from the latest report of the Government that Act No. 6 of 2010 provides for a clear definition of “sanitary services” in its section 2. ***The Committee requests once again the Government to provide information on the discussions held and the final outcome with respect to the determination of the minimum service to be afforded for sanitary services.***

The Committee recalls that its previous comments requested information on the effect given in practice to section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular, the charges that may be brought under section 40(13), as well as the effect given to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. The Committee notes from the Government's report that the proposal to amend section 40 (civil liability of trade union leaders) and section 97(1)

(criminal liability of trade union leaders) of the IRA would be brought before the Labour Advisory Board before 31 March 2012. ***The Committee requests the Government to provide information in its next report on all progress made in this regard.***

As regards the need to take measures to amend the legislation so as to guarantee for prison staff the right to organize in defence of their economic and social interests, the Committee recalls that in its previous comments it had noted that a Supreme Court judgment in relation to the organizational rights of the Correctional Services Union referred to the possibility of adopting appropriate legislation for these workers to enjoy their rights under the Convention, with the exception of the right to strike. The Committee notes from the Government's latest report that the zero draft of the Correctional Services Bill was yet to be finalized by the Ministry of Justice and Constitutional Affairs with a view to being submitted to the Social Dialogue Committee. The Government adds that it requested the assistance of the ILO to give advice on best practices in the region. ***While expressing its firm hope that the assistance of the ILO will be provided rapidly, the Committee expects the Government to propose the necessary legislative amendments without further delay.***

Finally, the Committee recalls that its previous comments referred to the following legal acts and proclamation which gave rise to practices contrary to the provisions of the Convention:

- ***The 1973 Proclamation and its implementing regulations.*** The Committee recalls that it previously took note of the information provided by the Government in relation to the status of this Proclamation and, in particular, the "Attorney-General's Opinion", which stated that "on the coming into force of the Constitution, the Proclamation died a natural death". The Committee however noted from the 2010 high-level tripartite mission report that, despite assurances of the Government to the contrary, the social partners considered that there remained a certain ambiguity and uncertainty in respect of the residual existence of the Proclamation. ***The Committee requests the Government to take all necessary steps to clarify that all provisions of the 1973 Proclamation are now null and void.***
- ***The 1963 Public Order Act.*** The Committee recalls that for a number of years it had requested the Government to take the necessary measures to amend the Act so as to ensure that it could not be used to repress lawful and peaceful strike action. The Committee previously noted from the conclusions of the 2010 high-level tripartite mission that, despite the provisions exempting trade union meetings from the scope of the Act, it appeared that the Act was resorted to in respect of trade union activities if it was considered that these activities included matters relating to broader calls for democratic reforms of interest to trade union members. In this respect, the Committee observed that the ban on displaying any flag, banner or other emblem signifying association with a political organization or with the promotion of a political object, which was added to the Act in 1968, apparently has affected the right of trade unions to carry out peaceful protest actions. ***The Committee requests the Government to provide information on the steps taken to ensure that the 1963 Public Order Act is not used in practice to repress lawful and peaceful strike action, including any police guidelines or other instructions that may be elaborated to this end, as well as to indicate the measures taken to amend the Act where its provisions may have given rise to undue interference in trade union meetings or protest actions.***

The Committee takes note of the statement of the Government according to which consultation with the ILO technical assistance is ongoing to find a way forward. The Committee is informed of the ongoing technical assistance of the ILO and proposed recommendations on the various issues under examination. It also takes due note of the proposed roadmap which runs until 31 March 2012 endorsed by the Government to meet the recommendations of the Conference Committee. ***While acknowledging the Government's openness and commitment, the Committee cannot but firmly hope that the Government will pursue its efforts in this regard, and expects it to take all necessary steps to address all remaining issues in line with the Committee's previous request and in full consultation with the social partners and to provide information on the concrete progress made in this regard in its next report.***

***Report on the death in custody of a participant to the 2010 May Day demonstration.*** In its previous observation, the Committee noted with grave concern from the Conference Committee discussion and the high-level tripartite mission report the serious disruption of the 2010 May Day demonstrations, the series of arrests, and finally the death in custody of a participant in the demonstrations who had been arrested for wearing a t-shirt with the name of a political organization proscribed under the 2008 Suppression of Terrorism Act. The Committee notes from the Government's report with regard to the death of the detainee that the conclusion in the coroner's report is that the death was due to suicide; furthermore, the Committee notes the indication that the hearing was made public and that the family were allowed to use their own pathologist and legal representative throughout the hearing.

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

## Trinidad and Tobago

### ***Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*** ***(ratification: 1963)***

***Article 4 of the Convention.*** The Committee has been referring for a number of years to 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 had noted that the Government indicated that the Civil Service Act review has been in progress but is not yet complete. However, after consultation with employers' and workers' representative organizations, the Government has considered that the amendment of section 24(3) was not possible because of the presence of more than one association representing the seven existing classes in the civil service for the purposes of consultations and negotiation could place the employer in a difficult position. The Committee had recalled, however, that where there exists a trade union which enjoys preferential or exclusive bargaining rights, as in the current system, decisions concerning the most representative organization should be made by virtue of objective and pre-established criteria instead of simply giving priority to the one which was registered earlier in time, so as to avoid any opportunities for partiality or abuse. ***Noting that no information was provided in this regard, the Committee once again expresses the firm hope that the legislation will be modified in the near future, including section 24(3), so as to bring it into conformity with the principles of the Convention, and once again requests the Government to indicate any developments thereon.***

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 had noted that the Government reiterated that the Standing Tripartite Committee on Labour Matters (a consultative body) had not been reconstituted after the expiration of its term in December 2006. The Committee notes that the Government indicates in its report that it is considering amendments to the Industrial Relations Act, Chapter 88:01, to increase the rights of workers who are currently not recognized for the purpose of collective bargaining under the Act. ***The Committee expresses the hope that additional concrete measures will be taken in the near future to amend the legislation so as to allow minority unions in the unit to bargain collectively, at least on behalf of their own members when there is no union that represents the majority of workers. The Committee trusts that the Government will communicate progress on these issues in its next report and recalls that it can avail itself of the technical assistance of the Office if it so wishes.***

*ITUC comments.* The Committee had noted the comments from the International Trade Union Confederation (ITUC) dated 24 August 2010 indicating that: (i) although the law states that workers can form and join trade unions, in practice, everyone working in "essential services", which include domestic workers, drivers, gardeners and others, are not recognized as workers under the law and therefore cannot legally join trade unions; (ii) many unions had their collective bargaining blocked by employers' delaying tactics; and (iii) the state authorities have repeatedly refused to negotiate collective agreements with the public sector unions. ***Noting that no information was provided in this regard, the Committee once again requests the Government to provide its observation thereon.***

## Tunisia

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

The Committee notes the comments dated 4 August 2011 from the International Trade Union Confederation (ITUC) concerning the application of the Convention.

The Committee is also informed of the establishment of the Tunisian General Confederation of Labour (CGTT), for which it had been requesting recognition, as did the Committee on Freedom of Association (Case No. 2672), for several years.

The Committee also notes that a constituent assembly was elected on 23 October 2011 with the mandate, inter alia, to draw up a new Constitution. ***In this context, the Committee hopes that, as part of the legislative reform movement which should accompany the adoption of a new Constitution, the issues which have been the subject of its comments for many years will be taken into account in order to ensure that the Tunisian legislation is in full conformity with the Convention.***

In this regard, the Committee recalls that these questions concerned the following points.

#### *Article 2 of the Convention:*

- the need to ensure that magistrates enjoy the guarantees afforded by the Convention;
- the need to amend section 242 of the Labour Code in order to guarantee that the minimum age for joining a trade union is the same as the age for admission to employment as determined in the Labour Code (16 years in accordance with section 53 of the Labour Code).

#### *Article 3:*

- the question of determining the representativeness of trade unions in the higher education sector;
- the need to amend section 251 of the Labour Code so as to ensure that workers' organizations have the right to elect their representatives in full freedom, including from among foreign workers, at least after a reasonable period of residence in the country;

- the need to repeal section 376bis of the Labour Code so as to guarantee that workers' organizations, irrespective of their level, can organize their activities in full freedom with a view to furthering and defending the interests of their members;
- the need to amend section 376ter of the Labour Code so as to remove any legal requirement to specify the duration of a strike so as to guarantee that workers' organizations can call a strike of unlimited duration if they so wish;
- the possibility of deleting the last subsection of section 381ter of the Labour Code, which provides that the list of essential services shall be fixed by decree; the Committee considers that it would not be desirable – or even possible – to attempt to draw up a complete and fixed list of services which can be considered as essential (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 159);
- the need to amend section 387 of the Labour Code taking account of the principle whereby sanctions for strike action should be possible only where the prohibitions breached are in conformity with the Convention (see General Survey, op. cit., paragraph 177); however, the requirement to obtain the approval of the trade union federation before declaring a strike, under the terms of section 376bis of the Labour Code, is not in conformity with *Article 3* of the Convention;
- the need to review the penalties laid down by section 388 of the Labour Code, under which any person who has participated in an unlawful strike is liable to a sentence of imprisonment; in this regard, the Committee recalls that no criminal penalty should be imposed against a worker for having carried out a peaceful strike and, therefore, measures of imprisonment should not be imposed on any account; that such penalties can be envisaged only where, during a strike, violence against persons or property or other serious criminal offences of rights have been committed, and can be imposed pursuant to legislation punishing such acts, especially the Penal Code.

*The Committee requests the Government to provide information in its next report on progress made with regard to bringing the national legislation, especially the Labour Code, into conformity with the provisions of the Convention. It reminds the Government that it may avail itself of technical assistance from the Office with regard to these issues.*

## Turkey

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011, Education International (EI) in a communication dated 31 August 2011, and the Turkish Union of Public Employees in the Education, Training and Science Services (EGITIM SEN) in a communication dated 12 September 2011. The Committee notes the observations provided by the Government on the 2010 comments of the Confederation of Public Employees' Trade Unions (KESK), ITUC and EI, as well as on the 2011 ITUC comments. The Committee recalls that in its previous observation it had also noted the comments submitted by the Independent Confederation of Public Servants' Trade Unions (BASK) in a communication dated 11 October 2010. *The Committee requests the Government to provide its observations thereon as well as on the 2011 EI comments.*

The Committee notes the discussion that took place in the 2011 Conference Committee on the Application of Standards.

*Civil liberties.* The Committee recalls that for a number of years it has been commenting upon the situation of civil liberties in Turkey. It further recalls that in its previous observation, while taking note of the information provided by the Government on the steps taken to avoid police violence and undue interference, the Committee observed with concern the allegations of important restrictions placed on freedom of speech and assembly of trade unionists, including numerous cases of arrests of trade unionists contained in the above-noted ITUC, KESK and EI communications. The Committee notes the Government's observations thereon. The Committee notes, in particular, that the Government, referring to the alleged cases of arrests of trade unionists, points out that while the mentioned trade union leaders have been arrested and detained, such measures were taken against them not because of their trade union activities, but rather because of their membership in a terrorist organization. The Committee notes in this respect that EI indicated that by accusing trade unionists of being a member of an armed and illegal organization, the State effectively stigmatized and delegitimized the trade union movement in Turkey. With regard to the EI allegation relating to the assaults committed by the riot police which used tear gas against members of the EGITIM SEN during a march organized on 5 June 2009, the Government indicates that the security forces intervened by gradually using gas, in a controlled manner, in order to disintegrate the group of people who forced the barricades. The Government provided similar explanation with regard to interventions by the security forces in other strikes and demonstrations. The Government considers that the security forces acted in accordance with the regulations and exerted force accordingly. The Committee notes with *concern* new allegations of restrictions placed on freedom of association and assembly of trade unionists. *The Committee, as did the Conference Committee, once again recalls that respect for civil liberties is an essential prerequisite to freedom of association and*

***urges the Government to continue to take all the necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. The Committee also urges the Government to review, in full consultation with the social partners, any legislation that might be applied in practice in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation. It requests the Government to indicate in its next report all measures taken in this respect. The Committee also requests the Government to carry out an investigation into the new allegations concerning all the cases of use of violence during police or other security force interventions and to provide information on its outcome in its next report.***

*Legislative issues.* The Committee recalls that for a number of years it had been commenting on several provisions of Act No. 2821 on trade unions, Act No. 2822 on collective labour agreements, strikes and lockouts and Act No. 4688 on public employees' trade unions. The Committee further recalls that in its previous observation, the Committee had noted the draft Act on Trade Unions amending Acts Nos 2821 and 2822. In this respect, the Committee noted that in general, the draft provisions concerning internal functioning of unions and their activities appeared to be less detailed than corresponding provisions of Acts Nos 2821 and 2822, which previously gave rise to repeated interference by the authorities. The Committee had further noted several other improvements concerning, among others, the procedure for establishment of a trade union. The Committee noted, however, that the draft did not deal with all issues previously raised by the Committee and that no amendments to Act No. 4688 have been proposed. It therefore expressed the hope that the necessary measures aimed at the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688 will be taken without further delay.

The Committee notes the Government's statement before the 2011 Conference Committee to the effect that more time was needed for revising the legislation regarding the industrial relations system and that the harmonization process of the legislation had not been fully completed. The Committee further notes that the Conference Committee requested the Government to provide detailed and complete information on all progress made in this respect to the Committee of Experts for its 2011 session. While observing with *regret* the absence of the Government's report, the Committee notes the Government's communication dated 30 November 2011 by which it informs that a draft Act on Collective Labour Relations had been prepared by the Tripartite Consultation Board. The Government expects that this draft, which aims at bringing the Turkish legislation into conformity with the Convention, will be enacted by Parliament in the first half of 2012. ***The Committee expresses the hope that the new legislation amending Acts Nos 2821, 2822 and 4688 will be adopted without further delay and that it will take into account the following points raised by the Committee in its previous observations.***

*Article 2 of the Convention:*

- The need to ensure that self-employed workers, homeworkers and apprentices enjoy the right to organize. In this respect, the Committee notes that section 2 of the draft Law refers to the definition of “worker” provided for in the Labour Law (No. 4857), according to which, an “employee is a real person working under an employment contract” and recalls that section 18 of Act No. 3308 (Apprenticeship and vocational training) leads to the exclusion either explicitly or in practice of these categories of workers.
- The need to guarantee the right to organize to public employees, such as senior public employees, magistrates, civilian personnel in military institutions and prison guards (section 15 of Act No. 4688).
- The need to ensure that persons who have been unemployed for over one year or those retired can retain their trade union membership, subject only to the by-laws of the relevant trade union (section 18 of the draft Law on trade unions).

*Article 3. Election of representatives:*

- The need to ensure that the decision regarding the suspension of a trade union officer's mandate in cases where he/she becomes a candidate in local or general elections and its termination in case of election belongs to the relevant trade union (sections 22(3) and 27(3) of the draft Law on trade unions).
- The need to repeal section 10(8) of Act No. 4688, which provides for the removal of union executive bodies in case of non-respect of requirements concerning meetings and decisions of general assemblies set out in the law.
- The need to repeal section 16 of Act No. 4688 providing for a mandatory termination of trade union membership and duties by reason of resignation and exclusion from the public services or transfer to another branch of activity, so as to ensure the right of organizations to elect their representatives in full freedom.
- The need to ensure that procedures and principles related to the acquisition and termination of membership are regulated by trade unions' internal regulations or by-laws and not by the authorities (section 18(10) of the draft Law on trade unions).

*Limitations on the right to strike:*

- The need to ensure that cases in which strikes may be restricted or even prohibited are limited to those involving: (i) public servants exercising authority in the name of the State; and (ii) essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. With regard to the public service, the Committee recalls that section 35 of Act No. 4688,

which provides for the determination and settlement of disputes by the conciliation board, makes no mention of the circumstances in which strike action may be exercised in the public service. With regard to other services, the Committee notes that, on the one hand, the draft Law on trade unions proposes to repeal sections 29–34 of Act No. 2822, which impose important limitations on the right to strike, including banning strikes in specified categories of services and, on the other, it proposes to add section 29, pursuant to which strikes may be fully or partially, permanently or temporarily prohibited by a ruling of the competent court if the strike is deemed contrary to public order or public health (section 42 of the draft Law on trade unions). The Committee considers that the term “public order” is too broad to fall within a strict definition of what may constitute an essential service.

- The need to amend section 52 of Act No. 2822, which provides for compulsory arbitration by the High Court of Arbitration at the request of one party in disputes concerning activities and establishments where strike is prohibited and where parties have failed to come to an agreement. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is only acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is in the case of disputes in essential services in the strict sense of the term.
- The need to reduce the excessively long waiting period before a strike can be called (section 27 – referring to section 23 – and section 35 of Act No. 2822).
- The need to ensure that workers’ and employers’ associations are involved in the determination of minimum services and, in cases of disagreement, the question should be settled by an independent body (section 40 of Act No. 2822).
- The need to repeal severe limitations on picketing (section 48 of Act No. 2822).
- The need to ensure that no penal sanction could be imposed against a worker for having carried out a peaceful strike and that on no account measures of imprisonment could be imposed, except in cases where during a strike, violence against persons or property or other serious infringements of rights have been committed (sections 70, 71, 72, 73 (except for paragraph 3 repealed by the Constitutional Court), 77 and 79 of Act No. 2822, imposing heavy sanctions, including imprisonment for participating in unlawful strikes).

*Supervision of organizations’ accounts (Associations Act No. 5253).* The Committee had previously observed that section 35 of the Associations Act of 4 November 2004 provides that certain specific sections of this Act apply to trade unions, employers’ organizations, as well as federations and confederations, if there are no specific provisions in special laws concerning these organizations. In this respect, section 19 enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24-hours’ notice. Once again, the Committee recalls that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers’ or workers’ organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 125). ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend sections 19 and 35 of Act No. 5253 of 2004 so as to exclude workers’ and employers’ organizations from the scope of application of these provisions or ensure that verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members.***

***The Committee urges the Government to engage in ongoing assistance with the ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822, 4688 and 5253 and expresses the hope that the final texts will take fully into account its comments above.***

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

The Committee notes the comments made by the Turkish Union of Public Employees in the Education, Training and Science Services (EGITIM SEN) in a communication dated 17 December 2010 and the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 alleging violations of collective bargaining rights and numerous cases of anti-union dismissals. ***The Committee requests the Government to provide its observations thereon in its next report.*** The Committee further notes the comments submitted by the International Metalworkers’ Federation (IMF) in a communication dated 31 August 2011 alleging anti-union dismissals that have taken place at two enterprises, and the Government’s observations thereon. The Committee examines the comments submitted by Education International (EI) in the framework of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee recalls that in its previous observation it had noted the draft Act on Trade Unions amending Acts Nos 2821 (Trade Unions Act) and 2822 (Collective Agreements, Strikes and Lock-outs Act). In this respect, the Committee notes the discussion that took place in the June 2011 Conference Committee on the Application of Standards regarding the application of Convention No. 87 in Turkey and, in particular, the Government’s statement that more time

was needed for revising the legislation regarding the industrial relations system and that the harmonization process of the legislation had not been fully completed. **The Committee expresses the firm hope that the necessary measures aimed at the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688 (Public Servants Trade Unions Act) will be taken without further delay and that any new legislation will take into account the following points raised by the two Committees.**

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that in its previous observation, while taking due note of legislative provisions introducing dissuasive sanctions against acts of anti-union discrimination (sections 118 and 135 of the Penal Code No. 5237, and section 18(2) of Act No. 4688), it observed that the ITUC referred to the widespread incidences of acts of anti-union discrimination in the public and private sectors, such as transfers of public employees who are trade union members or officers, interference in the activities of public sector trade unions by the Government as employer, and blacklisting and pressure to quit the union in the private sector. The Committee noted that similar allegations were submitted by the Public Employees' Trade Unions (KESK). The Committee requested the Government to indicate the procedure that applies for the examination of complaints of anti-union discrimination in the public sector and to provide statistical data showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed). The Committee notes the observations provided by the Government on the ITUC and KESK comments. The Government indicates, in particular, that in addition to the abovementioned legislative provisions which, in its view provide for sufficient protection against all types of discrimination, the necessary warnings have been issued by the Government and four circulars have been published by the Office of the Prime Minister on the unacceptability of interference in trade union activities of public employees. The Committee further notes that, in its report, the Government indicates that no statistical database regarding complaints of anti-union discrimination is kept by the Ministry of Labour and Social Security. It further explains that, as regards the public sector, public servants have the right to make written or verbal complaints to their supervisors requesting to investigate cases of trade union discrimination. If the alleged cases are not resolved following this procedure, administrative proceedings can be initiated. The Government informs that the State Personnel Administration possesses statistical information and documents submitted to it by the relevant institutions regarding claims relating to cases of anti-union discrimination in the public sector. **The Committee requests the Government to provide this statistical data.** The Committee notes that in its latest communication, the ITUC refers to cases of reinstatement ordered by the court. **Noting, however, that no information has been provided by the Government with regard to the private sector and noting that some of the ITUC allegations concern the private sector, the Committee reiterates its previous request for information and expresses the firm hope that the Government will take all necessary measures to ensure that the provisions of the Convention are effectively applied.**

*Remedies and compensation.* The Committee had previously requested the Government to update the sanctions provided for under sections 59(2) (non-reinstatement of trade union officers) and 59(3) (anti-union discrimination at the time of recruitment) of Act No. 2821 and to ensure that the compensation afforded to a trade union officer who wishes to return to his/her post and is not reinstated for anti-union reasons has a dissuasive effect. The Committee notes in this respect that section 24 of the draft Law on Trade Unions would appear to address the issue previously raised by the Committee with regard to adequate compensation for acts of anti-union discrimination as it proposes to provide, in addition to the compensation provided for under the Labour Law (No. 4857), for a compensation of not less than the worker's annual wage. With regard to the non-reinstatement of a trade union officer who wishes to return to his/her post, section 22 of the draft merely indicates that, while calculating the compensation, the employment period in the workplace shall be taken into consideration, as well as the wage and other rights enjoyed by the worker prior to termination. The Committee considers that compensation established solely pursuant to this criterion would not constitute a sufficiently dissuasive sanction against an employer. **The Committee therefore once again requests the Government to review the draft Law on Trade Unions so as to further amend the relevant sections of Act No. 2821.**

*Article 4. Free and voluntary collective bargaining.* The Committee recalls that it had previously expressed the hope that the Government would take the necessary measures to amend section 12 of Act No. 2822 so as to ensure that, where no union meets the 50 per cent membership criterion, the existing unions at the workplace or enterprise may bargain at least on behalf of their own members regardless of whether they are affiliated to a confederation or not. The Committee notes that, while section 39 of the new draft Law on Trade Unions, amending section 12 of Act No. 2822, proposes to abolish the requirement of affiliation to a major confederation in order for a union to be able to engage in collective bargaining at the workplace level, the proposed amendment maintains the requirement that unions should represent the majority of workers in a workplace (50 per cent plus one) in order to enter into negotiations with the employer with a view to concluding a collective agreement. The Committee once again recalls that in such systems, if no single union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the existing unions in the workplace, at least on behalf of their own members. **The Committee therefore once again requests the Government to review the draft Law on Trade Unions so as to further amend section 12 of Act No. 2822.**

*Collective bargaining in the public service.* The Committee recalls that it had previously noted that Law No. 5982 of 2010 repealed several provisions of the Constitution which previously restricted collective bargaining rights and granted, by virtue of its article 53, the right to conclude collective agreements to public servants and other public

employees. The Committee had also taken note of the Government's indication that the constitutional amendment would be followed by the relevant legislative amendments and trusted that Act No. 4688 would be soon amended so as to ensure that public servants enjoy full collective bargaining rights and not just the right to hold "collective consultative talks" as currently established. *The Committee therefore once again trusts that Act No. 4688 would be soon amended so as to bring it into conformity with the newly amended Constitution and the Convention by addressing the following points raised previously: (i) if the legislation is to provide for the direct employer to participate in genuine negotiations with trade unions representing public servants not engaged in the administration of the State, the need to ensure that a significant role is left to collective bargaining between the parties; (ii) the need to guarantee clearly within the legislation that negotiations cover not only financial questions but also other conditions of employment; (iii) the need to clearly guarantee that the legislation does not give the authorities, in particular the Council of Ministers, the power to modify or reject collective agreements in the public sector; and (iv) the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that currently provided for (currently 15 days under section 34).*

The Committee notes that in its statement before the Conference Committee, the Government referred to the adoption in February 2011 of an Act providing for a collective agreement premium for members of public servant trade unions and to the abrogation of a criticized provision concerning contract personnel in the public sector. *The Committee requests the Government to provide a copy thereof.*

The Committee further once again recalls that an additional issue to be overcome in order to allow for free and voluntary collective bargaining in the public sector is the recognition of the right to organize to a large number of categories of public employees not engaged in the administration of the State who are excluded from this right and, therefore, from the right to be represented in negotiations (as addressed in the comments on the application of Convention No. 87).

*The Committee urges the Government to engage in ongoing assistance with the ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688, and expresses the firm hope that the final texts will take fully into account its comments above. It requests the Government to transmit the relevant legislative texts or proposed drafts thereof with its next report.*

## Uganda

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)**

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

The Committee notes that, according to the comments submitted by the International Trade Union Confederation (ITUC), collective bargaining in the public service sector is not allowed by the legislation. *The Committee requests the Government to take measures in order to recognize the right to collective bargaining to all public employees and public servants not engaged in the administration of the State, in accordance with Article 6 of the Convention.*

*Article 4 of the Convention. Promotion of collective bargaining.* The Committee noted that section 7 of the Labour Unions Act (LUA) sets forth the lawful purposes for which trade union federations may be established. The said purposes include, inter alia: the formulation of policy relating to the proper management of labour unions and the general welfare of employees; the planning and administration of workers' education programmes; and consulting on all matters relating to labour union affairs. Noting that the lawful purposes delineated under section 7 of the LUA does not include collective bargaining, the Committee recalls that the right to collective bargaining should also be granted to federations and confederations of trade unions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 249). *In this connection, the Committee requests the Government to confirm whether the right of trade union federations to engage in collective bargaining is assured, in the LUA or in other legislation.*

*Compulsory arbitration.* The Committee noted that, under section 5(3) of the Labour Disputes (Arbitration and Settlement) Act of 2006, in cases where a labour dispute reported to a labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court. Section 27 of the Act, the Committee further notes, empowers the minister to refer disputes to the Industrial Court where one or both parties to a dispute refuse to comply with the recommendations of the report issued by a board of inquiry. In this connection, the Committee recalls that recourse to compulsory arbitration is acceptable only for: (1) workers in essential services, in the strict sense of the term; and (2) public employees engaged in the administration of the State. Otherwise, provisions that permit the authorities to impose compulsory arbitration, or allow one party unilaterally to submit a dispute to the authorities for arbitration, run counter to the principle of the voluntary negotiation of collective agreements enshrined in *Article 4* of the Convention. *The Committee requests the Government to amend the above legislation so as to bring it into conformity with the Convention.*

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

## United Kingdom

### Bermuda

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

*Article 2 of the Convention. Protection against employer's interference.* In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to protect against any possible employer intimidation or interference in respect of union certification or decertification. The Committee notes that the Government indicates in its report that in addition to doubling the number of Labour Relations Officers, the Department of Labour and Training continues to work with all of its social partners to proactively protect against employer intimidation and/or interference in respect of union certification and decertification. In addition, the Labour Advisory Council, which is chaired by the minister responsible for labour, meets quarterly and provides an opportunity and a forum for the Labour Relations Officers, the unions and/or the employers to discuss any concerns or issues. **The Committee requests the Government to indicate any measures taken by the Labour Advisory Council to further protect against any possible employer intimidation or interference in respect of union certification or decertification.**

*Article 4. Coverage of management personnel.* In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to include management personnel within the scope of the Trade Union Act so as to guarantee them the rights established by the Convention, in particular the right to collective bargaining. The Committee observes that according to the Government: (i) every worker has a right to belong to a union as prescribed by article 10(1) of the Constitution, therefore including management personnel; (ii) management personnel can be placed within a specific bargaining unit if there is agreement between the parties that collective bargaining agreement representation be installed; (iii) if a union has historically represented management personnel in an organization, then unless there are exceptional circumstances why recognition should be denied, then the Department of Labour and Training should use the weight of their department to facilitate the employer recognizing the union; (iv) the Labour Advisory Council agreed to this way forward, wherein the Department of Labour and Training will “cause” employers to recognize unions where it is appropriate to do so; and (v) the Department of Labour and Training will facilitate the process already in place for rights to recognition, in a way that is inclusive of management personnel. The Committee takes due note of this information.

### British Virgin Islands

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

The Committee notes the adoption of a new Labour Code in 2010 (Act No. 4 of 2010).

*Article 1 of Convention. Protection against acts of anti-union discrimination.* The Committee notes with **satisfaction** that the new Labour Code provides for protection against anti-union discrimination (sections 44, 82(1) and (2), 85 and 86), providing even reinstatement and other dissuasive sanctions.

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

## Uruguay

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

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 4 August 2011, alleging acts of anti-union discrimination and obstacles to collective bargaining. **The Committee requests the Government to send its observations on this matter.**

The Committee notes the discussion that took place within the Committee on the Application of Standards at the International Labour Conference at its June 2011 session, particularly that in its conclusions: (1) it noted the widespread exercise of trade union rights in the country and the respect for human rights; (2) it welcomed the fact that negotiations on the matters under examination had continued during the Conference and that an ILO mission would visit Uruguay in relation to these issues; and (3) it trusted that this mission would be able to note tangible progress and that, with the objective of bringing the legislation fully into conformity with the Convention, the necessary measures would be taken without delay to prepare a bill that reflected the comments of the supervisory bodies.

The Committee noted that an ILO mission visited the country in August 2011 and that during this mission, the Government and the social partners reached an agreement setting in motion a new stage of dialogue on the matters under examination.

*Article 4 of the Convention.* In its previous comments, the Committee noted the adoption of Act No. 18566 of September 2009 concerning collective bargaining, and the conclusions and recommendations of the Committee on

Freedom of Association in Case No. 2699, which raised problems of conformity of the abovementioned Act with the Convention (see 356th Report, paragraph 1389). These were referred to in the following conclusions:

- I. With respect to the exchange of information necessary to allow the normal conduct of the process of collective bargaining and that in the case of confidential information, its communication carries the implicit obligation of secrecy, and breach thereof would give rise to civil liability of those who are in breach (section 4), the Committee considers that all the parties to the negotiation, whether or not they have legal personality, must be liable for any breaches of the right to secrecy of the information which they receive in the framework of collective bargaining. The Committee requests the Government to ensure that this principle is respected.
- II. As regards the composition of the Higher Tripartite Council (section 8), the Committee considers that an equal number of members could be taken into account for each of the three sectors, and also the appointment of an independent chairperson, preferably nominated by the workers' and employers' organizations jointly, who could break the deadlock in the event of a vote. The Committee requests the Government to hold discussions with the social partners on the modification of the law so as to arrive at a negotiated solution to the number of members of the Council.
- III. With respect to the powers of the Higher Tripartite Council and in particular considering and pronouncing on questions related to the tripartite and bipartite bargaining levels (section 10(d)), the Committee has emphasized on many occasions that "the determination of the bargaining level is essentially a matter to be left to the discretion of the parties" (see *Digest of the decisions and principles of the Freedom of Association Committee*, fifth (revised) edition, 2006, paragraph 989). The Committee requests the Government to take the necessary measures including the amendment of existing legislation to ensure that the bargaining level is established by the parties and is not subject to voting in a tripartite body.
- IV. As regards the possibility of wages councils establishing conditions of work for each case to be agreed by the employers' and workers' delegates in the respective wage group (section 12), the Committee recalls, firstly, that under ILO standards, the fixing of minimum wages may be subject to decisions by tripartite bodies. On the other hand, recalling that it is up to the legislative authority to determine the legal minimum standards for conditions of work and that *Article 4* of the Convention seeks to promote bipartite bargaining to fix conditions of work, the Committee hopes that in application of those principles, any collective agreement on fixing of conditions of employment will be the result of an agreement between the parties, as the section in question appears to envisage.  
The Committee had noted in this connection the Government's statement in its report that the competence of the wages councils was aligned with the provisions of section 83 of Act No. 16002 of 25 November 1988, covering conditions of work, but extended to the latter only when there was agreement between the social partners, which meant that a tripartite body may not vote on matters pertaining to conditions of work, but does have a vote when it comes to determining minimum wages by category. (The Committee understands that these matters have been cleared up between the parties.)
- V. With respect to the subject of bipartite collective bargaining and, in particular, that in company collective bargaining where there is no workers' organization, bargaining authorities should pass to the representative higher level organization (section 14, last sentence), the Committee observes that the complainant organizations consider that the absence of a trade union does not mean the absence of collective relations in the company. The Committee considers, on the one hand, that bargaining with the most representative higher trade union-level organization should only take place if it had a number of members in the company in accordance with the national legislation of each country. The Committee recalls, on the other hand, that the Collective Agreements Recommendation, 1951 (No. 91), gives pre-eminence to workers' organizations as one of the parties to collective bargaining, and refers to representatives of non-organized workers only in the case of absence of such organizations. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that future legislation takes these principles fully into account.
- VI. As regards the effects of the collective agreement and, in particular, that the collective agreement by sector of activity concluded by the most representative organizations is of mandatory application to all employers and workers at the respective bargaining level once it has been registered and published by the Executive Power (section 16), the Committee, taking into account the concern expressed by the complainant organizations, requests the Government to ensure that the process of registration and publication of the collective agreement only involves checks on compliance with the legal minima and questions of form, such as, for example, the determination of the parties and the beneficiaries of the agreement with sufficient precision and the duration of the agreement.
- VII. As regards the duration of collective agreements and, in particular, the maintenance in force of all the clauses of the agreement which have expired until a new agreement replaces it, unless the parties have agreed otherwise (section 17, second paragraph), the Committee recalls that the duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement (see *Digest*, op. cit., paragraph 1047). In these circumstances, taking into account that the complainant organizations have expressed disagreement with the whole idea of automatic continuing effect of collective agreements, the Committee

invites the Government to discuss with the social partners on amendments to the legislation in order to find a solution acceptable to both parties.

The Committee is pleased to note in the Government's report that: (1) in the framework of the ILO's mission to the country in August 2011, a tripartite agreement was drawn up between the Ministry of Labour and Social Security and representatives of the workers' sector Inter-Union Assembly of Workers – Workers' National Convention (PIT-CNT) and the employers' sector (National Chamber of Commerce and Services of Uruguay), thereby setting in motion a new dialogue on the comments made by the Committee on Freedom of Association, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards; and (2) the dialogue process, which is the result of a tripartite agreement, was due to start on 10 October 2011 and the Government will send a progress report or draft legislation envisaging possible amendments to Act No. 18566 to the International Labour Standards Department so that it might make comments. The Committee notes with *interest* that the Government has indicated in a recent communication that following the dispositions provided for in the tripartite agreement abovementioned, it has invited the social partners to a meeting on 28 October 2011 in order to continue the work as planned by the tripartite agreement and it has presented to the social partners a modification proposal to Act No. 18566 in accordance with the conclusions of the Committee on Freedom of Association. (The Government has also sent the employers' sector's contribution and the comments from the workers as regards the said proposal.) *The Committee trusts that, in the course of the tripartite dialogue initiated, the necessary measures will be taken, taking into account the comments of the Committee on Freedom of Association and of this Committee on Act No. 18566 and the matter relating to the occupation of workplaces, to ensure that law and practice is in full conformity with this Convention. The Committee stresses the importance of the parties reaching an agreement as rapidly as possible on the matters pending, given that it is vital that the regulations governing labour relations should be shared by the social partners with a view to future action. The Committee requests the Government to keep it informed on the matter in its next report.*

## Yemen

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

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

The Committee had noted the comments submitted by the International Trade Union Confederation (ITUC) in its communication dated 24 August 2010 referring mostly to issues already raised by the Committee as well as violations of trade union rights of foreign workers and the cancellation of the registration of a trade union in the transport sector. *The Committee requests the Government to provide its observations thereon.*

*Article 2 of the Convention. The Law on Trade Unions (2002).* In its previous comments, the Committee had indicated that the reference to the General Federation of Trade Unions of Yemen (GFTUY) made in sections 2 (definition of "General Federation"), 20 and 21, indicating that *"All the general trade unions establish a General Federation entitled the General Federation of Trade Unions of Yemen"* could result in making it impossible to establish a second federation to represent workers' interests. The Committee had noted that the Government indicated that: (i) it has never imposed any prohibition on trade-union activities; (ii) the law does not stipulate that affiliation to GFTUY is obligatory and there are many other general trade unions which are not in this federation, such as the Trade Union of Doctors, Trade Union of Pharmacists, Education Professions' Trade Unions, Journalists' Trade Union and Lawyers' Trade Union; (iii) there is no monopoly in representation since, in the framework of social dialogue, the interlocutor is the most representative trade union; and (iv) at the moment, the GFTUY is the most representative association of workers. While noting that the Government does not refer to the possibility of the general trade unions to form a federation different than the GFTUY, the Committee recalls that unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in *Articles 2 and 11* of the Convention. *In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the Law on Trade Union so as to repeal specific reference to the GFTUY, allowing workers and their organizations to establish and join the federation of their own choosing and to indicate the measures taken or envisaged in this regard in its next report.*

Furthermore, the Committee had noted the exclusion from the scope of the Law of employees of high-level public authorities and Cabinets of Ministers (section 4). The Committee had recalled that senior public officials should be entitled to establish their own organizations and that the legislation should limit this category to persons exercising senior managerial or policy-making responsibilities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 57), and had requested the Government to indicate whether the categories of workers referred to in section 4 of the Law enjoy the right to establish and join trade unions. *In the absence of the Government's reply thereon, the Committee must once again reiterate the abovementioned request.*

*Article 3.* In its previous comments, the Committee had noted that section 40(b) provides that a trade union organization can organize a strike in coordination with a trade union organization of the highest level. The Committee had recalled that a legislative provision which requires that a decision by the first-level trade union to call a strike at the local level should be approved by a higher level trade union body, is not in conformity with the right of trade unions to organize their activities and to formulate their programmes. The Committee had requested the Government to clarify whether, section 40(b) requires an authorization from the higher level trade union for a strike to be organized and if that is the case, to take the necessary measures in order to amend the legislation so as to bring it into conformity with the Convention. *In the absence of the Government's reply thereon, the Committee must once again reiterate the abovementioned request.*

*The draft Labour Code.* The Committee recalls that in its previous observations it had noted that a draft Labour Code was under discussion and that several of its provisions were not in conformity with the Convention. The Committee notes the Government's indication that with the active participation of the ILO, it is working on the enactment of the new Labour Code and that the draft Code has been referred to the Ministry of Legal Affairs, and will consequently be referred by the Ministry of Social Affairs and Labour to the Council of Ministers and afterwards to Parliament.

In this respect, the Committee must once again recall its comments concerning the draft Labour Code which read as follows:

*Article 2 of the Convention.* The Committee recalled that in its previous observation, it had requested the Government to ensure that domestic workers, the magistracy and the diplomatic corporations, excluded from the draft Labour Code (section 3B(2) and (4)), may fully benefit from the rights set out in the Convention and to transmit the texts of any legislation or regulations ensuring their right to organize. The Committee had further requested the Government to consider revising section 173(2) of the draft Code so to ensure that minors between the ages of 16 and 18 may join trade unions without parental authorization and noted with interest the Government's intention to do so. The Committee had noted that the Government, in its previous report, indicated that the Committee's observations with regard to sections 3B and 173(2) of the draft Code have been taken into consideration. ***The Committee requests the Government to indicate any developments in this respect.***

In its previous comments, the Committee had noted the Government's indication that foreign persons holding diplomatic passports and those working in Yemen on the basis of political visas were excluded from the scope of the draft Code under section 3B(6) and that this category of workers was covered by the specific legislation, regulations and agreements on reciprocal treatment. The Committee had therefore requested the Government to indicate whether this category of foreign workers could in practice establish and join organizations of their own choosing. ***In the light that no new information was provided by the Government, the Committee reiterates its previous request.***

*Article 3.* With regard to the Committee's previous request to provide a list of essential services referred to in section 219(3) of the draft Code, which empowers the Minister to submit disputes to compulsory arbitration, the Committee had noted the Government's indication that the Council of Ministers will issue such a list once the Labour Code is promulgated. ***The Committee requests the Government to indicate any developments in this respect.***

Concerning section 211 of the draft Labour Code, which provides that strike notice must include an indication as to the duration of a strike, the Committee had noted that the Government reiterates that it is willing to take into account the previous observation of the Committee to the effect that such a requirement unduly restricts the effectiveness of an essential means for furthering and defending workers' occupational interests. ***It requests the Government to indicate any progress made in this regard.***

*Articles 5 and 6.* The Committee had previously noted that section 172 of the draft Labour Code would appear to prohibit the right of workers' organizations to affiliate with international workers' organizations and that the Government had concurred that this section contradicted section 66 of the Law on Trade Unions, which ensures the right to affiliate with international organizations and the current practice. The Committee therefore expressed the hope that the Government would take the necessary measures to withdraw section 172 from the draft Labour Code. The Committee had noted the Government's indication referring to the Law on Trade Unions which allows workers' organizations to affiliate with the Arab, regional and international trade union federations and to contribute to their establishment. According to the Government, this Law leaves no room for any other text that might contradict its provisions. ***The Committee therefore once again expresses the firm hope that section 172 will be withdrawn from the draft Labour Code and requests the Government to keep it informed in this respect.***

***The Committee trusts that the present legislative reform will bring the national legislation into full conformity with the Convention, in accordance with the comments abovementioned, and once again requests the Government to indicate any development in this regard in its next report.***

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

***The Committee notes the comments on a serious situation submitted by ITUC in August 2011 and requests the Government to provide as a matter of urgency its reply in this respect.***

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

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

*Comments of the International Trade Union Confederation (ITUC).* The Committee notes the comments submitted by the ITUC in its communication dated 24 August 2010. ***The Committee requests the Government to communicate its observations thereon.***

*Articles 1, 2 and 3 of the Convention. Protection against anti-union practices.* The Committee recalls that for a number of years it had been requesting the Government to ensure that effective and sufficiently dissuasive sanctions that guarantee the protection of workers' organizations against acts of interference by employers or their organizations in trade union activities are expressly provided for in the national legislation. In its last observation, the Committee had noted the Government's indication that: (i) the process of formulating the new draft legislative amendments to the Labour Code was under way and that it would endeavour to add provisions on penal responsibility of employers committing acts of anti-union discrimination and interference in trade union affairs in order to bring the legislation into conformity with the Convention; and (ii) the Committee's observation would be taken into account when making amendments to the Law on Trade Unions and supplementing the Penal Code. However, no information regarding the amendments to the Law on Trade Unions or Penal Code was provided in the Government's report. ***Therefore, the Committee once again requests the Government to indicate the progress made in this respect and to provide a copy of the amended legislative texts aimed at ensuring full respect for the rights covered under the Convention as soon as they have been adopted.***

*Article 4. Power granted to the Ministry of Labour to refuse registration of a collective agreement on the basis of consideration of "economic interests of the country".* The Committee had previously requested the Government to amend sections 32(6) and 34(2) of the Labour Code so as to ensure that refusal to register a collective agreement is only possible due to a

procedural flaw or because it does not conform to the minimum standards laid down by the labour legislation and not on the basis of consideration of “the economic interests of the country”. The Committee had previously noted: (i) that the Government reiterates that it has adopted the Committee’s proposal with regard to the amendment of the abovementioned section of the Labour Code; and (ii) that the Labour Code was being revised by the Ministry of Legal Affairs before being submitted to the Council of Ministers and to the Parliament. The Committee notes that the Government once again reiterates that the Labour Code is currently being revised by the Ministry of Legal Affairs before being submitted to the Council of Ministers and to the Parliament. ***The Committee trusts that the legislative amendments requested in its previous observations will be fully reflected in the new legislation and once again requests the Government to provide a copy of the draft Labour Code as soon as the final version of it is available.***

*Collective bargaining in practice.* In its previous comments, the Committee had requested the Government to provide statistics on the number of workers covered by collective agreements in comparison with the total number of workers in the country and it had noted the Government’s indication that the requested statistics on collective bargaining were available and would be sent in its subsequent reports. ***While noting that according to the Government, trade unions exist in the public sector and that in the private sector, trade unions have been recently established in certain institutions, the Committee expresses the firm hope that the Government will provide the statistics requested together with its next report or at least the information available.***

The Committee notes that the Government denies the ITUC’s assertion according to which the Ministry of Labour revokes collective agreements and that according to the Government, there is not the slightest evidence given for it.

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

***The Committee notes the ITUC comments on a serious situation of 4 August 2011 and requests the Government to provide its reply as a matter of urgency.***

## Zambia

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1996)***

In its previous comments, the Committee had noted that the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 (ILRA) had been adopted. The Committee, however, noted that most of the proposed amendments still remain unattended to and were not taken into account during the process of the labour law review. The Committee further noted that, according to the Government’s report, the concerns expressed by trade unions and employers’ associations, some of which were presented before the Parliamentary Committee on Economic, Social and Labour Affairs, had been referred to the Government for consideration. Finally, the Committee noted the Government’s indication that its previous comments would be taken into account in the future review of the Industrial and Labour Relations Act. The Committee notes that the Government indicates in its report that there is a moratorium on the discussion of the ILRA as there are matters before the courts of law arising from a petition by the Federation of Free Trade Unions of Zambia. The Committee further notes that the Government indicates that in spite of the aforesaid, it is willing to review the Committee’s concerns through the tripartite structures once the matters are disposed of by the courts of law.

In these circumstances, the Committee must once again recall its comments and in particular that measures should be taken to bring the following provisions of the ILRA, into conformity with the Convention:

#### *Article 2 of the Convention:*

- Section 2(e), which excludes from the scope of the Act, and therefore from the guarantees afforded by the Convention, workers in the prison service, judges, registrars of the court, magistrates and local court justices, and section 2(2), which accords the Minister discretionary power to exclude certain categories of workers from the scope of the Act.
- Section 5(b) that provides that an employee can only become a member of “a trade union within the sector, trade, undertaking, establishment or industry in which the employee is engaged” since it limits trade union membership to workers in the same occupation or branch of activity. In this respect, the Committee recalls that such conditions may be applied to first-level organizations, on condition that these organizations are free to establish inter-professional organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers concerned.
- Section 9(3) in order to shorten the period of registration of a trade union which is currently at a maximum of six months, constituting a serious obstacle to the establishment of organizations and amounts to denial of the right of workers to establish organizations without previous authorizations.

#### *Article 3 of the Convention:*

- Section 7(3) that allows a labour commissioner to prohibit a trade union officer from holding office in any trade union for a period of one year if, following the commissioner’s refusal to register the union, this union is not dissolved within six months. In this respect, the Committee recalls that having committed an act, the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties, should not constitute grounds for disqualification from trade union office.

- Section 21(5)(6) which confers to the Commissioner the power to suspend and appoint an interim executive board of a trade union, as well as to dissolve the board and call for a fresh election. In this respect, the Committee recalls that any removal or suspension of trade union officers, 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 the officers have been freely elected by the members of their trade unions. Provisions which permit the suspension and removal of trade union officers by the administrative authorities or under the provisions of legislation are incompatible with the Convention. Measures of this kind should be solely directed towards protecting the members of organizations and should only be possible through judicial proceedings. The law should lay down sufficiently precise criteria to enable the judicial authority to determine whether a trade union officer has committed acts warranting his suspension or removal; provisions, which are too vague or fail to comply with the principles of the Convention, do not constitute an adequate guarantee. The persons concerned should also enjoy all the guarantees of normal judicial procedures (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 122 and 123).
- Sections 18(1)(b) and 43(1)(a), under which a person, having been an officer of an employers' or workers' organization whose certificate of registration has been cancelled, may be disqualified from being an officer of a trade union if that person fails to satisfy the commissioner that she or he did not contribute to the circumstances leading to such cancellation.
- Section 78(4), which limits the maximum duration of a strike to 14 days, after which, if the dispute remains unsolved, is referred to the court. The Committee considers that such a restriction would 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 and is not compatible with *Article 3* of the Convention.
- Section 78(6)–(8), under which a strike can be discontinued if it is found by the court not to be “in the public interest”.
- Section 78(1), under which, as interpreted by a decision of the Industrial Relations Court, either party may take an industrial dispute to court.
- Section 107, which prohibits strikes in essential services, defined too broadly, and empowers the Minister to add other services to the list of essential services, in consultation with the Tripartite Consultative Labour Council.
- Section 107, which empowers a police officer to arrest, without any possibility of bail, a person who is believed to be striking in an essential service and which imposes a fine and up to six months' imprisonment. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers.

*The Committee hopes that the future amendments will take into account the comments that it has been making for many years and that they will be adopted in the very near future following full and frank consultations with the social partners. The Committee requests the Government to provide information in its next report on any progress achieved in this respect and hopes that the amendments to the Act will be in full conformity with the provisions of the Convention.*

*ITUC comments.* Finally, the Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011 concerning issues already raised by the Committee and indicating that the Zambia Revenue Authority (ZRA) has consistently used delaying tactics to effectively deny recognition to the Zambia Union of Financial Institutions and Allied Workers (ZUFIAW). The Committee had also previously noted the comments made by the ITUC in 2008 and 2010, on the application of the Convention and in particular concerning the intimidation of strikers through police intervention. *The Committee requests the Government to provide its observations on all of these ITUC comments.*

### **Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1996)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 4 August 2011.

*Situation of the revision of the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA).* In its previous comments, the Committee noted that the Industrial and Labour Relations (Amendment) Act No. 8 of 2008 (ILRA) had been adopted. The Committee, however, noted that according to the Government's report, most of the amendments it has previously proposed, still remain unattended to, and were not taken into account during the process of the labour law review. The Committee further noted that according to

the Government's report, the concerns expressed by trade unions and employers' associations, some of which were presented before the Parliamentary Committee on Economic, Social and Labour Affairs, had been referred to the Government for consideration, although since 1997, the said provisions have not been used against workers or employers. The Committee noted the Government's indication that its previous comments have been noted and would be taken into account in the future review of the Industrial and Labour Relations Act. The Committee notes that the Government indicates in its report that there is a moratorium on the discussion of the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA), as there are matters before the courts of law arising from a petition by the Federation of Free Trade Unions of Zambia (FFTUZ). ***The Committee welcomes the Government's commitment and hopes that the revision will be in full conformity with the Convention, according to this commitment.***

*Articles 1–4 of the Convention.* The Committee recalls that its previous comments concerning the Industrial and Labour Relations Act (as amended by the Industrial and Labour Relations (Amendment) Act, 2008) (ILRA), were the following:

- Section 78(1)(a) and (c) and (4) of the ILRA, as amended, allows, in certain cases, either party to refer the dispute to a court or arbitration. The Committee recalls that arbitration imposed by the legislation, or at the request of one party in the services which are neither essential in the strict sense of term, nor involving civil servants engaged in the administration of the State, is contrary to the principle of the voluntary negotiation of collective agreements. ***The Committee therefore requests the Government to give consideration to amending the above provisions so as to ensure that arbitration in services other than those mentioned above, can take place only at the request of both parties involved in the dispute.***
- Section 85(3) of the ILRA, as amended, provides that the court shall dispose of the matter before it (including disputes between an employer and an employee, as well as the matters affecting trade unions and collective bargaining rights) within a period of one year from the day on which the complaint or application is presented to it. The Committee understands that, under section 85, the court has jurisdiction over the complaints of anti-union discrimination and trade union interference and recalls that when allegations of violations of trade union rights are concerned, both the administrative bodies and the competent judges should be empowered to give a ruling rapidly. ***The Committee therefore requests the Government to shorten the maximum period within which a court should consider the matter and issue its ruling thereon.***

The Committee once again emphasizes the importance that should be attached to full and frank consultations taking place on any questions or proposed legislation affecting trade union rights. ***The Committee hopes that the envisaged amendments will be adopted in the very near future following full and frank consultations with the social partners. It requests the Government to provide information in its next report on any progress achieved in this respect and once again hopes that the amendments to the Act will be in full conformity with the provisions of the Convention and its comments above.***

## Zimbabwe

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2003)***

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

#### ***Follow-up of the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)***

The Committee recalls that the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) recommended that: the relevant legislative texts be brought in line with Conventions Nos 87 and 98; all anti-union practices – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – cease with immediate effect; national institutions continue the process the Commission had started whereby people can be heard, in particular referring to the Human Rights Commission and the Organ for National Healing and Reconciliation (ONHR); training on freedom of association and collective bargaining, civil liberties and human rights be given to key personnel in the country; the rule of law and the role of the courts reinforced; social dialogue strengthened in recognition of its importance in the maintenance of democracy; and ILO technical assistance to the country continued.

The Committee notes the information provided by the Government and the discussion that took place in the Conference Committee on the Application of Standards in June 2011. The Committee further notes the comments made by the International Confederation of Free Trade Unions (ITUC) on the application of the Convention in its communication dated 4 August 2011.

The Committee notes with *interest* that the ILO technical assistance to support the Government and the social partners in implementing the above recommendations continued throughout 2011 and in this respect, notes the following activities carried out during the reporting period: (i) a workshop on legislative and institutional support framework for social dialogue systems; (ii) a high-level roundtable on international labour standards and national law and practice; (iii) a two workshops on freedom of association and collective bargaining rights in the public sector; (iv) a training course on international labour standards for members of the national employment councils; (v) a training course on human and trade union rights for police, security forces and Attorney-General's Office; (vi) a training course on freedom of association for members of the Attorney-General's Office and officers of the Ministry of Labour; (vii) a training course on international labour standards, judicial independence and ethics for judges, magistrates, arbitrators and lawyers; (viii) a training course for conciliators and mediators; and (ix) a workshop on international labour standards for the Zimbabwe Congress of Trade Unions (ZCTU). The Committee understands that further promotional activities are scheduled to take place before the end of the year.

The Committee recalls that it had previously noted the allegations submitted by the ZCTU, which related to the forced exile of the General Secretary of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ) and instances of banning of trade union activities (workshop, commemoration events, processions and May Day celebration), and requested the Government to provide its observations thereon. The Committee notes that the ITUC 2011 communication also contains allegations referring to the same issues. The Committee notes that with regard to the allegations of forced exile of the GAPWUZ General Secretary (Ms Hambira), the Government indicates in its report that in order to ascertain the legitimacy of the complaint and reply to the allegation, it needs more information from the complainant in view of the fact that it is possible for people to submit unfounded allegations in pursuance of their own goals. The Government indicates that in respect of the GAPWUZ leader exile, it has no case to answer: Ms. Hambira has no case pending before the police or the courts and is free to return to live in Zimbabwe. The Committee recalls that the ZCTU alleged that in February 2010, the GAPWUZ offices were raided and Ms Hambira and members of her team were questioned at the Harare Central Police station following a documentary and a report produced by the union on violations of workers' rights in the agricultural sector. The ZCTU and ITUC allege that Ms Hambira, who had already been previously threatened and beaten by the security forces and the police on several occasions, felt forced to go into exile after the police investigation had found that she had contravened section 31 of the Criminal Law, which makes it an offence to publish or communicate false statements prejudicial to the State. The Committee *regrets* that the Government provides no observations on these detailed allegations. ***Noting that the Government indicates that Ms Hambira can return to the country, the Committee, like the Conference Committee, requests the Government to indicate all measures taken or envisaged to ensure her safety if she decides to return to the country.***

With regard to the allegation of banning trade union activities, the Committee notes that the Government submits that this aspect should be considered in the context of the delayed implementation of the Government's initiatives to improve its compliance with Conventions Nos 87 and 98 and the recommendations of the Commission of Inquiry. In this respect, the Government explains that the information sharing with the law enforcement agencies commenced only in July 2011. The Government expects the situation to improve once a significant number of the targeted groups is reached. The Government also indicates that the Ministry of Labour was entrusted to liaise with the law enforcement bodies with a view to ensuring that in practice, trade union meetings are not subjected to the Public Order and Security Act (POSA). ***The Committee expects that the Government will intensify its efforts in this respect so as to ensure that the POSA is not used to infringe upon legitimate trade union rights, including the right of workers' organizations to express their views on the Government's economic and social policy. It also expects that the Government will take the necessary steps to ensure that trainings on human and trade union rights for the police and security forces continue.*** The Committee notes that the 2011 Conference Committee requested the Government to carry out, together with the social partners, a full review of the application of the POSA in practice, and considered that concrete steps should be taken to enable the elaboration and promulgation of clear lines of conduct for the police and security forces with regard to human and trade union rights. The Committee *regrets* that no information has been provided by the Government on the measures taken or envisaged in this respect. ***The Committee therefore requests the Government to carry out, together with the social partners, a full review of the application of the POSA in practice and to provide details on its outcome. It expects that lines of conduct for the police and security forces will be elaborated and promulgated in the very near future. The Committee requests the Government to provide information on all measures taken or envisaged in this respect.***

Further in this connection, the Committee recalls that the Commission of Inquiry recommended that the POSA be brought into line with the Convention. The Committee notes the Government's indication that the POSA, notwithstanding its non-application to trade union meetings, is being amended. The Committee notes in this respect, copies of two sets of amendments proposed back in 2009. ***It requests the Government to clarify the status of these amendments, particularly in the light of the fact that in the framework of the Universal Periodic Review process of the United Nations Human Rights Council, the Government of Zimbabwe has clearly indicated that it did not support the recommendations calling for the amendment of the POSA (see A/HRC/19/14, Human Rights Council, 12th session, 3–14 October 2011).***

The Committee further recalls the Commission of Inquiry's recommendation that steps be taken by the authorities to bring all outstanding cases of trade unionists arrested under the POSA to an end. It recalls that in its previous observation it had noted the Government's indication that all such cases had been identified and requested the Government to indicate

the steps taken to ensure that these cases were withdrawn. The Committee notes the Government's indication that the Ministry of Labour has been liaising with the Attorney-General's Office and that the latter has been following up with the concerned courts throughout the country and compiling information regarding the cases that have either been concluded or withdrawn. The Committee *deeply regrets* that almost two years after the Commission of Inquiry's specific recommendation, the Government appears to be still at the information gathering stage. *The Committee, as did the 2011 Conference Committee, urges the Government to ensure that cases of trade unionists arrested under the POSA are withdrawn without further delay and to provide detailed information in this respect.*

The Committee had previously taken note of the initiated labour law reform and harmonization process and on that occasion expressed the firm hope that the relevant legislative texts will be brought in line with the Convention. The Committee notes the Government's indication that together with the social partners it has been holding consultations aimed at developing of principles for the harmonization and labour law reform taking into account all the legislative recommendations of the Commission of Inquiry and the comments of the Committee of Experts. The Government further indicates that on 12 September 2011, these principles were presented by the tripartite technical working group to the principals of the Tripartite Negotiating Forum. The Government indicates that while there was a consensus on the draft principles arising from the recommendations of the ILO supervisory bodies, the social partners have requested for additional time to consult over three additional principles which arose during the consultative process (unlinked to the comments of the Committee). Representatives of workers in the public sector also requested additional time for bipartite discussions on the nature of the harmonization with the relevant governmental bodies, their respective employers. Such consultations were due to take place during October 2011. It is the Government's hope that the amendment Bill will be discussed in Parliament in 2012. The Committee takes due note of a copy of the draft Principles for the Harmonization and Review of Labour Laws in Zimbabwe and the information provided by the Government on the specific sections of the Labour Law which it intends to amend in the framework of the reform. The Committee notes with *interest* that the revision of the labour legislation envisages taking into account its previous comments and welcomes the fact that this process involves all social partners. *The Committee requests the Government to provide information on all developments and progress made in revising and harmonizing the Labour Act, Public Service Act and all other relevant laws and regulations.*

The Committee notes that in its 2011 communication, the ITUC alleged several cases of suspension and mass dismissals of workers following their participation in protests and strikes. The Committee recalls that suspending or dismissing workers for having participated in a strike or protest implies a serious risk of abuse and constitutes a violation of freedom of association. *The Committee requests the Government to provide its observations on the matters raised by the ITUC.*

*The Committee expresses the firm hope that the law and practice will be brought fully in line with the Convention in the very near future. It encourages the Government to continue cooperating with the ILO and the social partners in this regard. The Committee requests the Government to provide in its next report detailed information on the outcome of the activities carried out under the technical assistance package and on all other measures taken to implement the recommendations of the Commission of Inquiry. It considers that priority should be given to addressing all concerns related to civil liberties and all human rights violations, including those relating to trade union rights, which should be included in the review to be carried out by the Human Rights Commission.* In this respect, the Committee notes with *concern* that in the framework of the Universal Periodic Review process, the Government of Zimbabwe has indicated that it did not support the recommendation requesting the Government to take the necessary measures so that all allegations of human rights violations are duly investigated and that the perpetrators are brought to justice. *The Committee urges the Government to provide information on the steps taken to ensure that the Human Rights Commission and the ONHR can adequately contribute to the defence of trade union and human rights.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (Australia, Bangladesh, Brazil, Kyrgyzstan, Mauritius, Montenegro, New Zealand, Rwanda, Sri Lanka, Turkey); **Convention No. 87** (Angola, Armenia, Australia, Bosnia and Herzegovina, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, China: Macau Special Administrative Region, Congo, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Gabon, Gambia, Ghana, Hungary, Indonesia, Israel, Kyrgyzstan, Luxembourg, Malawi, Netherlands: Aruba, Pakistan, Papua New Guinea, Russian Federation, Rwanda, Samoa, Sierra Leone, Swaziland, Timor-Leste, Uganda); **Convention No. 98** (Angola, Argentina, Armenia, Australia, Barbados, Belgium, Bosnia and Herzegovina, Brazil, Cambodia, Central African Republic, China: Macau Special Administrative Region, Colombia, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Estonia, Gabon, Ireland, Kyrgyzstan, Malawi, Russian Federation, Senegal, Timor-Leste, Tunisia, United Kingdom: British Virgin Islands); **Convention No. 135** (Armenia, Burundi, Democratic Republic of the Congo, Slovakia); **Convention No. 141** (Belize, Burkina Faso); **Convention No. 151** (Armenia, Colombia, Gabon, Seychelles); **Convention No. 154** (Armenia, Colombia, Kyrgyzstan, Morocco, Slovakia, Uganda).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 11** (*Azerbaijan, Morocco, Tajikistan, Uganda*); **Convention No. 87** (*France*); **Convention No. 98** (*Algeria, Singapore, United Kingdom: Anguilla*); **Convention No. 141** (*Albania, Guatemala, Mali*).

## Forced labour

### Algeria

#### **Forced Labour Convention, 1930 (No. 29) (ratification: 1962)**

*Article 2(1) of the Convention. Civil service.* For a number of years the Committee has been drawing the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 concerning civil service, as amended and supplemented by Act No. 86-11 of 19 August 1986 and by Act No. 06-15 of 14 November 2006, under which it is possible to require persons who have completed a course of higher education or training to perform a period of civil service ranging from one to four years before being able to exercise an occupation or obtain employment.

The Committee also previously noted that, under sections 32 and 38 of the Act, any refusal to perform civil service and the resignation of the person concerned without valid reason results in the prohibition on their exercising an activity on their own account, and that any infringement will incur the penalties laid down in section 243 of the Penal Code (imprisonment ranging from three months to two years and/or a fine of between 500 and 5,000 dinars). Similarly, under sections 33 and 34 of the Act, all private employers are required to satisfy themselves before engaging any workers that applicants are not subject to civil service or can produce documentation proving that they have completed it. Furthermore, any private employer who knowingly employs a citizen who has evaded civil service is liable to imprisonment and a fine. Hence, even though persons liable to civil service enjoy conditions of work (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they perform this service under threat since, in the event of any refusal, they are denied access to any self-employed occupational activity or employment in the private sector. This means that civil service falls within the concept of compulsory labour within the meaning of *Article 2(1)* of the Convention. Moreover, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service is also incompatible with Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which has also been ratified by Algeria.

The Committee further noted that under section 2 of Ordinance No. 06-06 of 15 July 2006, civil service may be performed in private-sector health establishments in accordance with arrangements set forth by regulation. The Committee reminds the Government that, according to Paragraph 3(3) of the Special Youth Schemes Recommendation, 1970 (No. 136), the services of participants should not be used for the advantage of private persons or enterprises.

In its last report the Government indicates that civil service concerns only doctors specializing in public health and that this was established in response to the need to bring essential specialists' care to the populations of isolated regions who have no access to it. Moreover, the Government indicates that, at the National Conference on Hospital Reform Policy (February 2011), discussions were held concerning the abolition of civil service for these doctors, and that the ultimate goal would be to leave them free to choose whether to exercise their profession in the public, private or semi-public sector.

***While noting this information, the Committee expresses the strong hope that the necessary measures will be taken to repeal or amend the provisions of Act No. 84-10 of 11 February 1984 concerning civil service in the light of Conventions Nos 29 and 105, and that the Government will soon be in a position to report on the measures adopted in this respect.***

***Referring to Ordinance No. 06-06 of 15 July 2006, amending and complementing Act No. 84-10 of 11 February 1984 concerning civil service, the Committee reiterates the hope that the necessary measures will be taken to repeal or amend the provisions imposing civil service on specialized doctors. Pending such legislative amendments, the Committee requests the Government to provide information on the number of persons and establishments concerned with regard to civil service, the length of service, and the conditions of work of the persons concerned.***

*Article 2(2)(a). National service.* For a number of years the Committee has been referring to Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code and the Order of 1 July 1987, under which conscripts are required to take part in the running of various sectors of the economy and administration. The Committee observed that they are further required to perform civil service for a period ranging from one to four years, as referred to above. The Committee recalled that, under the terms of *Article 2(2)(a)* of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character.

The Committee noted the Government's indication in its previous report that the civil modality of national service had not been used since 2001. The Government explained that this de facto suspension would be reflected in law as soon as the reform of the National Service Code was placed on the agenda. ***As the Government has not provided any information on this point, the Committee hopes that it will be in a position to send information in its next report on any developments in this matter showing that national law has been aligned with practice and hence with the provisions of the Convention, and to provide copies of the relevant texts.***

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

## Argentina

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons for sexual and labour exploitation.* In its previous comments the Committee emphasized that the trafficking in persons for labour and sexual exploitation calls for robust and effective action in proportion to the gravity and extent of this practice, and asked the Government to take the necessary measures to eliminate this practice, which constitutes a serious violation of the Convention. It referred to the observations received from a number of national trade union organizations and from the International Trade Union Confederation (ITUC), and also to a report published by the International Organization for Migration (IOM), documenting specific situations of trafficking from which it emerges that Argentina is a country of destination, transit and departure of trafficked persons; women and girls originating from the Dominican Republic, Paraguay and Brazil are victims of trafficking for sexual exploitation; Argentinian women and girls, mostly originating from the provinces of Misiones, Tucumán, La Rioja, Chaco et Buenos Aires, are also subjected to sexual exploitation abroad, mainly in Spain and Brazil, including through abductions perpetrated by gangs; and, finally, migrant workers mostly originating from the Plurinational State of Bolivia are victims of trafficking in the textiles and clothing sector.

The Committee notes the information supplied by the Government in its last report and its appendices, the observations made by the General Confederation of Workers (CGT-RA) on the application of the Convention, received in November 2010, and also the report of May 2011 of the United Nations Special Rapporteur on trafficking in persons, particularly women and children, further to her visit to Argentina in September 2010 (A/HRC/17/35/Add.4). The Committee proposes to analyse all this information by examining the legal and institutional framework, the penalties imposed and the protection given to victims.

(a) *Legal and institutional framework.* The Committee recalls that Act No. 26.364 of 9 April 2008 concerning the prevention and suppression of trafficking in persons and the provision of assistance for victims defines in detail the elements that constitute trafficking in persons, for labour and sexual exploitation, and establishes the penalty of imprisonment for offenders ranging from three to six years (with more severe penalties in cases where the victims are minors). The Committee is aware that a bill to amend the Act of 2008 is under discussion. The objectives of the bill include increasing penalties, making the consent of the victim irrelevant as regards defining the crime of trafficking, expanding protection for victims and improving cooperation between the various parties involved in taking action against trafficking. ***The Committee hopes that the bill amending the Act concerning the prevention and suppression of trafficking in persons will be adopted shortly and requests the Government to provide information on the manner in which it will contribute towards strengthening action against trafficking in persons.***

*Action of the General Prosecution Service.* The Committee observes that, inasmuch as the crime of trafficking in persons comes within the competence of the federal courts, the General Prosecution Service of the Nation plays a crucial role in the prosecution of perpetrators. It notes the information provided by the Government on the action taken by the General Prosecution Service of the Nation, including the issuing of a publication in collaboration with the IOM containing a toolkit to help prosecuting perpetrators and protecting victims and, in particular, documents indicating the legal interpretation given to the concept of “trafficking in persons and related offences”. The Committee also notes the action taken by the unit within the General Prosecution Service of the Nation responsible for providing assistance for the victims of abduction for the purposes of ransom and human trafficking (UFASE), whose role is to assist the various prosecution services in the country. Such assistance is provided at the request of the prosecutors concerned and covers the stages of examination of the evidence and preparation of the case, as well as the relevant hearings. UFASE also coordinates training activities and is in charge of establishing a database relating to abductions and trafficking in persons. The Committee notes that this unit publishes an annual report which serves as a basis for the Attorney-General of the Nation to adopt resolutions aimed at tackling the problems faced by the prosecution authorities. Resolutions adopted include Resolution No. PGN-39-10, which contains recommendations for the prosecution services with regard to conducting thorough investigations in cases involving procuring in order to ensure that no trafficking of persons is involved, and Resolution No. PGN-46-11, which lays down guidelines for procedures and criteria to identify and investigate cases involving trafficking for labour exploitation purposes. ***The Committee requests the Government to provide information on the measures taken to tackle the problems emphasized by UFASE in its annual reports with regard to the identification of situations involving trafficking in persons, for both sexual and labour exploitation, and the launching of prosecution proceedings at federal level.***

*Action by the police forces and allegations of corruption.* In its previous comments the Committee asked the Government to provide information on the investigations conducted and the measures taken further to allegations of corruption within the police forces and of direct participation of police officials in criminal activities connected with trafficking in persons. The Government referred to the establishment of specific units within the four national security forces, whose task is to prevent and investigate the crime of trafficking in persons, and to develop an intelligence service for that purpose (Resolution No. 1679/2008). The Committee asked the Government to indicate to what extent the establishment of the specific units had contributed towards combating corruption in the police forces and the participation of officials in activities linked to the trafficking in persons.

The Committee observes that this problem was also emphasized by the United Nations Special Rapporteur, who, in the report referred to above, raises the sensitive issue of corruption of certain members of the police and other security forces directly involved in the implementation of measures to combat trafficking adopted by the Government, especially at the provincial level. According to the report, these officers receive bribes and act in complicity with the traffickers, who are thus able to evade arrest and prosecution. The Special Rapporteur recommends that the Government should adopt a zero-tolerance policy with regard to corruption and should ensure that the officials involved in the crime of trafficking are prosecuted and severely punished.

The Committee recalls that the victims of trafficking are in a vulnerable situation in which it is particularly difficult for them to assert their rights. It is therefore essential that police officers are appropriately trained in the subject of trafficking in persons in order to be able to identify victims, and it is also essential that the victims feel they can trust the police and prosecution authorities when they have recourse to them. ***The Committee therefore requests the Government to ensure that investigations are duly expedited in cases of corruption and complicity on the part of law enforcement officials, and that adequate penalties are imposed on them. The Government is also requested to continue to supply information on the measures taken to strengthen the capacities of these authorities with respect to identification of the perpetrators of trafficking in persons and their victims.***

*Action by the labour inspectorate.* As regards forced labour imposed on Bolivian migrant workers who are the victims of trafficking in the textiles and clothing sector, the Committee highlighted the large number of unauthorized workshops and asked the Government to provide information on the measures taken in this respect, particularly with regard to strengthening the labour inspectorate. In its last report, the Government supplies data from the labour inspectorate concerning the number of inspections conducted in unauthorized garment manufacturing workshops for 2005–10, indicating the percentage of undeclared workers (ranging from 17.6 to 37.27 per cent). The labour inspectorate explains that, further to these inspections, a number of workshops and establishments were closed and legal action was initiated. The Committee duly notes this information. ***Recalling that the labour inspectorate performs an essential role in combating trafficking in persons for labour exploitation, the Committee requests the Government to continue to supply information on the action taken by the labour inspectorate, and also on the measures taken to ensure that the labour inspectorate has sufficient human and material capacity to carry out its work effectively throughout the territory. The Committee also requests the Government to indicate the manner in which cases of forced labour involving migrant workers are handled by the labour inspectorate and how the inspectorate cooperates with the General Prosecution Service of the Nation so that reported violations give rise to prosecution proceedings.***

*(b) Article 25. Application of effective criminal penalties.* In its last report the Government indicates that, between April 2008 (date of entry into force of the Act) and the end of July 2010, a total of 590 searches were conducted, 583 persons were arrested and 921 victims were assisted. Ten court cases were thus concluded with the conviction and sentencing of 15 persons to imprisonment ranging from four to 15 years for the trafficking in persons for sexual exploitation. The Committee notes two court decisions communicated by the Government and notes with *interest* the elements taken into account by the judges in defining what constitutes a “situation of vulnerability” to which the victims were exposed, and thereby invalidating the consent given. Furthermore, the Committee observes that, between 2008 and 2010, no case of trafficking in persons for labour exploitation was brought before the courts. According to the UFASE website, the first conviction for trafficking in persons for labour exploitation was handed down in August 2011 by the Federal Criminal Court of San Martín. It therefore appears that gathering enough evidence to bring offenders before the courts is even more difficult where trafficking in persons involves labour exploitation. Moreover, according to Government statistics, the total number of convictions for trafficking in persons remains low if compared with the number of victims assisted and persons arrested. ***The Committee draws the Government’s attention to the importance of imposing terms of imprisonment that constitute an effective deterrent on persons who exploit other persons’ labour, and hopes that the Government will be in a position in its next report to provide information on new prosecutions resulting in an adequate number of convictions.***

*(c) Assistance for victims.* The Committee notes that the Bureau for Assistance and Support for Trafficking Victims was established in 2008. The Government indicates that this Bureau centralizes activities for the prevention and elimination of trafficking and the provision of psychological, medical and legal support and assistance for victims, and that a branch office has been established in the province of Salta. ***The Committee requests the Government to provide further information on the activities of this Bureau as regards the identification and protection of victims (number of centres for the reception, support and rehabilitation of victims) and on the measures taken to continue to extend the capacity for intervention of this Bureau to the whole of the national territory. The Government is also requested to indicate the measures taken to provide legal assistance to victims in such a way that they can assert their rights and be compensated for the material and general damage suffered.***

The developments described above show that the numerous measures taken by the Government to strengthen its legal and institutional framework with a view to combating the trafficking in persons for labour and sexual exploitation, bear witness to its commitment in this sphere. ***The Committee encourages the Government to pursue its efforts and requests it to indicate the measures taken to strengthen coordination between the various actors involved in combating trafficking in persons – especially the labour inspectorate and the General Prosecution Service of the Nation – as well***

*as coordination between the state, provinces and municipalities, especially in view of the fact that the crime of trafficking lies within the competence of the federal courts.*

## Australia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1932)**

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of temporary migrant workers and measures taken to protect them from exploitation.* The Committee previously noted the comments on the application of the Convention submitted by the Australian Council of Trade Unions (ACTU) in a communication dated 1 September 2008, in which the ACTU expressed concern about the vulnerable situation of temporary overseas skilled workers, who were not adequately protected from exploitation and sometimes subjected to forced labour. According to the allegations, there were reported cases in which workers on temporary visas (under “the 457 visa scheme”) had been denied wages or had their wages illegally reduced to pay for recruitment or migration agent fees and airfares, had been forced to work long hours without adequate meals or rest breaks, in unsafe workplaces and had been threatened with deportation if they sought to enforce their rights. The Committee has also noted two supplementary communications by the ACTU on the above subject, dated 31 August and 25 October 2010 respectively, as well as the Government’s response received on 30 September 2010.

The Committee notes from the Government’s response that, on 1 April 2009, it announced a package of measures to improve the integrity, transparency and flexibility of the temporary business (“subclass 457”) programme. The Government indicates that the key labour market measures which address the concerns raised by the ACTU, include, inter alia, the development of a market salary framework to ensure “subclass 457” workers are not exploited and local wages and conditions of work are not undermined. This framework is consistent with Australian workplace law and practice which requires all sponsored “subclass 457” and other temporary visa holders with a work right to be engaged in accordance with Australian standards (including awards, agreements, workers’ compensation, occupational safety and health) and receive the same level of protection (in terms of investigation of claims of underpayment or exploitation) as Australian workers. The Government also indicates that, in addition to the Migration Legislation Amendment (Worker Protection) Act 2008, which provides for increased information exchange and cooperation between relevant departments in relation to sponsored temporary visa holders, the Minister for Immigration and Citizenship has announced the appointment of an independent legal expert to provide options for strengthening the employer sanctions legislation. The Government further indicates that in addition to investigation of complaints relating to “subclass 457” and other temporary visa holders, the government departments and agencies (including the Fair Work Ombudsman) have issued fact sheets to increase visa holders’ awareness of their rights.

In its communication dated 31 August 2010 referred to above, the ACTU noted that, since their first submission in 2008, “the 457 visa scheme” had been subject to extensive reform, which was aiming at preventing further exploitation of workers on temporary visas and included strengthening the powers of the relevant authorities to monitor, investigate and penalize non-compliance of employers with “the 457 visa” requirements, as well as the removal of the former inequitable minimum salary level wage rate system applicable to such workers. The ACTU also noted that the Federal Government had consulted with the social partners and the community throughout “the 457 visa scheme” reform process. While welcoming the reform process, the ACTU considered it important to continue to monitor the operation of the new laws and regulations in practice, so as to ensure that they adequately protect the rights of temporary migrant workers in Australia.

***The Committee notes this information and hopes that the Government will continue to describe, in its future reports, the measures taken, both in legislation and in practice, to improve the protection of temporary migrant workers. Please provide, in particular, information on the results of the measures taken with a view to strengthening the employer sanctions legislation, to which reference has been made in the Government’s report.***

*Articles 1(1), 2(1) and (2)(c). Privatization of prisons and prison labour. Work of prisoners for private companies.* In comments it has been making for a number of years, the Committee pointed out that the privatization of prison labour falls outside 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 two conditions set forth in *Article 2(2)(c)* are equally important and apply cumulatively: 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. 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 prohibited in virtue of *Article 1(1)* of the Convention. The Committee asked the Government to take the necessary measures to ensure observance of the Convention, such as, for example, to provide that any prisoners working for private enterprises offer themselves voluntarily without being subjected to pressure or the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free employment

relationship. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved.

The Committee 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. It appears, from the Government's report, that there has been little change in national legislation and practice with regard to the work of prisoners in private prison facilities during the reporting period. The Government reiterates its view that its law and practice comply with the Convention, given that prisoners accommodated in privately operated facilities remain under the supervision and control of public authorities, as required by the exemption in *Article 2(2)(c)*, and that the private sector has no rights to determine for itself the conditions for the work of prison inmates, such conditions being established by the public authorities. The Government therefore considers that prisoners are not "hired to or placed at the disposal of private individuals, companies or associations", since the "legal custody" of prisoners has not been transferred to a private provider of prison services, and sentenced prisoners remain in the legal custody of the Secretary to the Department of Justice (*Victoria*) or the Chief Executive of the Department of Correctional services (*South Australia*) until they are released from prison.

The Committee draws the Government's attention once again to the explanations concerning the scope of the terms "hired to or placed at the disposal of" contained in paragraphs 56–58 and 109–111 of its 2007 General Survey on the eradication of forced labour and observes that these terms cover not only situations where prisoners are "employed" by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the type of work they can request the prisoner to do, since they are limited by the rules set by the public authority. The Committee recalls, referring also to paragraph 106 of the above General Survey, that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons; consequently, it applies to all work organized by privately run prisons.

As the Committee repeatedly pointed out, work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain the prisoners' formal consent to work for private enterprises in state-run prisons or in privatized prisons and that it should be given in writing. Further, given that such consent is required in a context of lack of freedom with limited options, there should be indicators which authenticate or satisfy the giving of the free and informed consent. The Committee recalls that the most reliable indicator of the voluntariness of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health (see the explanations provided in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above).

The Committee notes from the Government's report that no Australian jurisdiction is currently considering amending its law and practice. However, the Committee previously noted some positive trends relating to the practical application of existing legislation in certain Australian jurisdictions referred to above. Thus, as regards the question of voluntariness, it noted that, in *New South Wales*, employment of inmates in correctional centres is voluntary on the part of the inmate and there are no incidents of forced labour. The Government indicates in its latest report that, in order to ensure that "informed" consent of prisoners to work for private companies is achieved, the following measures are in place in the privately operated correctional centres (Juncie and Parklea): an inmate wishing to apply for work must complete a form, sign it and present it to the Industry Manager; if an inmate believes that he or she has been forced to work, the inmate may raise the matter with his/her immediate supervisor or the Inmate Development Committee, or lodge a formal complaint to the General Manager of the centre or to the Ombudsman's Office. The Government also states that the privately operated correctional centres in *New South Wales* are obliged to abide by the Forced Labour Convention, 1930 (No. 29). The Committee previously noted the Government's indication that, in *South Australia*, where prison labour is compulsory both inside and outside the correctional institution under section 29(1) of the Correctional Services Act, 1982, prisoners at Mt Gambier Prison (*South Australia's* only privately operated prison) apply in writing to undertake work programmes. The Government indicates in its latest report that prisoners in the Adelaide Pre-Release Centre are allowed to apply for outside employment with private enterprises, and any outside work undertaken by prisoners is voluntary. In *Queensland*, where prison labour is compulsory under section 66 of the Corrective Services Act, 2006, prisoners are not forced to participate in approved work activities: the Government indicates that, though no formal consent of prisoners is required, the work programme is a voluntary initiative that provides prisoners with the meaningful work projects to develop practical skills in order to assist their reintegration into the community; there are no consequences for a prisoner for refusal to participate in a work programme. As regards *Western Australia*, where prison labour is compulsory under section 95(4) of the Prisons Act, the Committee previously noted the Government's indication that the relevant provision had not been enforced, and the prisoners were not forced to participate in work programmes, even in privately run prisons. The Government indicates in its latest report that there are currently six prisoner work camps established in regional *Western Australia* for the purposes of prisoners' rehabilitation. Such work camp placement is voluntary and is initiated by the prisoner making a formal written application.

*While noting with interest these developments in the positive trends of practical application of existing legislation in the Australian jurisdictions referred to above, the Committee expresses its hope that the necessary measures will be taken, both in law and in practice, to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, so that such consent is free from the menace of any penalty in the wide sense of Article 2(1) of the Convention, such as loss of privileges or an unfavourable assessment of behaviour taken into account for reduction of sentence. Furthermore, in the context of a captive labour force having no alternative access to the free labour market, such “free” and “informed” consent needs to be authenticated by the conditions of work approximating a free labour relationship, as regards wage levels (leaving room for deductions and attachments), social security and occupational safety and health. The Committee trusts that such measures will be taken in all Australian jurisdictions, both in law and in practice, in order to grant prisoners working in privately operated facilities and other prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this basic human rights instrument, and that the Government will soon be in a position to report the progress made in this regard.*

*The Committee also hopes that the Government will not fail to provide information on the practical impact of the recommendation of the Australasian Correctional Industries Association’s code of practice to establish an independent consultative body which includes representatives of industry, unions and the community to monitor the development and operation of correctional industries, which was referred to by the Government in its previous report, as well as information on any other measures taken or envisaged to ensure compliance with the Convention.*

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

## **Austria**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private enterprises.* In comments made for a number of years on law and practice in Austria, the Committee examined the situation of prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons. It referred in this connection to section 46, paragraph 3, of the Law on the execution of sentences, as amended by Act No. 799/1993, under which prisoners may be hired to enterprises of the private sector, which may use their labour in privately run workshops and workplaces both inside and outside prisons. The Committee pointed out on numerous occasions (see e.g. the 2007 General Survey on the eradication of forced labour, paragraph 109 and footnote 272) that the practice followed in this regard in Austria corresponds in all respects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is “hired to” private contractors. It noted, in particular, that it is in the very nature of such hiring agreements to include mutual obligations between the prisons administration and the private enterprise. The fact that prisoners remain at all times under the authority and control of the prison administration does not detract from the fact that they are “hired to” a private enterprise – a practice which is incompatible with this fundamental human rights instrument.

In its report, the Government reiterates its view that private enterprise’s employees perform only a technical supervisory role in respect of prisoners, but do not have any disciplinary powers, which remain with the prison’s administration, and therefore do not exercise any compulsion over them. The Government concludes that the prisoners are not at the disposal of the private enterprise, supervision being carried out by the prison staff.

While having noted these views, the Committee draws the Government’s attention once again to the explanations concerning the scope of the terms “hired to or placed at the disposal of” in paragraphs 56–58 and 109–111 of the Committee’s 2007 General Survey on the eradication of forced labour and observes that these terms cover not only situations where prisoners are “employed” by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the type of work they can request the prisoner to do, since they are limited by the rules set by the public authority. The Committee also refers in this connection to paragraph 106 of its 2007 General Survey, where it considered that the prohibition for prisoners to be hired to private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons.

However, the Committee has considered in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above that work of prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee has therefore considered that, taking into account their captive circumstances, it is necessary to obtain prisoners’ formal, free and informed consent to work for private enterprises both inside and outside prisons. The Committee recalls that, in the prison context, 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.

The Committee notes with *regret* that, according to the Government's latest report, no steps have been taken with a view to amending the existing legislation governing the work of prisoners, and no measures aimed at obtaining the free, formal and informed consent of convicts to work for private enterprise workshops inside prisons has been introduced. As the Committee noted previously, national legislation requires such consent only for work outside prison premises.

The Committee notes the Government's indications in its report concerning the rise in the prisoners' wages in January 2010, in accordance with the 25.69 per cent increase in the wages index above the level of 1 March 2000. It also notes the information on prisoners' conditions of work, including guarantees concerning prisoners' hours of work, occupational safety and health, their entitlement to medical treatment and social security coverage. However, the Committee points out once again that, in the absence of the consent requirement, the general scope of protective legislation cannot be regarded as an indicator of a freely accepted labour relationship. Taking into account the statistical data communicated by the Government, according to which in the 27 penal institutions in Austria there are about 50 different kinds of employment and business activity, the Committee expresses its *concern* that, more than 50 years after the ratification of this fundamental human rights instrument, a significant number of prisoners in Austria is hired to private enterprises without evidence of their consent, which is incompatible with the Convention.

*The Committee trusts that the necessary measures will at last be taken to grant prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this fundamental human rights instrument. In particular, the Committee expresses the firm hope that measures will be taken to ensure that free, formal and informed consent is required for the work of prisoners in private enterprise workshops inside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship.*

## Bahamas

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)**

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

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers.* For many years, the Committee has been referring to certain provisions of the 1976 Merchant Shipping Act, under which various breaches of labour discipline are punishable with imprisonment (involving an obligation to work, under section 10 of the Prisons Act and rules 76 and 95 of the Prison Rules) and deserting seafarers from ships registered in another country may be forcibly conveyed on board the ship. The Committee has noted the Government's indications in its earlier reports that some amendments to the Merchant Shipping Act have been made. It notes, however, that under sections 129(b) and (c) and 131(a) and (b) of the updated text of the Merchant Shipping Act, which it has consulted on the Government's website, penalties of imprisonment may still be imposed for breaches of discipline such as disobedience to lawful command, neglect of duty, desertion and absence without leave, and section 135 of the Act still provides for the forcible conveyance of deserting seafarers to ships registered in another country, where it appears to the minister that reciprocal arrangements will be made in that country.

The Committee recalls that *Article 1(c)* expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline. As the Committee repeatedly pointed out, only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention (see, for example, paragraphs 179–181 of the General Survey of 2007 on the eradication of forced labour). *The Committee therefore reiterates its hope that the necessary measures will at last be taken with a view to amending the above provisions of the Merchant Shipping Act, either by repealing sanctions involving compulsory labour or by restricting their application to the situations where the ship or the life or health of persons are endangered (as is the case, e.g. in section 128 of the same Act). The Committee requests the Government to provide information on the progress made in this regard in its next report.*

*Article 1(d). Punishment for having participated in strikes.* Over a number of years, the Committee has been referring to section 73 of the 1970 Industrial Relations Act, as amended, under which the minister may refer a dispute in non-essential services to the tribunal for settlement, if he considers that a public interest so requires; the recourse to strike action in this situation is prohibited, violation being punishable with penalties of imprisonment (involving an obligation to perform labour, as explained above) under sections 74(3) and 77(2)(a) of the same Act. The Committee has further noted that, according to section 76(1), a strike which, in the opinion of the minister, affects or threatens the public interest, might also be referred to the tribunal for settlement, failure to discontinue the participation in such a strike being punishable with imprisonment under section 76(2)(b).

The Committee previously noted the Government's indications in its earlier report that the proposed Trade Unions and Industrial Relations Bill had been tabled in the House of Assembly, and that it contained no provisions imposing sanctions of imprisonment for breach of the legislation, which may be punished only with fines. The Committee also noted the Government's repeated statement that the above provisions of the Industrial Relations Act had never been applied in practice, and that the legislation would be amended when a consensus is achieved after further consultation with the social partners.

*While having noted these indications, the Committee reiterates the firm hope that the review of the Act announced by the Government for a number of years will soon result in the amendment of the above provisions, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike, in order to bring legislation into conformity with the Convention. Referring also to its comments made in 2007 under Convention No. 87, likewise ratified by the Bahamas, the Committee asks the Government to supply a copy of the new legislation, as soon as it is adopted.*

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

## Bangladesh

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1972)**

*Articles 1(1) and 2(1) of the Convention. Restrictions on freedom of workers to terminate employment.* Over a number of years the Committee has been referring to certain provisions of the Essential Services (Maintenance) Act No. LIII, 1952, and the Essential Services (Second) Ordinance No. XLI, 1958, which imposed restrictions on termination of employment by any person employed by the central Government and in essential services, punishable with sanctions of imprisonment.

The Committee notes from the Government's report that section 27 of the Labour Act (BLA 42/06) ensures to all workers freedom to terminate their employment with notice. It also notes the Government's statement that the Labour Law Commission has specifically recommended to repeal the Essential Services (Maintenance) Act No. LIII, 1952, which is no longer applied in practice. As regards the Essential Services (Second) Ordinance No. XLI, 1958, the Committee notes the Government's repeated statement that such Ordinance is no longer applied in practice and that it will be repealed in the occasion of a legislative reform.

***While noting these indications, the Committee trusts that the necessary measures will soon be taken to repeal the Essential Services (Maintenance) Act No. LIII, 1952, and the Essential Services (Second) Ordinance No. XLI, 1958, in order to bring legislation into conformity with the Convention and the national practice.***

*Articles 1(1), 2(1) and 25. Trafficking in persons. Law enforcement.* The Committee previously noted the Government's indications concerning various measures taken by different ministries, human rights organizations and law enforcement agencies to combat trafficking in persons, including awareness-raising and prevention measures. In its latest report, the Government indicates that awareness-raising programmes are still in progress throughout the country and that it continues to take measures to combat trafficking with the assistance of the police, law enforcement agents and NGOs.

While noting these indications, the Committee notes the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women, presented on 4 February 2011 (doc. CEDAW/C/BGD/CO/7), in which the UN Committee expresses concern about the continuing prevalence of trafficking in women and girls in Bangladesh, particularly for sexual exploitation. It observes that, despite the ratification by the country of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in July 2002, its provisions have not yet been incorporated into domestic laws, no extradition treaties with neighbouring countries have been signed to address trafficking and sexual exploitation and only a few traffickers have been arrested and convicted. Finally, the UN Committee expresses its concern at the limited gender sensitization trainings for border police and law enforcement personnel.

***The Committee therefore requests the Government to take the necessary measures to strengthen its law enforcement mechanisms in order to effectively investigate and prosecute cases of trafficking in persons, both for sexual and labour exploitation. Please continue to provide information on court decisions concerning trafficking cases, as well as information regarding any difficulties encountered by the competent authorities in identifying victims and in initiating legal proceedings. Finally, the Committee once again requests the Government to provide statistical information on the number of trafficking offences reported, the number of prosecutions initiated and the number of convictions obtained, indicating penalties imposed.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1972)**

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For many years, the Committee has been referring to sections 16–20 of the Special Powers Act (No. XIV of 1974), under which penalties of imprisonment may be imposed on people who publish prejudicial reports or contravene orders for prior scrutiny and approval of certain publications or for the suspension or dissolution of certain associations. The Committee noted that penalties of imprisonment may involve an obligation to perform prison labour by virtue of section 53 of the Penal Code and section 3(26) of the General Clauses Act.

The Committee notes the Government's view expressed in the report that the provisions in the Special Powers Act are not related to employment relationships, but established to improve the administrative system. The Committee recalls, in this regard, referring also to paragraphs 152–166 of its General Survey of 2007 on the eradication of forced labour, that any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed on people convicted for expressing political views or views opposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations. ***The Committee reiterates the firm hope that the necessary measures will soon be taken or envisaged to repeal or amend sections 16–20 of the Special Powers Act (No. XIV of 1974), so as to ensure the observance of the Convention. Pending the amendment, the Committee requests the Government to provide information on the application of these provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.***

*Article 1(c). Penalties involving compulsory labour as a punishment for breaches of labour discipline.* For many years, the Committee has been referring to the following provisions under which various breaches of labour discipline are punishable with imprisonment, which may involve compulsory labour under section 3(26) of the General Clauses Act:

- Control of Employment Ordinance, No. XXXII of 1965, sections 5(2)(h) and (i), 6(3) and 13(1) (prohibiting people employed or engaged in “essential work” from leaving their work or absenting themselves from duty or slowing down or otherwise impeding their output, essential work being defined in section 2(3) as any work relating to the manufacture, production, maintenance or repair of arms, ammunition and equipment or other supplies and any other work which the Government may, by notification in the Official Gazette, declare to be essential work for the purposes of this Ordinance);
- Post Office Act, No. VI of 1898, section 50 (penalties applicable to postal employees who withdraw from the duties of their office without one month’s previous notice in writing).

The Committee notes the Government’s indication that the Control of Employment Ordinance, 1965, has been promulgated during an exceptional period of war and therefore is no longer applicable in practice. It further notes the Government’s statement that the provisions in the Post Office Act, 1898, are not related to employment relationships, but established to improve the administrative system. While duly noting this information, the Committee observes that the above provisions permit the imposition of compulsory labour as a means of labour discipline within the meaning of *Article 1(c)* of the Convention. The Committee considers that such breaches may be made punishable by other kinds of sanctions (e.g. fines or other punishment not involving compulsory labour), which lie outside the scope of the Convention. ***The Committee therefore reiterates the firm hope that the necessary measures will soon be taken to repeal or amend the above provisions of the Control of Employment Ordinance, 1965, and of the Post Office Act, 1898, in order to bring them into conformity with the Convention and the indicated practice.***

The Committee previously noted that sections 292 and 293 of the new Bangladesh Labour Act, 2006, which repealed and replaced the Industrial Relations Ordinance, 1969, contain provisions similar to those in sections 54 and 55 of the repealed Ordinance (failure to implement, or breach of, any settlement, award or decision), punishable with sanctions of imprisonment, which may involve compulsory labour. The Committee notes the Government’s indication that the Labour Act, 2006, is currently under review and that amendment proposals are being finalized. ***The Committee hopes that, in the course of the revision, sections 292 and 293 will be brought into conformity with the Convention, so that no sanctions involving compulsory labour can be imposed as a punishment for breaches of labour discipline. It asks the Government to provide information on any progress made in this regard.***

*Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee referred to sections 198 and 199 of the Merchant Shipping Ordinance (No. XXVI of 1983), which provide for the forcible conveyance of seafarers on board ship to perform their duties, and sections 196, 197 and 200(iii), (iv), (v) and (vi) of the same Ordinance, which provide for penalties of imprisonment (involving compulsory prison labour) for various disciplinary offences.

The Committee notes the Government’s indication that a technical committee has been established to review the existing legal framework in the maritime sector, including the Merchant Shipping Ordinance, 1983. It further notes the Government’s statement that the legislative revision process would take into account the need to align national legislation with the Maritime Labour Convention, 2006, (MLC, 2006), which Bangladesh intends to ratify. ***The Committee therefore trusts that the necessary amendments will be made to the Merchant Shipping Ordinance in the near future in order to ensure that breaches of labour discipline which do not endanger the safety of the vessel or the life or health of persons are not enforceable with sanctions of imprisonment involving compulsory labour, and that seafarers would not be forcibly conveyed on-board ship to perform their duties. The Committee asks the Government to provide detailed information on the progress made in this regard.***

*Article 1(d). Penalties involving compulsory labour as a punishment for having participated in strikes.* The Committee previously noted with regret that the Bangladesh Labour Act, adopted in 2006, does not contain any improvements as compared to the previous legislation in regard to the matters falling within the scope of the Convention. It noted, in particular, that sections 211(3) and (4) and 227(1)(c) of the Bangladesh Labour Act, 2006, which repealed and replaced the Industrial Relations Ordinance, 1969, provide for several restrictions on the right to strike which are similar to those contained in the repealed Ordinance, such restrictions being enforceable with sanctions of imprisonment, which may involve compulsory labour (section 196(2)(e) read in conjunction with section 291(2), and section 294(1)), contrary to the provisions of the Convention.

While noting the Government’s repeated statement that such restrictions on the right to strike, which have been maintained in the Labour Act, 2006, are justified in the present socio-economic context of the country, the Committee recalls that *Article 1(d)* of the Convention prohibits the use of any form of forced or compulsory labour, including compulsory prison labour, as a punishment for having participated in strikes. ***Noting also the Government’s indication that the Labour Act, 2006 is currently under review and that amendment proposals are being finalized, the Committee reiterates the firm hope, referring to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), likewise ratified by Bangladesh, that the necessary measures will at last be taken to ensure the observance of the Convention both in law and in practice, either by removing the above restrictions on the right to strike, or by removing the penalties through which these restrictions are***

*enforced and which may involve compulsory labour. The Committee requests the Government to provide, in its next report, information on the progress made in this regard.*

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

## **Belize**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)**

*Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes.* For many years, the Committee has been referring to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to perform labour, by virtue of section 66 of the Prison Rules) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may, by proclamation, be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the national fire service, postal service, monetary and financial services (banks, treasury, monetary authority), airports (civil aviation and airport security services) and the port authority (pilots and security services) to be essential services, and Statutory Instrument No. 51 of 1988 declared the social security scheme administered by the Social Security Branch an essential service.

The Committee has recalled in this respect 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 has noted that section 35(2) of the Trade Union Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only to essential services, but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Government indicates in its report that one of the main tasks of the newly revived Labour Advisory Board is the revision of the national legislation, and that the Board has regrouped the legislation under revision into six topics, including trade unions' rights. The Government also states that, although trade unions' legislation has not yet been covered, the intention is to revise it in order to bring it into conformity with the international labour Conventions, and that the Committee's concern regarding section 35(2) of the Trade Unions Act will definitely be taken into consideration.

*While taking due note of this information, the Committee trusts that the process of the revision of the Trade Unions Act will be completed in the near future, so as to ensure that no sanctions involving compulsory labour could be imposed as a punishment for breaches of labour discipline or for peaceful participation in strikes.*

## **Plurinational State of Bolivia**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1990)**

*Incidence of compulsory prison labour on the application of the Convention.* The Committee notes that the information provided by the Government in its report only concerns the arrangements for the performance of work undertaken by convicts, whether in the context of sentences of imprisonment ("*presidio*" or "*reclusión*") or in the framework of sentences to work of general interest. The Committee wishes to recall that work imposed on persons as a consequence of a conviction in a court of law does not in most cases have an incidence on the application of this Convention. However, if a person is compelled to work, for example in the form of prison labour, for expressing certain political views, opposing the established political, social or economic system or participating in a strike, such compulsory labour falls within the scope of the Convention. Accordingly, prison sentences, when they involve compulsory labour, as is the case in the Plurinational State of Bolivia under the terms of section 48 of the Penal Code and sections 181 et seq. of Act No. 2298 of 2001 on the enforcement of sentences, lie within the scope of the Convention when they are imposed as punishment for violating the prohibition to express views or opposition or participate in a strike.

*Article 1(d) of the Convention. Punishment for having participated in strikes.* In its previous comments the Committee referred to section 234 of the Penal Code, under which advocacy of lockouts, strikes or stoppages declared illegal by the labour authorities is punishable by imprisonment of from one to five years, as well as sections 2, 9 and 10 of Legislative Decree No. 2565 of 6 June 1951 establishing penal sanctions for participation in general strikes and sympathy strikes. The Committee also observed that the legislation respecting strikes establishes a number of restrictions on the exercise of the right to strike, including the requirement for a majority of three-quarters of the workers of the enterprise to call a strike (section 114 of the General Labour Act and section 159 of its Regulations), and the possibility to impose compulsory arbitration by decision of the executive authorities (section 113 of the General Labour Act). The Committee emphasized that excessive restrictions imposed on the exercise of the right to strike have an impact on the application of the Convention insofar as they result in a strike being declared illegal and those who participate in a strike that has been declared illegal being liable to penal sanctions, under which they are subject to compulsory labour.

*The Committee once again hopes that the Government will take the necessary measures to ensure that penalties involving compulsory labour cannot be imposed for participation in strikes and that, for that purpose, the provisions referred to above of Legislative Decree No. 2565 and section 234 of the Penal Code, which provide for this type of penal sanction, will be amended or repealed. As the Government indicated previously that these provisions are not applied in practice, the Committee trusts that the legislation will be brought into conformity with the Convention and with existing practice in the very near future.*

## Brazil

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

*Articles 1(1), 2(1) and 25 of the Convention. “Slave labour”.* In the comments it has been addressing to the Government for a number of years on the issue of “slave labour”, the Committee has noted several measures which have been taken by the Government in order to reinforce its legislative and institutional framework to combat this practice, under which many workers continue to be victims of inhuman and degrading conditions, debt bondage or internal trafficking for purposes of labour exploitation. The Committee emphasized, in particular, the adaptation of the legislation to national circumstances through section 149 of the Penal Code, which defines the elements that constitute the crime of “reducing a person to a condition akin to that of slavery”; the activities undertaken by specialized institutions to combat this phenomenon, such as the National Commission to Eradicate Slave Labour and the Special Mobile Inspection Group; and the action of Labour Courts, which have sanctioned persons engaged in these forms of exploitation with fines and have provided for substantial compensation. Noting that all of these actions have failed to be sufficiently dissuasive to prevent certain employers from having recourse to this practice, which remains lucrative, the Committee requested the Government to continue taking action without respite against persons who exact forced labour by adopting measures in the fields of legislation, labour inspection and the judicial authorities. The Committee notes that, following her visit to the country, the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, addressed recommendations to the Government that are consistent with those made by the Committee in its observations (A/HRC/15/20/Add.4).

*(a) Strengthening of the legal framework.* In its previous comments, the Committee expressed the hope that the Government would take every measure to expedite the adoption of certain Bills aimed at guaranteeing greater legal security through measures targeting the economic and financial interests of those who exploit slave labour. The Committee noted, in particular, the draft amendment to article 243 of the Constitution (PEC No. 438/2001), authorizing the expropriation, without compensation, of establishments in which the use of slave labour has been identified (the expropriated lands will be consigned to the agrarian reform). It also referred to the draft Law (PLS No. 487/03), which provides a legal basis for the prohibition of persons recognized to have used slave labour from obtaining fiscal benefits and credits, and from participating in public contracts; and Bills (PLS No. 9/04 and PL No. 5.016/5) increasing the penalties applicable to the crime of reducing a person to a condition akin to slavery. The Committee notes that none of these initiatives have yet been adopted and that the Government simply refers to the establishment of a Joint Parliamentary Front, in March 2010, to accelerate the adoption of the constitutional amendment. ***The Committee therefore reiterates its firm hope that the Government will take all the necessary measures to expedite the adoption of the Bills referred to above and, in particular, those intended to guarantee greater legal security, with a view to increasing the penalties applicable to the crime of reducing a person to a condition akin to slavery.***

The Committee recalls that, since 2003, the Ministry of Labour and Employment has established a list to include the names of individuals or entities which have been found responsible, by a definitive administrative decision, for exploiting workers under conditions akin to slavery (“dirty list”). The list, which is updated every six months, is sent to various public administrative services and to banks administering constitutional and regional financing funds so that no financial assistance, grants or public credits are granted to those included on the list (Decree No. 540 of the Ministry of Labour and Employment of 15 October 2004). The Committee noted with concern that the lawfulness and constitutional nature of the list had been contested, and that the courts had upheld appeals by certain employers demanding the removal of their names from the list while awaiting a final decision. While noting that the Government once again indicates in its report that the prevailing jurisprudence in regional labour courts recognizes the legality of the list, the Committee notes that it no longer refers to the Bill to strengthen the legal status of the list. The Committee also notes that the total of persons or entities included on the list in July 2011 was 251, which represents an increase in comparison to July 2009 (175 names) and July 2007 (192 names).

The Committee further notes that the Government has not provided information on the expropriation measures taken by the President of the Republic in relation to establishments that do not fulfil their social purpose and, therefore, would be eligible for agrarian reform (their presence on the list is a factor taken into account for this purpose). The Committee also notes that the Federal Supreme Court has still not ruled on the appeal lodged against the expropriation Decree signed in 2004 by the President of the Republic concerning a property which was declared of social interest for agrarian reform on those grounds.

The Committee considers that the establishment of the “dirty list” and the resulting measures constitute effective tools in combating slave labour, in so far as they are targeted at the economic interests of those who impose forced labour.

*The Committee hopes that the Government will take the necessary measures to guarantee that the legal status of the list is strengthened in order to avoid any questioning on its legality by offenders. Please also specify the number of cases brought before the courts aiming at the exclusion from the list, as well as the court decisions handed down. The Committee once again emphasizes the importance of adopting the proposed amendment to the Constitution (PEC No. 438/2001) authorizing the expropriation, without compensation, of establishments in which the use of slave labour has been identified.*

(b) *Strengthening of the labour inspectorate.* The Committee emphasizes, once again, the central role of labour inspection, and particularly of the Special Mobile Inspection Group (GEFM), in combating slave labour, as well as the need to guarantee that adequate human and material resources are provided to allow labour inspectorates to move quickly, efficiently and safely throughout the country. The Government indicates in its last report that, in 2009, the GEFM consisted of eight teams specialized in slave labour working throughout the entire country, compared with five teams in July 2010. It also refers to the organization, in 2010, of a new public competition to fill 234 vacancies in the labour inspection services across the country and that 82 labour inspectors recruited in 2006–07 have been assigned to Mato Grosso, one of the regions most affected by slave labour. The Committee notes this information as well as the number of inspections conducted by the GEFM, which have remained stable (143 interventions in 2010, compared with 156 in 2009). While observing that the Government has been regularly organizing competitions to increase the number of labour inspectors, the Committee notes with *concern* the considerable reduction on the number of GEFM teams. The Committee recalls that the inspections carried out by the GEFM result not only in the release of workers from situations of forced labour, but also provide evidence for civil and criminal action against perpetrators. *Taking into consideration the significant geographical area to be covered by labour inspection, as well as the absence of information indicating any decrease in the use of slave labour in the country, the Committee requests the Government to take the necessary measures to ensure that the GEFM has at its disposal adequate trained personnel and material resources allowing it to carry out its activities effectively.*

(c) *Imposition of effective penalties.* The Committee recalls that the effective imposition of penalties for violations of labour legislation is an essential element in combating forced labour, as it is characterized by the concurrence of a number of violations of labour legislation which must be punished as such. Moreover, taken as a whole, these violations constitute the criminal offence provided for in the Penal Code of “reduction of a person to a condition akin to slavery”, which in itself gives rise to specific penalties.

*Administrative sanctions.* In its previous comments the Committee has noted the complementary role played by labour inspection, labour prosecutors and labour courts, resulting in the imposition of substantial administrative penalties on those who make use of forced labour. It noted, in particular, the fines imposed, the reinstatement of the rights of released workers and the conviction of perpetrators to pay compensation for the material damages suffered by workers and for “collective moral damages” caused to the society as a whole. *The Committee requests the Government to continue taking measures to reinforce the means of action available to the authorities responsible for imposing such sanctions in order to ensure that fines and compensation are effectively collected. Please also provide information on the measures taken with a view to continuing to exert economic pressure on those who impose forced labour, including the imposition of dissuasive fines and compensation, the removal of access to public subsidies and financing, and, particularly, the expropriation of lands where forced labour is found.*

*Penal sanctions.* In its previous comments the Committee noted that, by confirming the competence of federal courts to prosecute those found guilty of reducing a person to a condition akin to slavery (article 149 of the Penal Code), the Federal Supreme Court (STF) brought an end to the conflicts concerning jurisdiction, which had prevented or delayed the trial of many perpetrators. The Committee expressed the hope that this decision, as well as the practice followed by the Office of the Attorney-General of the Republic of bringing those cases before the competent jurisdiction, would lead to the conviction of those responsible for such crimes.

In its report, the Government refers once again to two court decisions of 2008 imposing prison sanctions. It indicates that the Office of the Attorney-General of the Republic has initiated prosecutions against 103 persons in 2007 and 31 in 2008. The Committee notes with *regret* the lack of information in the Government’s report on the number of criminal proceedings accepted by the federal criminal courts, as well as the number of convictions resulting therein. The Committee observes that, according to statistics available on the website of the Office of the Attorney-General of the Republic, the number of final convictions listed is very low (nine rulings and 15 convicted persons between 2001 and 2010). It notes, for example, that in the State of Mato Grosso, 71 criminal proceedings were initiated between 2001 and 2010, yet only one conviction was obtained. The Committee observes nevertheless that, as a result of action undertaken by the GEFM, 39,180 workers found in a situation akin to slavery were released between 1995 and 2010, and that new names have been regularly incorporated into the “dirty list” (the July 2011 list contains over 200 names). *The Committee requests the Government to provide information on the measures taken to ensure that those found in violation of section 149 of the Penal Code, are promptly prosecuted. Please also indicate the difficulties which are preventing the conviction by federal criminal courts of persons who subject workers to conditions akin to slavery, as well as the measures taken to overcome them. The Committee recalls in this regard that, according to Article 25 of the Convention, really effective penalties should be imposed on those who have imposed forced labour.*

(d) *Reintegration of victims.* The Committee previously highlighted the importance of providing material and financial support to victims in order to prevent them from returning to a situation of vulnerability in which they would be prone to be exploited under forced labour conditions. It notes that, in its report, the Government again refers to the same measures and programmes to promote the integration of released workers: the granting of unemployment benefit for a limited period of time (three months); the priority inclusion of these workers in the federal programme for the income redistribution (*Bolsa Família*) and access to the literacy programme (*Brasil alfabetizado*). Moreover, a pilot project for the promotion of employment in rural areas particularly affected by slave labour was set up, within the context of the national employment system. ***The Committee requests the Government to continue providing information on the measures adopted for the reintegration of victims of forced labour and the results achieved. Please also provide information on the measures adopted to raise the awareness of workers from the regions most affected by forced labour on the risks and consequences of such practice.***

## Burundi

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

Referring to its previous comments on 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 Government's disposal for a certain period and be forced to perform work in a prison institution, the Committee notes with *satisfaction* that the new Penal Code, adopted in 2009, no longer contains a provision criminalizing and penalizing begging and vagrancy.

*Articles 1(1) and 2(1) of the Convention.* 1. *Compulsory community development work.* For many years, the Committee drew the Government's attention to the need to bring Legislative Decree No. 1/16 of 29 May 1979 – establishing the obligation to carry out community development work under penalty of sanctions (one month of penal labour performed on one half day a week) – in conformity with the Convention. The Government previously indicated that this Legislative Decree had been repealed and that Act No. 1/016 of 20 April 2005 organizing municipal administration provided for voluntary participation in municipal development activities within the framework of national reconstruction.

In its previous observation, however, the Committee pointed out that the Act of 2005 did not explicitly provide for the voluntary nature of this work. The Act specifies that, with a view to promoting the economic and social development of municipalities – not only on an individual but also on a collective and unified basis – municipalities may cooperate through a system of inter-municipality. It also states that it is up to the municipal council to establish the community development programme, monitor its implementation and carry out the evaluation thereof. A regulatory text determines the organization, mechanisms and rules of procedure of inter-municipality. The Committee therefore requested the Government to indicate whether the text implementing the Act organizing municipal administration had been adopted and to provide information on the type and duration of the community work carried out and the number of persons concerned. It also asked the Government to specify whether persons who evade community labour are liable to penalties.

The Committee notes that, in its last report, the Government confirms that Decree No. 1/16 of 1979 has been replaced by the Act organizing municipal administration of 2005 and that the latter does not provide for penalties to be imposed on persons who fail to carry out community work. The Committee also notes that the Government has not made any comment on the observations sent in 2008 by the Trade Union Confederation of Burundi (COSYBU), stating that community work is decided upon without popular consultation and that the Government bans the movement of persons throughout the duration of this work.

The Committee notes that, although the principle of community work has been upheld in the 2005 Act organizing municipal administration, the rules for participation in this work do not seem to have been established under the legislation because, on the one hand, no text implementing the Act has been adopted and, on the other hand, according to the Government, the Decree of 1979 has been repealed. The Committee points out however that, according to information available on the Internet site of the Government and the National Assembly, community work seems to be organized on a weekly basis and includes work of reforestation, cleaning and the construction of economic and social infrastructure such as schools, colleges and health centres. ***Taking into account this information, the observations from the COSYBU and the legal void apparently existent with respect to the conditions for organization and participation in community work, the Committee requests the Government to take the necessary steps to adopt the text applying the Act of 2005 and that this text will explicitly refer to the voluntary nature of participation in this work.***

*Compulsory agricultural work.* For many years, the Committee has been requesting the Government to take the necessary measures to bring a number of texts providing for the compulsory participation in certain types of agricultural work into line with the Convention. It had stressed the need to set out in the legislation the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to create and maintain minimum areas of fruit crops (Ordinances Nos 710/275 and 710/276 of 25 October 1979), as well as the need to formally repeal certain texts on compulsory cultivation, portage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953 and the Decree of 10 May 1957). In its last report, the Government indicates that these texts, which dated from the colonial period, have been repealed, and that the voluntary nature of agriculture work has now been set out in the legislation. ***The Committee takes due note of this information and requests the Government to send a copy of the texts that repeal the abovementioned legislation and set out the voluntary nature of agricultural work.***

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

## Cameroon

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(c) of the Convention. Hiring of prison labour to private entities.* For many years, the Committee has been referring to Decree No. 92-052 of 27 March 1992 issuing the prison regulations, which authorizes the hiring of prison labour to private enterprises and individuals (sections 51–56), and to Order No. 213/A/MINAT/DAPEN of 28 July 1988, which establishes a number of conditions concerning the use of prison labour and fixes the rates for their hiring. Noting that neither of these texts requires the formal and informed consent of the prisoners who are to be hired to private enterprises and/or individuals, the Committee previously requested the Government to take the necessary measures to supplement the legislation through the inclusion of the requirement for the consent of prisoners working for private entities.

The Committee notes the Government's indication in its latest report that the Ministry of Territorial Administration and Decentralization is undertaking the revision of the implementing texts of the Decree issuing the prison regulations so as to establish the requirement for the formal, free and informed consent of prisoners for any work performed for private enterprises and to ensure them conditions of work approximating those of a free labour relationship.

In this respect, the Committee notes that, in its comments on the application of the Convention received on 31 October 2011, the Confederation of United Workers of Cameroon (CTUC) refers to the evasive nature of the Government's reply in relation to the date of adoption of the implementing texts and emphasizes the importance of taking urgent measures in this regard with a view to giving effect to the provisions of the Convention.

The Committee recalls that, in a setting of captivity, it is necessary to obtain the free, formal and informed consent of prisoners for work in cases where such work is performed for private individuals, enterprises or associations. The Committee further considers that certain factors are required in order to authenticate or confirm the giving of such consent, and that the most reliable indicator of the voluntary nature of labour is that the work is performed under conditions which approximate to a free labour relationship. *The Committee trusts that, as it has undertaken to do, the Government will take the necessary measures to adopt the implementing texts of the Decree of 1992 issuing the prison regulations, and that these texts will establish the explicit requirement that free, formal and informed consent is to be given by convicts for work for private entities, and that they benefit from conditions of labour which approximate a free labour relationship in terms of wages, hours of work and occupational safety and health. In this regard, the Committee draws the Government's attention to the possibility of availing itself of ILO technical assistance.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(a) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system.* In its previous comments the Committee noted that, under section 24 of the Penal Code, as amended by Act No. 90-61 of 19 December 1990, and section 49 of Decree No. 92-052 establishing the prison system, sentences of imprisonment involve the obligation to work. It emphasized that where an individual is, in any manner whatsoever, compelled to perform prison labour as punishment for expressing certain political views or opposition to the established political, social or economic system, this falls within the scope of the Convention. In order to be sure that certain provisions of national law are not used as the basis for imposing prison sentences on persons who, express certain political views or opposition to the established political, social or economic system, the Committee asked the Government to provide information on the application of these provisions in practice, including copies of court decisions issued on the basis thereof. The following provisions are concerned:

- section 113 of the Penal Code, under which any person issuing or propagating false information that may be detrimental to the public authorities or national unity shall be liable to imprisonment of three months to three years;
- section 154(2) of the Penal Code, under which any person guilty of incitement, whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic shall be liable to imprisonment of three months to three years;
- section 157(1)(a) of the Penal Code, under which any person guilty of incitement to obstruct the enforcement of any law, regulation or lawfully issued order of the public authority shall be liable to imprisonment of three months to four years;
- section 33(1) and (3) of Act No. 90-53 concerning freedom of association, under which board members or founders of an association which continues operations or which is re-established unlawfully after a judgment or decision has been issued for its dissolution, and persons who have encouraged the assembly of members of the dissolved association by allowing continued use of the association's premises, shall be liable to imprisonment of three months to one year. Section 4 of the Act declares that associations founded in support of a cause or for a purpose contrary to the Constitution, or associations whose purpose is to undermine, inter alia, security, territorial integrity, national

unity, national integration or the republican nature of the State, shall be null and void. Furthermore, section 14 provides that the dissolution of an association does not prevent any legal proceedings from being instituted against the officials of such an association.

The Government indicates in its latest report that the Penal Code is being reformed and that, since the adoption of the Freedom of Association Act in 1990, cases involving offences relating to the expression of certain views are no longer taken to court. The Committee duly notes this information. It also points out that both the Human Rights Committee (HRC) and the Committee against Torture (CAT), in their concluding observations in 2010 with respect to Cameroon, express their concern regarding the large number of journalists who have been imprisoned or are facing prosecution. The HRC “reiterates its concern about provisions in the Penal Code which render it a criminal offence to spread false news and about how journalists in a number of cases have been prosecuted for this or related crimes, such as the crime of defamation, as a consequence of their reporting”. The HRC also expresses its concern at the low number of accredited NGOs and asks Cameroon to ensure that any restriction on freedom of association is strictly compatible with international standards (CCPR/C/CMR/CO/4, paragraphs 25–26, and CAT/C/CMR/CO/4, paragraph 18).

*In view of the above, the Committee once again requests the Government to send copies of any court decisions issued on the basis of the abovementioned provisions of the Penal Code and the Freedom of Association Act. The Committee hopes that during the revision of the Penal Code, to which the Government refers in its report, the explanations provided by the Committee on the scope of the protection afforded by the Convention will be taken into account in such a way that no prison sentence (which in Cameroon entails compulsory labour) can be imposed on persons who, without using or advocating violence, express certain political views or opposition to the established political, social or economic system.*

## Central African Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1) and 2(1) of the Convention. Idleness, active population and compulsory activities.* For many years the Committee has been asking the Government to take the necessary steps to formally repeal the following provisions of the national legislation, which are contrary to the Convention inasmuch as they constitute a direct or indirect compulsion to work:

- Ordinance No. 66/004 of 8 January 1966 concerning the suppression of idleness, as amended by Ordinance No. 72/083 of 18 October 1972, under which any able-bodied person aged between 18 and 55 years who cannot prove that he or she is engaged in a normal activity providing for his or her subsistence or engaged in studies shall be considered to be idle and shall be liable to imprisonment of one to three years;
- Ordinance No. 66/038 of June 1966 concerning the supervision of the active population, under which any person aged between 18 and 55 years who cannot prove that he or she belongs to one of the eight categories of the active population shall be called up to cultivate land designated by the administrative authorities and shall also be considered a vagabond if apprehended outside his or her subprefecture of origin and shall be liable to imprisonment;
- Ordinance No. 75/005 of 5 January 1975 obliging all citizens to provide proof of the exercise of a commercial, agricultural or pastoral activity and rendering any person in breach of this provision liable to the most severe penalties; and
- section 28 of Act No. 60/109 of 27 June 1960 concerning the development of the rural economy, under which minimum areas for cultivation are to be established for each rural community.

The Committee notes that the Government reiterates in its latest report that the abovementioned provisions of national law have fallen into disuse. The Government also indicates that an inter-ministerial meeting is due to be held in the very near future, and this should result in specific proposals for the repeal of these legislative texts which are contrary to the Convention.

The Committee notes that the Government has reported in recent years on various initiatives aimed at repealing the abovementioned provisions of the legislation which are contrary to the Convention. *The Committee trusts that the Government will take the necessary measures to ensure that the inter-ministerial meeting to which it refers can actually take place and result in specific proposals for the repeal of the abovementioned provisions, in order to avoid any legal uncertainty.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

*Article 1(a) of the Convention. Imposition of imprisonment involving an obligation to work as a penalty for expressing political views or views ideologically opposed to the established political, social and economic system.* In its previous comments the Committee drew the Government’s attention to the need to amend or repeal the provisions of Act No. 60/169 of 12 December 1960 concerning the dissemination of prohibited publications liable to prejudice the development of the Central African nation and Order No. 3-MI of 25 April 1969 concerning the dissemination of

periodicals or news of foreign origin not approved by the censorship authority, which permitted the imposition of terms of imprisonment involving compulsory labour for various press offences.

The Committee notes the Government's indication in its last report that Act No. 60/169 of 1960 and Order No. 3-MI of 1969 have become obsolete and fallen into disuse and are considered to be contrary to Ordinance No. 05-002 of 22 February 2005 concerning the freedom of communication in the Central African Republic, which decriminalizes press offences.

The Committee notes with *satisfaction* that Ordinance No. 05-002 does not impose terms of imprisonment for press offences, including defamation, slander or the publication of misinformation. It also notes that, under section 123 of the Ordinance, all previously existing contrary provisions are repealed.

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

## Chad

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

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

*Article 2(2)(a) of the Convention. Work in the general interest imposed in the context of compulsory military service.* The Committee previously noted Ordinance No. 001/PCE/CEDNACVG/91 organizing the armed forces, according to which military service is compulsory for every citizen of Chad. Under section 14 of the Ordinance, conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government. The Committee noted that similar provisions were contained in Ordinance No. 2 of 1961 on the organization and recruitment of the armed forces of the Republic, on which it commented for many years. Indeed, such provisions are not compatible with *Article 2(2)(a)* of the Convention under which, to be excluded from the scope of the Convention, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. ***The Committee hopes that the Government will take the necessary measures to bring the provisions of section 14 of the Ordinance of 1991 reorganizing the armed forces and, as appropriate, any decrees issued thereunder, into conformity with the Convention.***

*Article 2(2)(c).* For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision would allow the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. ***The Committee hopes that the Government will take the necessary measures without further delay to amend or repeal section 2 of Act No. 14 of 13 November 1959 referred to above.***

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

## Congo

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Article 2(2)(a) of the Convention. 1. Work exacted under compulsory military service laws.* For many years, the Committee has been drawing the Government's attention to the fact that section 1 of Act No. 16 of 27 August 1981 establishing compulsory military service is not in conformity with the Convention. Under this provision, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee has stressed that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention.

The Committee notes that the Government indicates once again in its report that it is committed to repealing the abovementioned law and that it will provide information on any changes in this respect. ***The Committee firmly hopes that the necessary steps will be taken to amend or repeal the Act establishing compulsory military service so as to bring the legislation into conformity with the Convention.***

*2. Youth brigades and workshops.* In its previous comments, the Committee noted that, according to the Government, Act No. 31-80 of 16 December 1980 on guidance for youth had fallen into disuse since 1991. Under this Act, the party and mass organizations were supposed to create, over time, all the conditions for establishing youth brigades and organizing youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). The Committee notes that, in its last report, the Government states that it is committed to repeal the law to bring national legislation into conformity with the Convention. ***The Committee hopes that the necessary measures will be taken to formally repeal Act No. 31-80 of 16 December 1980 on guidance for youth.***

*Article 2(2)(d). Requisitioning of persons to perform community work in instances other than emergencies.* For many years, the Committee has been drawing the Government's attention to the fact that Act No. 24-60 of 11 May 1960 is incompatible with the Convention in that it allows the requisitioning of persons to perform community work in instances

other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to a prison sentence ranging from one month to a year.

The Committee notes that the Government confirms, in its last report, that this Act has fallen into disuse and may be considered as repealed, in view of the subsequent adoption of the Labour Code, especially section 4 which bans forced labour. The Government stipulates that, to avoid any legal ambiguity, it will include a provision stating the voluntary nature of this work in the Labour Code at present being revised. It also refers to the adoption of a text enabling a distinction to be made between work of public interest and forced labour. ***Taking account of this information, the Committee trusts that the Government will be in a position to announce, in its next report, the formal repeal of Act No. 24-60 of 11 May 1960 on community work.***

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

## Democratic Republic of the Congo

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1960)***

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

The Committee notes the concise report provided by the Government on 9 June 2011 and also the discussion which took place within the Conference Committee on the Application of Standards concerning the application of the Convention by the Democratic Republic of the Congo. It also notes the observations from the Confederation of Trade Unions of Congo (CSC) received at the Office on 21 September and forwarded to the Government on 26 September 2011.

*Articles 1(1) and 2(1) of the Convention. Forced labour and sexual slavery in the context of armed conflict.* In its previous observation the Committee referred to the various reports of the Office of the United Nations High Commissioner for Human Rights and of the Special Rapporteurs on the situation in the Democratic Republic of the Congo. These reports underlined the gravity of the human rights situation in the country – both in the zones where hostilities have resumed and in areas that have not been affected by the conflict – and referred to violations committed by the state security forces and other armed groups, including cases of forced labour and sexual slavery. In the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, the experts noted that the mines in the Kivu provinces continued to be exploited by armed groups, especially the Armed Forces of the Democratic Republic of the Congo (FARDC) and expressed their concern at “reports that civilians are still subjected to forced labour, extortion and illegal taxation, and that sexual exploitation of women and girls is rife in these mining areas”. This report also emphasize that “women and girls have been abducted and held as sexual slaves both by FARDC members and other armed actors, and have been subject to collective rapes for weeks and months, often accompanied by additional atrocities” (A/HRC/13/63 of 8 March 2010).

In its report, received in June 2011, the Government indicates that it has noted the Committee’s observations and that urgent measures are being taken to put a stop to these serious violations. It adds that a bill for the eradication of forced labour is under examination in Parliament.

The Committee notes that the Conference Committee on the Application of Standards, further to its examination of this case, “noted with concern the information provided which bore witness to the gravity of the situation and the climate of violence, insecurity and the violation of human rights which prevailed in the country, especially in North Kivu. This information confirmed that cases of abduction of women and children, with a view to their use as sexual slaves and the exaction of forced labour, particularly in the form of domestic work, were frequent and continued to occur. Moreover, in mines, the workers were hostages of conflicts for the exploitation of natural resources and victims of exploitation and abusive practices, some of which amounted to forced labour. The Committee observed that failure to comply with the rule of law, legal insecurity, the climate of impunity and the difficulties faced by victims in gaining access to justice favoured all of these practices. (...) The Committee (...) appealed to the Government to take urgent and concerted measures to bring such violations to an immediate end (...)”.

The Committee *regrets* that, further to this discussion, the Government has neither supplied detailed information on the measures taken to put a stop to these violations, nor replied to the observations from the CSC, which confirm the practices of abduction of women and girls and, to a lesser degree, of men and boys with a view to being used for forced labour and sexual slavery by the armed groups. Elderly women are also being abducted for domestic work. The trade union confederation refers to specific cases of abductions and indicates that the worst affected areas are Walikale, Rutshuru, Masisi and North Kivu.

***In view of the gravity of the situation described above, the Committee urges the Government to take the necessary measures, as a matter of urgency, to put an immediate stop to these practices which constitute a serious violation of the Convention and to guarantee a climate of stability and legal security in which recourse to forced labour cannot be legitimized or go unpunished. The Government is also requested to provide information on the prosecution proceedings instituted against perpetrators and the criminal penalties imposed therein.***

*Article 25. Criminal penalties.* In its previous comments the Committee noted that, under section 323 of the Labour Code, any infringement of section 2.3, which prohibits the use of forced or compulsory labour, shall incur the penalty of a maximum of six months' imprisonment and/or a fine, without prejudice to criminal legislation laying down more severe penalties. Emphasizing that the penalties laid down in the Labour Code do not constitute an effective deterrent, the Committee asked the Government to specify the penal provisions which prohibit and sanctions recourse to forced labour. The Committee notes the Government's confirmation that the Penal Code of 1940 (as amended up to 2006) does not establish any penalties for persons who impose forced labour. The Government explains that the bill for the eradication of forced labour which is under examination in Parliament provides for effective criminal penalties. ***The Committee trusts that the Government will be in a position to announce in its next report the adoption of the Act for the eradication of forced labour and that the latter will establish criminal penalties that constitute an effective deterrent, in accordance with Article 25 of the Convention.***

*Repeal of legislation allowing for the exaction of work for national development purposes, as a means of levying taxes and by persons in preventive detention.* For a number of years the Committee has been asking the Government to amend or repeal the following legislative texts and regulations, which are contrary to the Convention:

- Act No. 76-011 of 21 May 1976 concerning national development efforts and its implementing order, Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme: these legal texts, which aim to increase productivity in all sectors of national life, require, subject to criminal penalties, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment (political representatives, employees and apprentices, public servants, traders, members of the liberal professions, the clergy, students and pupils) to carry out agricultural and other development work as decided by the Government;
- Legislative Ordinance No. 71/087 of 14 September 1971 concerning the minimum personal contribution, sections 18 to 21 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;
- Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from persons in preventive detention (this Ordinance not being on the list of legal texts repealed by Ordinance No. 344 of 15 September 1965 concerning prison labour).

The Government previously indicated that these legal texts were obsolete and were therefore, de facto, repealed. Furthermore, replying to the Committee's request to repeal these texts formally in order to guarantee legal certainty, the Government indicated that legal certainty was not compromised by the lack of any formal repeal of these texts. The Committee notes the Government's indication in its report of June 2011 that the promulgation of the Act for the eradication of forced labour will provide an answer to the concerns of the Committee as regards the repeal of Act No. 76-011 concerning the national development effort and its implementing order, as well as Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts. ***The Committee hopes that, on the occasion of the adoption of the Act for the eradication of forced labour, the legal texts to which it has been referring for many years and which the Government indicates are obsolete and, de facto, repealed, will finally be repealed formally.***

## Dominica

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1983)**

*Articles 1(1) and 2(1), (2)(a) and (d) of the Convention. National service obligations.* Over a number of years, the Committee has been requesting the Government 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 pointed out that the above provisions are not in conformity with the present Convention and the Abolition of Forced Labour Convention, 1957 (No. 105), which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

The Government indicates in its report that the item concerning the amendment of the legislation has been included in the Decent Work Agenda, and that the necessary measures will be taken to address the requests in relation to compliance with the Conventions with the technical assistance of the ILO. ***While having noted the Government's indications in its earlier reports that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, and that section 35(2) of the Act has not been applied in practice, the Committee trusts that appropriate measures will be taken in the near future in order to formally repeal the above Act, so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.***

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

## Ecuador

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Article 1(d) of the Convention. Sanctions of imprisonment involving compulsory labour as a punishment for participation in strikes.* 1. *Decree No. 105 of 7 June 1967.* In the comments that it has been making for many years, the Committee has referred to Decree No. 105 of 7 June 1967, which allows a prison sentence of two to five years to be imposed on any person fomenting or taking a leading part in a collective work stoppage. The penalty laid down in the Decree for anyone who participates in such a stoppage without fomenting or taking a leading part in it is correctional imprisonment of three months to one year. For the purposes of this provision, “there is a work stoppage when there is a collective stoppage of work or the imposition of a lockout except in the cases permitted by law, the paralysing of the means of communication and similar antisocial acts”. Noting that prison sentences involve compulsory labour under sections 55 and 66 of the Penal Code, the Committee recalled that, in accordance with the Convention, prison sentences involving compulsory labour should not be imposed for peaceful participation in strikes.

The Committee notes that the Government previously indicated that the Decree No. 105 of 7 June 1967 was no longer applicable in practice, without, however, mentioning that it has been formally repealed. In its latest report, the Government refers to a current process of rationalization of the legislation. The Committee observes that Decree No. 105 of 7 June 1967 was not included among the legislation that was repealed in 2010 by Derogatory Law No. 1. ***The Committee expresses the firm hope, referring also to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), likewise ratified by Ecuador, that, in the course of the process of rationalization of the legislation, the Government will take the necessary measures to formally repeal Decree No. 105 of 7 June 1967, so as to ensure that no penalties involving compulsory labour can be imposed for the mere fact of a peaceful participation in strikes, thereby bringing the national legislation into conformity with the Convention and the indicated practice.***

2. *Article 326(15) of the 2008 Constitution.* The Committee previously noted with regret that, despite the comments it had been addressing to the Government on this point, the Constitution promulgated in 2008 contains a provision prohibiting the stoppage of public services which are not essential services in the strict sense of the term, such as education, transport, processing, public transport and the postal services (article 326(15)). It also noted that penalties applicable in the case of a stoppage in public services are those set out in the Penal Code. The Committee requested the Government to review the situation in the light of both Conventions Nos 87 and No.105.

***Noting that the Government’s report contains no information in this regard, the Committee reiterates its hope that the Government will take the necessary measures to repeal or amend article 326(15) of the Constitution, in order to bring the above provision into compliance with Convention No. 105, which prohibits the imposition of prison sentences involving compulsory labour as a punishment for peaceful participation in strikes.***

*Article 1(c). Sentence of imprisonment imposed as a means of labour discipline.* The Committee previously noted that under section 165 of the Maritime Police Code, crew members are prohibited from disembarking in a port other than the port of embarkation, except with the agreement of the ship’s master. Section 165 further provides that crew members who desert shall forfeit their pay and belongings to the vessel and, if recaptured, shall pay the cost of arrest and be punished in accordance with the naval regulations in force. ***While noting the Government’s indication concerning a process of rationalization of the legislation, the Committee reiterates its hope that the Government will not fail to take the necessary measures to repeal or amend section 165 of the Maritime Police Code, in order to bring the legislation into conformity with the Convention on this point, and that the Government will provide, in its next report, information on the progress made in this regard.***

*Article 1(a). Sanctions of imprisonment involving compulsory labour as a punishment for the expression of political views.* The Committee previously requested the Government to provide information on the application in practice of the following sections of the Penal Code, in order to ascertain the scope of these provisions in relation to *Article 1(a)* of the Convention: sections 230 and 231 (disrespect or insult towards public officials); sections 130, 133, 134, 148, 153 and 155 (internal security of the State). The Committee recalled that provisions restricting the right to express peacefully a political opinion that is contrary to the established political system, if enforced with sanctions involving compulsory labour, fall within the scope of the Convention.

The Committee notes with *regret* that the Government’s report contains no information in this regard. It further notes that title VII of the Penal Code (Crimes Against Honour) also contains provisions punishing with imprisonment various forms of “insults”, including defamation and “defamatory accusations against an authority” (section 493). It draws the Government’s attention to the explanations contained in paragraphs 152–166 of its 2007 General Survey on the eradication of forced labour, in which it has considered 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.

The Committee notes, in this connection, the press release from the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (R104/11 – 21 September 2011), in which the Office of the Special Rapporteur expresses its concern regarding the existence and application of laws that criminalize the expression of views opposed to the established political system. Referring in particular to a recent court decision which sentenced journalists to three years of imprisonment for the crime of aggravated defamation, the Office of the Special Rapporteur observes that the self-censorship that results from these types of decisions impacts not only journalists and the authorities themselves, but all of Ecuadorian society. Finally, it calls on the Government to bring its normative framework and institutional practices into compliance with the internationally recognized standards in the area of freedom of expression.

*While noting the above information, the Committee hopes that the Government will take the necessary measures so as to ensure that prison sentences involving compulsory labour are not imposed for the expression of views opposed to the established political, social or economic system. The Committee once again requests the Government to provide copies of court decisions handed down under the above provisions of the Penal Code, indicating the penalties imposed.*

## Germany

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1956)**

*Articles 1(1), 2(1) and 2(2)(c) of the Convention. Work of prisoners for private enterprises.* In comments made for many years on law and practice in Germany, the Committee referred to the situation of prisoners who are obliged to work, without their consent, in workshops run by private enterprises within state prisons, in conditions bearing no resemblance whatsoever to the free labour market. The Committee pointed out on numerous occasions (see e.g. the 2007 General Survey on the eradication of forced labour, paragraph 109 and footnote 272) that the practice followed in this regard in Germany corresponds exactly to the description of the “special contract system”, a system in which the labour of prisoners is hired to private contractors. The fact that prisoners remain at all times under the authority and control of the prison administration does not detract from the fact that they are “hired to” a private enterprise – a practice designated in *Article 2(2)(c)* of the Convention as being incompatible with this fundamental human rights instrument.

The Committee recalled, referring also to the explanations in paragraphs 59–60 and 114–120 of the General Survey referred to above, that work by prisoners for private enterprises can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, by giving their formal, free and informed consent to work for private enterprises. In such a situation, work of prisoners for private parties would not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, in the prison context, the most reliable indicator of the voluntariness of labour is the work performed under conditions which approximate a free labour relationship, including wages (leaving room for deductions and attachments), social security and occupational safety and health.

In this connection, the Committee previously noted with regret that the requirement of the prisoner’s formal consent to be employed in a workshop run by a private enterprise, laid down in section 41(3) of the Act on the execution of sentences of 1976, had been suspended by the Second Act to improve the budget structure, of 22 December 1981, and had remained a dead letter since that time. The Committee notes with *regret* that, according to the Government’s latest report, no steps have been taken to bring this provision into force, and the Länder are not prepared to lay down legislation on the obligation to obtain such consent of the prisoners concerned. No steps have been taken, either by the Federal Government or by the Länder, to include prisoners in the health insurance and old-age pension schemes, since the budgetary situation of the Länder has not changed. However, the proportion of the prisoners working for private enterprises in Germany is still significant: the Government indicates that, throughout the Federal territory, an average of 12.57 per cent of all prisoners worked for private enterprises in 2008, though figures for the Länder ranged from 3 up to 19 per cent. The Government also reiterates its previous statement that the work situation in prisons is characterized by a job shortage, and the prison authorities are therefore trying to get more jobs from private companies in prisons in order to bring down the level of unemployment in penitentiary institutions.

While having noted these indications, the Committee once again expresses its *concern* that a significant number of the prisoners in Germany is hired to private enterprises which use their labour without their consent and in conditions bearing no resemblance whatsoever to the free labour market, in violation of this fundamental human rights Convention. While having noted the Government’s repeated statement in its reports that the Federal Constitutional Court has ruled that compulsory work of prisoners for private companies is compatible with the Basic Law, the Committee points out once again that, as explained above, the situation is still not in conformity with the Convention, both in legislation and in practice.

*The Committee therefore urges the Government to take the necessary measures, both at the federal and at the Länder levels, to ensure that formal, free and informed consent is required for the work of prisoners in private enterprise workshops inside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship. In this connection, the Committee expresses the firm hope that the provision for the consent of prisoners to work in private workshops, already made in*

*section 41(3) of the 1976 Act referred to above, will at last be brought into operation, together with the provisions regarding their contribution to the old-age pension scheme, as foreseen by section 191 et seq. of the same Act, and that the Government will soon be in a position to report the progress made in this regard.*

## Ghana

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

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

*Article 1(a), (c) and (d) of the Convention.* 1. In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. Having requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within *Article 1(a), (c) or (d)* of the Convention, the Committee noted the Government's statement that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and that it was the wish of the Government to bring the legislation concerned into conformity with the Convention. The Government also indicated in its report received in 1996 that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' comments and submitted recommendations to the Minister in March 1994 designed to bring domestic legislation into conformity with ILO standards, and the comments of the Committee of Experts had been submitted to the Attorney-General for a closer study and expert comments.

The Government has previously indicated that the action of the Attorney-General to bring the legislation into conformity with the Convention in accordance with the recommendations of the National Advisory Committee on Labour has been halted in view of the proposed review and codification of the labour laws. It has also indicated that the tripartite National Forum that includes representatives of the Attorney-General's Office, the National Advisory Committee on Labour and the employers' and workers' organizations, would consider the comments made by the Committee of Experts regarding the application of the Convention.

The Government indicates 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 near future.*

## Greece

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)**

*Voluntary nature of labour performed by convicted persons.* In its earlier comments, the Committee referred to certain provisions of the Code of Public Maritime Law, 1973, as amended, under which various breaches of labour discipline by seafarers are punishable with sanctions of imprisonment. It also referred to the provisions allowing the imposition of restrictions on freedom of assembly and expression, enforceable with sanctions of deprivation of liberty, in the circumstances covered by the Convention.

The Committee has noted the provisions of the Penitentiary Code, as amended by Act No. 2776/1999, as well as the Government's explanations concerning their application in practice. It has noted, in particular, that, under section 40(1) of the Code, the labour and employment of prisoners shall not be compulsory. It also notes the Government's indication in the report that prisoners wishing to be engaged in a specific work must submit an application to the Prisoners' Labour Council, which is a competent body for the selection of prisoners wishing to work, as well as for the work distribution and supervision of prisoners' conditions of work (section 41(3) and (4) of the Code). The decisions of the Council are taken after consultation with the prisoners concerned. The Committee notes the Government's statement that, under the legislation in force, there is no obligation for convicted prisoners to work, and they perform labour voluntarily.

As regards the sanction of community service, which is an alternative to imprisonment, the Committee notes that, under section 64 of the Code, it is performed following a relevant application or acceptance by the convicted person.

## Guatemala

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)**

*Article 1(a), (c) and (d) of the Convention.* *Penal sanctions involving compulsory labour imposed for expressing political views, for breaches of labour discipline and for participation in strikes.* For many years, the Committee has been referring to certain provisions of the Penal Code that may affect the application of the Convention. Under these

provisions, prison sentences involving compulsory labour (under section 47 of the Penal Code) can be imposed, in breach of the Convention, as a punishment for the expression of certain political opinions, as a means of labour discipline or for participation in a strike. The provisions in question are the following: section 396, under which “any person who seeks to organize or operate, or who participates in, associations which act in collaboration with, or in obedience to, international bodies that promote the communist ideology or advocate any other totalitarian system, or associations whose purposes offend against the law, shall be punished with imprisonment of from two to six years”; section 419, which stipulates that “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 390(2), under which “anyone committing an act intended to paralyse or disrupt an enterprise that contributes to the economic development of the country shall be punished with imprisonment of from one to five years”; and, finally, section 430, which stipulates that “public servants, public employees and other employees or members of the staff of public service enterprises who collectively abandon their jobs, work or service, shall be punished with imprisonment of from six months to two years. The penalty shall be doubled where such stoppage harms the public interest, and in the case of leaders, promoters or organizers of a collective stoppage”.

The Committee notes with *interest* that the Act against Organized Crime (Decree No. 21-2006 of 10 August 2006) repealed section 396 of the abovementioned Penal Code. It notes moreover that, according to the Government, a tripartite commission was appointed in 2008 to examine the legislative reforms to be made in follow-up to the comments of the Committee, which included the amendment of sections 390(2) and 430 of the Penal Code. The Government points out that these proposals were drafted with ILO technical assistance and that they are backed by the Ministry of Labour and Social Affairs. In this respect, the Committee notes that the high-level mission that went to Guatemala in 2011 at the request of the Committee on the Application of Standards of the International Labour Conference, in the context of the examination of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), stressed the lack of progress made with respect to the legislative reforms recommended by the Committee of Experts – the provisions of sections 390(2) and 430 were also the subject of comments under Convention No. 87. The mission pointed out that no bill had been submitted to Congress by the tripartite commission of international affairs.

*The Committee trusts that the Government will be able to indicate in its next report that the provisions of sections 419, 390(2) and 430 of the Penal Code have been modified or repealed, taking into account the comments it has been making for many years, to ensure that nobody taking part in a strike or breaching labour discipline may be penalized by a prison sentence involving compulsory prison labour. Meanwhile, the Committee requests the Government to send information on the application of these provisions in practice, including copies of any rulings handed down under these provisions. The Committee also refers to the comments it makes under Convention No. 87.*

## Guyana

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1966)**

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

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its earlier comments, the Committee referred to observations received from the International Trade Union Confederation (ITUC), which contained allegations that there was evidence of trafficking for forced prostitution and for child prostitution in cities and remote gold mining areas.

The Committee has noted the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government’s indication in the report that 300 volunteers have been trained to identify cases of trafficking. *The Committee would appreciate it if the Government would provide information on the following matters:*

- *the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;*
- *statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;*
- *any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.*

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

## India

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1954)**

The Committee notes a communication dated 16 March 2010, received from the Dakshini Rajasthan Majdoor Union (DRMU), which contains observations on the application of the Convention by India and, in particular, allegations concerning the situation of migrant workers, especially children, who are subject to compulsory labour practices in cotton production in India. The Committee notes that this communication was sent to the Government in June 2010 for any

comments it might wish to make on the matters raised therein. ***The Committee requests the Government to provide, in its next report, information in this regard.***

*Articles 1(1), 2(1) and 25 of the Convention. Bonded labour. Magnitude of the problem.* The Committee previously noted the Government's indication in its 2008 report that since the enactment of the Bonded Labour System (Abolition) Act, 1976 (BLSA), 287,555 bonded labourers had been identified, of whom 267,593 had been rehabilitated. It also noted from an International Trade Union Confederation (ITUC) communication received in 2008 that, despite the Government's efforts in combating forced and bonded labour, findings from research studies showed that bonded labour in agriculture and in industries like mining, brick kilns, silk and cotton production, and bidi making was likely to be affecting millions of workers across the country.

The Committee has noted the Government's repeated indication in its reports that statistical tools or methodologies used to collect macro or aggregated data are inappropriate for a survey of bonded labour. The Government reiterates that it had provided grants to state governments for conducting district-level surveys of bonded labour, and that a large number of such surveys had been conducted by the state governments. The Committee also notes a detailed report on the survey conducted in the State of Gujarat, supplied by the Government. Finally, the Committee notes that the Government, in cooperation with the ILO, will be undertaking a detailed survey on the vulnerable groups of workers who often become victims of bonded labour.

***While taking due note of the above information, the Committee expresses the firm hope that the Government will soon be in a position to undertake a national survey on bonded labour, in cooperation with the ILO and with the involvement of the social partners, using any statistical methods it considers appropriate and, as far as practicable, the existing data from all the district-level surveys referred to above. The Committee asks the Government to provide, in its next report, information on the progress made in this regard. The Committee also asks the Government to continue to provide copies of all available reports of the district-level surveys conducted by state governments.***

#### *Vigilance committees*

In its earlier comments, the Committee expressed concern about the effectiveness of the vigilance committees established under the BLSA. The Committee has noted the Government's repeated statement in its reports that all state governments have confirmed that vigilance committees have been constituted at the district and subdivisional levels and that the meetings are being held regularly. The Government also indicates that sensitization workshops have been organized in the states by the National Human Rights Commission (NHRC) in collaboration with the Ministry of Labour and Employment. ***The Committee therefore hopes that the Government will continue to take the necessary measures to ensure the proper functioning and effectiveness of the vigilance committees, and that it will provide, in its next report, information on the progress made in this regard, including copies of any relevant reports, studies and inquiries.***

#### *Release and rehabilitation*

The Committee notes the Government's indication in its report that a special group chaired by the Union Labour and Employment Secretary has continued to monitor the implementation of the BLSA and has held 18 region-level meetings with state government participation so far. The Government also indicates that the NHRC has been involved in the supervision of the implementation of the BLSA and the Centrally Sponsored Scheme (CSS) for rehabilitation of bonded labour victims, and that Special Rapporteurs have been appointed in order to make periodic visits to districts to assess the situation on the ground. The Special Rapporteurs' reports are studied by the NHRC and follow-up action has been initiated. Finally, the Committee notes the information provided by the Government as regards recent statistics on identification, release and rehabilitation of bonded labourers under the CSS up to 31 March 2010.

***While noting this information, the Committee encourages the Government to pursue its efforts towards the release and rehabilitation of bonded labourers and to provide, in its future reports, updated information on the measures taken to effectively implement release and rehabilitation programmes at the state level, including statistical information on the identification, release and rehabilitation of bonded labourers.***

#### *Measures to reduce vulnerability of workers to bondage situations*

The Committee notes the detailed information provided by the Government as regards the measures it has been adopting with the objective of reducing vulnerability to bondage. It notes, in particular, the information regarding the project "Reducing Vulnerability to Bondage in India through Promotion of Decent Work", which has been prepared by the Ministry of Labour and Employment, with the assistance of the ILO Special Action Programme to Combat Forced Labour (SAP-FL). The overall objective of the project is to reduce vulnerability of workers to bondage situations in the brick manufacturing and rice mill sectors in Tamil Nadu by achieving a significant improvement in living and working conditions for women and men workers and their family members. In addition to Tamil Nadu where the pilot project has been operational since July 2008, the project is currently supporting the States of Andhra Pradesh and Orissa to develop and implement their state plans of action. The Committee further notes the Government's indication that the project establishes close collaboration with the federal Government, state governments, trade unions and employers of the concerned sectors in order to develop and implement a "convergence-based" approach for the prevention and reduction of vulnerability to bonded labour.

The Committee finally notes the detailed information provided by the Government as regards the Task Force established by the Ministry of Labour and Employment and composed of members of the Ministry of Social Justice and

Empowerment, the NHRC and the ILO, in order to consider various issues related to bonded labour. ***The Committee hopes that the Government will continue to provide information on the measures taken to reduce workers' vulnerability to bondage, including information on the implementation and impact of the above project carried out with ILO assistance.***

#### *Law enforcement*

With regard to the issue of enforcement of the penalty provisions of the BLSA, the Committee notes the Government's brief indication that the NHRC has been receiving information from state governments and has been monitoring issues related to the prosecution and conviction under the above Acts. ***While noting the Government's statement that further information on prosecutions and convictions is available at the NHRC, the Committee reiterates its hope that the Government will provide, in its next report, information concerning the numbers of prosecutions and convictions, as well as specific criminal penalties which have actually been imposed on employers of bonded labourers convicted under the BLSA, supplying copies of the relevant court decisions.***

#### *Child labour*

With regard to the implementation of the Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA), the Committee notes the Government's indication that, on the advice of the Technical Advisory Committee on Child Labour, the Act was amended in 2008 to include one additional occupation and eight additional processes where employment of children is prohibited. It also notes the Government's indications that it has carried out awareness-raising meetings and media campaigns on the effective implementation of the CLPRA. The Committee further notes the statistical information provided by the Government as regards inspections, prosecutions and convictions. It notes, in particular, the Government's indication that, in the period between 1997 and 2008, from a total of 23,223 convictions under the CLPRA, imprisonment sanctions have been imposed on employers in five cases, while fines have been imposed in the remaining cases.

***While noting the above information with interest, the Committee hopes that the Government will continue to take the necessary measures to strengthen its law enforcement mechanisms in order to effectively implement the CLPRA. It also asks the Government to continue to provide information on the specific penalties imposed in cases of convictions under the Act, including copies of the relevant court decisions. The Committee requests the Government once again to provide information on the status of the Draft Offences against Children Bill, 2006.***

The Committee notes the information concerning the implementation of the National Child Labour Project (NCLP) provided by the Government. It also notes the adoption of the Right to Education Act, 2009, which entitles children to have the right to education enforced as a fundamental right. The Government states in its report that, through this Act, it is expected that the constitutional obligation of educating children, combined with social schemes like midday meals in schools and rural employment guarantee schemes, will have a positive impact on combating the root causes of child labour. The Committee further notes the Government's indication as regards the launching of a convergence project, in cooperation with ILO-IPEC, on the educational rehabilitation of victims of child labour and the economic rehabilitation of their families. ***The Committee hopes that, in its next report, the Government will provide more detailed information concerning this project and its implementation.***

#### *Prostitution and commercial sexual exploitation*

The Committee notes the Government's indication in the report that the Immoral Traffic Prevention Bill, 2006, which has been drafted to amend the Immoral Traffic (Prevention) Act, 1956 (ITPA), is still under consideration with a view to widening its scope and providing for more stringent punishments for trafficking in persons, including children. It also notes the Government's indication that a number of measures are being taken by the Ministry of Labour and Employment in order to rescue, repatriate and rehabilitate child victims of trafficking and a detailed protocol has been issued as a guideline to be followed by state governments on this issue. ***The Committee reiterates its hope that the Bill amending the Immoral Traffic (Prevention) Act, 1956 (ITPA), will soon be adopted and that the Government will supply a copy of the new legislation, as soon as it is promulgated.***

With regard to the Ujjawala federal scheme on prevention of trafficking and rescue, rehabilitation and reintegration of victims of trafficking and commercial sexual exploitation, the Committee notes the Government's indication that 58 rehabilitation homes, with capacity for 2,900 victims, have been set up under the scheme. The Government also provides information on the organization of the Central Advisory Committee (CAC) for preventing and combating trafficking of women and children for purposes of commercial sexual exploitation. ***The Committee hopes that the Government will continue to provide, in its future reports, information about the work of the CAC and nodal authorities, including any official reports assessing the effectiveness of their work and its impact in practice on trafficking in women and children for purposes of commercial sexual exploitation. Please also continue to provide information on the implementation and impact of the Ujjawala federal scheme.***

## Indonesia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1950)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* In its previous comments, the Committee requested the Government to provide detailed information on the task forces required to be set up under section 58(2) and (3) of Law No. 21/2007 to implement policies, programmes, and activities to prevent trafficking in persons, particularly at the regional (provincial and district) and municipal levels of government. The Committee notes the information provided by the Government in its report concerning Presidential Decree No. 69/2008 on a Task Force to Prevent and Address the Criminal Act of Trafficking in Persons. It notes, in particular, the Government's indication that, under Decree No. 69/2008, the Task Force has established an Integrated Service Centre for Empowering Women and Children Victims of Trafficking. The Committee also notes the information on various measures taken to protect victims of trafficking. Finally, the Committee notes the statistics provided in the Government's report on trafficking cases between 2004 and 2009. ***The Committee hopes that the Government will continue to provide information on the measures taken to prevent trafficking in persons, including, in particular, information about the operation and functioning of the task forces set up under Law No. 21/2007, especially at the regional (provincial and district) and municipal level of government. Please also continue to provide information on the judicial proceedings instituted under Law No. 21/2007, supplying copies of the relevant court decisions and indicating the penalties imposed. The Committee once again requests the Government to provide a copy of the annual report which the Witness and Victim Protection Institution (LPSK) is required to submit to the House of Representatives under section 13(2) of Law No. 13/2006.***

*Vulnerable situation of Indonesian migrant workers with regard to the exaction of forced labour.* The Committee notes the information provided by the Government in its report as regards measures taken to improve the protection of Indonesian migrant workers against forced labour exploitation, including statistical information on returning migrants. In this connection, the Committee notes the information and statistics provided by the Government on the Crisis Centre in Indonesia, which has been established with the objective of addressing migrant workers' issues. The Committee also notes from the Government's report that, in order to provide training to migrant workers, a Social Basis Practice Group (KBBM) has been established in sub-district level. It further notes the Government's indication that services are also provided at Indonesian diplomatic missions overseas with the objective of protecting Indonesian workers and their rights in destination countries. Finally, the Committee notes the information regarding the adoption of Regulation PER-07/MEN/V/2010 of the Ministry of Manpower and Transmigration on Insurance for Indonesian Migrant Workers, as well as Regulation PER 03/KA/II/2010 on the Standard of Services for the Protection of Migrant Workers. ***While noting the above information with interest, the Committee requests the Government to continue to provide information on the application in practice of the provisions adopted to implement Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers, including information about inter-sector and intergovernmental coordination and cooperation, as well as difficulties encountered. Please also provide information on the measures being taken or contemplated to protect migrant workers by way of controlling the exploitative aspects of activities of private recruitment agencies, including their fee-charging practices.***

As regards, more particularly, migrant domestic workers, the Committee notes the Government's indication in the report that Moratoria on placing Indonesian domestic workers have been enacted with Jordan (2008), Malaysia (2009) and Kuwait (2010), prohibiting the migration of Indonesian domestic workers to these countries. The Committee further notes that the Moratorium for Malaysia has been lifted as a result of a "letter of intent", which was signed between the two countries in May 2010 and which amends the Memorandum of Understanding (MoU) of 2006, stipulating that Indonesian domestic workers have the right to retain their passports while in Malaysia, shall be entitled to one rest day a week, and shall have their wages commensurate with the market. ***The Committee requests the Government to indicate, in its next report, whether there are plans to include similar guarantees in other bilateral agreements referred to by the Government in its report, in particular as regards measures to prevent and respond to cases of abuse of migrant workers, providing also information on the implementation of such agreements in practice.***

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1999)**

*Article 1(a) of the Convention. Use of compulsory labour as a punishment for expressing views opposed to the established political, social or economic system.* In its earlier comments, the Committee noted that under sections 107(a), 107(d) and 107(e) of Law No. 27 of 1999 on the Revision of the Criminal Code in relation to crimes against state security, sentences of imprisonment (which involve compulsory prison labour under sections 14 and 19 of the Criminal Code and sections 57(1) and 59(2) of the Prisons Regulations) may be imposed upon any person who disseminates or develops the teachings of "Communism/Marxism-Leninism" orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing Pancasila as the State's foundation. The Government confirms in its report that, by virtue of the above sections of Law No. 27 of 1999, any person who jeopardizes national stability may be punished with a sentence of imprisonment, which involves the obligation to work. The Government states, however, that such work has the objective of rehabilitating, rather than punishing convicts.

While noting these indications, the Committee once again draws the Government's attention to the explanations provided in paragraph 154 of its 2007 General Survey on the eradication of forced labour, where it observed that the

Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. Considering that sections 14 and 19 of the Criminal Code and sections 57(1) and 59(2) of the Prisons Regulations, provide for the obligation to work in prison, prison sentences imposed on persons who express views ideologically opposed to the established system will have an impact on the application of the Convention. ***The Committee therefore trusts that the necessary measures will be taken in the near future to bring sections 107(a), 107(d) and 107(e) of Law No. 27/1999 into conformity with the Convention, so that persons who peacefully express ideological opposition to the established political, social or economic system cannot be sentenced to a term of imprisonment which includes the obligation to work.***

In its earlier comments, the Committee noted that Law No. 9 1998 on the Freedom of Expression in Public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc., and that sections 15, 16 and 17 of the Law provide for the enforcement of those restrictions with penal sanctions “in accordance with the applicable legislation”. The Committee requested the Government to clarify the sanctions applicable in case of non-compliance with Law No. 9/1998, as referred to in the above sections. ***Noting that the Government’s latest report contains no information on this issue, the Committee hopes that the Government will not fail to provide, in its next report, the information requested.***

In its earlier comments, the Committee noted that the Constitutional Court, in its ruling on Case No. 6/PUU-V/2007, found sections 154 and 155 of the Criminal Code to be contrary to the Constitution of 1945. These sections 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 (section 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (section 155). The Committee further noted that, in ruling No. 013 022/PUU IV/2006, the Constitutional Court found that it was inappropriate for Indonesia to maintain sections 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. 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 sections 134, 136bis and 137 of the Criminal Code. Furthermore, the Committee noted the cases of several persons convicted to heavy sentences of imprisonment, involving compulsory labour, for the peaceful expression of their political opinions, under the above provisions of the Criminal Code.

***While noting the Government’s statement in its report that the draft revision of the Criminal Code is still not concluded, the Committee expresses the firm hope that the Government will take into account the above 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 new Code as soon as it has been adopted. In the meantime, it requests the Government once again to indicate the manner in which sections 134, 136bis and 137 of the Criminal Code are applied in practice, supplying copies of any court decisions handed down under these provisions.***

***Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes.*** In its earlier comments, the Committee requested the Government to take appropriate measures to amend sections 139 and 185 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, as required by the Convention. Noting that the Government’s latest report contains no information in this regard, the Committee recalls, referring also to the explanations contained in paragraph 189 of its 2007 General Survey, that no penalties of imprisonment should be imposed against a worker for having participated peacefully in a strike. ***Referring also to its comments addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee expresses the firm hope that the Government will take measures without further delay to amend sections 139 and 185 of the Manpower Act so as to ensure that no penalty involving compulsory labour can be imposed for the mere fact of a peaceful participation in strikes. Pending the amendment, the Committee once again requests the Government to provide information on the effect given in practice to sections 139 and 185, including copies of the relevant court decisions.***

## Kenya

### ***Forced Labour Convention, 1930 (No. 29) (ratification: 1964)***

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

***Articles 1(1) and 2(1) of the Convention. Compulsory labour in connection with the conservation of natural resources.*** For many years, the Committee has been referring to sections 13–18 of the Chief’s Authority Act (Cap. 128), as amended by Act No. 10 of 1997, according to which able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. The Committee has noted the Government’s repeated indication that the Chief’s Authority Act will be replaced by the Administrative Authority Act. The

Government also stated in its last report that sections 13–18 of the Chief's Authority Act referred to above have never been enforced and undertakes to supply a copy of the new Act, as soon as it is adopted.

*The Committee expresses the firm hope that the Administrative Authority Act, which is intended to replace the Chief's Authority Act, will soon be adopted and that the legislation will be brought into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the Administrative Authority Act, as soon as it is adopted.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)**

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

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. For many years, the Committee has been referring to certain provisions of the Penal Code, the Public Order Act and the Prohibited Publications Order, 1968, under which sentences of imprisonment (involving compulsory labour) may be imposed as a punishment for participating in certain meetings and gatherings, for the display of emblems or the distribution of publications signifying association with a political object or political organization. The Committee has noted the Government's repeated statement in its reports that it is committed to bring the national legislation into conformity with the Convention. It notes from the Government's latest report that the issues raised by the Committee have been brought to the attention of the relevant authorities. The Committee trusts that the provisions of the Penal Code, the Public Order Act and the Prohibited Publications Order referred to above will be brought into conformity with the Convention and that the Government will soon be in a position to report the progress made in this regard. It also asks the Government to provide information on various points raised in a more detailed request addressed directly to the Government.*

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

## **Kuwait**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1968)**

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant workers. Freedom of domestic workers to terminate employment. The Committee previously noted that the new Labour Code (Law No. 6, 2010) excludes domestic workers from its scope (section 5), and that the rules governing the relationship between domestic workers and their employers are specified by a decision issued by the competent Minister.*

The Government indicates in its report that the Minister of Interior Resolution No. 1182/2010, which amends some provisions of the previous Ministerial Decision No. 617/1992 on the rules and procedures for obtaining licenses for the agencies supplying domestic workers and similar workers, provides for certain guarantees for these categories of workers, such as the minimum wage, the maximum number of working hours, the right to weekly holidays and annual paid leave, as well as compensation for occupational injuries. The Committee notes that the model contract for recruiting domestic workers, annexed to the Ministerial Decision No. 617/1992, provides that the contract between the employer ("the sponsor") and the domestic worker must be concluded for a number of years specified in the contract and is renewable for similar periods, unless one of the parties notifies the other of its intention not to renew the contract. Such notification should be made at least two months before the expiration of the contract (section 4).

Regarding the freedom of domestic workers to terminate employment, the Committee notes from the report of the International Organization for Migration (IOM) on "Labour migration from Indonesia. An overview of Indonesian migration to selected destinations in Asia and the Middle East" (2010) that all migrant workers, including domestic workers, are legally allowed to take up employment only with the "sponsor" who issues a residence visa under his authority, and cannot easily transfer from one employer to another without permission of the initial "sponsor".

The Committee also notes that the situation of foreign workers, especially domestic workers, was discussed during the ILO technical assistance mission which visited the country in February 2010. Furthermore, following the discussion by the United Nations Human Rights Council of the Universal Periodic Review of Kuwait in September 2010, the Government reiterated its acceptance "to revoke the sponsorship system and replace it with regulations in accordance with international standards" (A/HRC/15/15/Add.1).

The Committee further understands that steps are being taken to draft a domestic workers bill, which, in addition to the mandatory model contract and other measures taken to support migrant domestic workers, could further improve domestic workers' rights.

Referring to its comments addressed to the Government under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee highlights the importance of taking effective action to ensure that the system of employment of migrant workers, including migrant domestic workers, does not place the workers concerned in a situation of increased vulnerability, particularly when they are confronted with employment policies such as the visas "sponsorship" system and subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuses. Such practices could turn their employment into situations that could amount to forced labour.

*The Committee expresses the firm hope that the domestic workers bill referred to above will soon be adopted, and that it will provide for a protective framework of employment relations that is specifically tailored to the difficult circumstances faced by migrant domestic workers. In this regard, the Committee urges the Government to ensure that*

*domestic workers are not prevented from exercising their right to freely terminate their employment and that they are fully protected from abusive practices and conditions that amount to the exaction of forced labour. Furthermore, the Committee hopes that, in its next report, the Government will provide information on the measures adopted to protect migrant workers, in particular from abuses that may arise from the visa “sponsorship” system.*

*Articles 1(1), 2(1) and 25. Trafficking in persons.* Referring to its earlier comments, the Committee notes the Government’s indication that the Bill on combating trafficking in persons still has to be adopted by Parliament and approved by the Emir, in accordance with the relevant constitutional procedures. *The Committee expresses the firm hope that the bill on combating trafficking in persons will be adopted in the near future and that the Government will provide a copy, once it has been promulgated. Please supply information on the activities of the national committee for combating human trafficking, which shall be set up under section 15 of the bill. Pending the adoption of the bill, the Committee once again requests the Government to provide information on the application in practice of sections 138 and 173 of the Penal Code, to which the Government referred in its previous report in relation to the punishment of human trafficking.*

*Article 25. Penal sanctions for the exaction of forced or compulsory labour.* In its earlier comments, the Committee observed that the national legislation does not contain any specific provisions under which the illegal exaction of forced or compulsory labour is punishable as a penal offence, and invited the Government to take the necessary measures, for example by introducing a new provision to that effect in the legislation. It noted that the Government referred in this regard to various penal provisions (such as sections 49 and 57 of Law No. 31 of 1970 on the amendment of the Penal Code, or section 121 of the Penal Code) prohibiting public officials or employees to force a worker to perform a job for the State or for any public body, as well as to section 173 of the Penal Code, which provides for the imposition of penalties on anyone who threatens another person physically or with damage to his reputation or property with a view to forcing the victim to do something or to refrain from doing something.

The Committee recalls, that under *Article 25* of the Convention, the exaction of forced or compulsory labour shall be punishable as a penal offence, and the penalties imposed by law must be really adequate and strictly enforced. *Noting that the Government’s report contains no information regarding this issue the Committee expresses the firm hope that the necessary measures will be taken in order to give full effect to Article 25 of the Convention. Pending the adoption of such measures, the Committee again requests the Government to communicate, in its next report, information on the application of the above penal provisions in practice, supplying copies of the court decisions and indicating the penalties imposed.*

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(a) of the Convention. Punishment for expressing political views.* In its earlier comments, the Committee noted that Legislative Decree No. 65 of 1979, which imposed certain restrictions on the organization of public meetings and gatherings enforceable with penalties of imprisonment (involving compulsory prison labour), was declared unconstitutional by the Constitutional Court in 2006. It also noted that a new law concerning public meetings and gatherings was drafted in 2008.

In its latest report, the Government indicates that the draft law referred to above has not yet been adopted. *The Committee reiterates its hope that the law concerning public meetings and gatherings will be adopted in the near future and that the Government will communicate a copy for the examination by the Committee.*

*Article 1(c) and (d). Disciplinary measures applicable to seafarers.* Over a number of years, the Committee has been referring to certain provisions of Legislative Decree No. 31 of 1980 regarding security, order and discipline on board ship, under which various breaches of discipline (unauthorized absence, repeated disobedience, failure to return to the vessel) committed by common agreement by three persons may be punished by imprisonment (involving compulsory prison labour). The Committee recalled that penalties imposed for violations of labour discipline or punishment for having participated in a strike do not come within the scope of the Convention only if such acts endanger the safety of the vessel or the life or health of persons. The Committee observed that sections 11, 12 and 13 of the above Legislative Decree do not appear to limit the application of the penalties to such acts.

The Committee notes the Government’s commitment expressed in the report to bring legislation into conformity with the Convention, and in particular, the Government’s indication that the necessary measures are being taken to amend the abovementioned Decree. *The Committee trusts that the Legislative Decree No. 31 of 1980 will be amended in the near future, for example by clearly indicating that the imposition of penalties involving compulsory labour is strictly limited to acts endangering the vessel or the life or health of persons. Pending the amendment, the Committee requests the Government to continue to provide information on the application of the Legislative Decree in practice, supplying copies of court decisions and indicating the penalties imposed.*

## Lao People's Democratic Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1964)**

The Committee notes with *satisfaction* that the amended Labour Law, 2006, has repealed and replaced the Labour Law of 1994, which contained a provision (section 4) exempting from the prohibition of forced labour any work performed in accordance with a resolution adopted by local authorities, where such work constituted an obligation on all citizens in the common interest of the nation.

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

## Lebanon

### **Forced Labour Convention, 1930 (No. 29) (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:

*Articles 1(1) and 2(1) of the Convention. Vulnerable situation of migrant domestic workers with regard to the illegal exaction of forced labour.* The Committee noted the Government's indication that the National Steering Committee has drafted a Bill on the regulation of the work of domestic workers, which is to be reviewed by the House of Deputies. It also noted the preparation of a Guiding Manual for migrant female domestic workers, as well as the promulgation by the Minister of Labour of Order No. 38/1 of 16 March 2009, relating to the implementation of a consolidated labour contract for domestic workers and Order No. 52/1 of 28 April 2009, extending the coverage of social security to all foreign workers in Lebanon, including domestic workers.

The Government also indicated that a working team has been established by Order No. 8/1 of 20 January 2009, whose task is to monitor the work of employment agencies which bring in migrant domestic workers, to examine requests to establish new agencies for bringing in workers and to investigate the complaints against such employment agencies, as well as complaints filed by domestic workers against employers. In this regard, the Minister of Labour issued Memorandum No. 21/1 of 20 February 2009, which regulates the work of the team, in particular examining and investigating the complaints filed against the employment agencies which bring in female domestic workers. Furthermore, the Minister of Labour promulgated Order No. 13/1 of 22 January 2009, regulating the employment agencies which bring in migrant female domestic workers.

*While noting this information, the Committee asks the Government to provide a copy of the Bill on the regulation of the work of domestic workers referred to above, once it has been adopted by the House of Deputies. Please also continue to provide information on the activities of the National Steering Committee and on the various measures taken, both in legislation and in practice, to protect migrant domestic workers with a view to the complete elimination of the exaction of forced labour from this category of workers.*

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

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

## Liberia

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1931)**

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

*Articles 1(1), 2(1) and 25 of the Convention. Forced labour and captivity practices as a consequence of the armed conflict.* In its earlier comments, the Committee referred to the allegations concerning forced labour and captivity practices which took place in the south-eastern part of the country in connection with armed conflict, where children were allegedly held hostage by adults and used as a source of forced and captive labour. The Committee previously noted the Government's indication in its report that the special investigation committee sent by the Government to investigate the alleged forced labour practices in the south-eastern region recommended that a national committee be established to trace and reunite displaced women and children taken captive during the war and that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

While having noted that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of forced labour exploitation were due to the consequences of the war, the Committee expressed the hope that the Government would encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and requested the Government to supply full information on measures taken to this end.

The Committee noted the Government's brief indication in its report supplied in May 2008 that a tripartite national committee is being considered to investigate the complaints of forced labour and hostage situation in the south-eastern region, that consultations for this investigation have already begun and the committee is expected to start its work in the near future. *The Committee reiterates the firm hope that the Government will provide, in its next report, full information on the activities of the abovementioned tripartite national committee and on the specific action taken to investigate the situation in the South-East as regards the alleged practices of forced labour, as well as on the measures taken to eliminate such practices. The Committee also hopes that the Government will supply information on the results achieved in this regard by the Liberian Truth and Reconciliation Commission (TRC), which was set up to investigate human rights violations and was empowered to recommend for prosecution the most serious offenders, as well as information on the progress achieved in the establishment of an Independent National Human Rights Commission and drawing up of a national human rights action plan.*

*Recalling also that, under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation of the State to ensure that the penalties imposed are really adequate and are strictly enforced, the Committee hopes that the necessary action to give effect to this Article will be taken in the near future, by imposing penal sanctions on persons convicted of having exacted forced labour, and that the Government will provide, in its next report, information on any legal proceedings which have been instituted for that purpose and on any penalties imposed.*

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

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

### **Abolition of Forced Labour Convention, 1957 (No. 105) (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(a) of the Convention. Imposition of prison sentences involving the obligation to work as a punishment for expressing political views.* In its earlier comments, the Committee observed that prison sentences (involving an obligation to work by virtue of Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws) might be imposed in circumstances falling within Article 1(a) of the Convention under section 52(1)(b) of the Penal Law, punishing certain forms of criticism of the Government. *The Committee again requests the Government to indicate whether section 52(1)(b) of the Penal Law is still in force and, if so, to indicate the measures taken with a view to ensuring observance of the Convention.*

*Article 1(c). Disciplinary measures applicable to seafarers.* In its earlier comments, the Committee noted that, under section 347(1) and (2) of the Maritime Law, local authorities shall apprehend and deliver a seafarer who deserts from a vessel with the intention of not returning to duty and who remains unlawfully in a foreign country. Referring to paragraph 171 of its 2007 General Survey on the eradication of forced labour, the Committee pointed out that measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical constraint or the menace of a penalty) constitute forced or compulsory labour as a means of labour discipline and are thus incompatible with the Convention.

The Committee notes the Government's indication in its report that section 347 has not been repealed, but due consideration is being given to this section. *The Committee trusts that section 347(1) and (2) of the Maritime Law will soon be repealed and that the Government will supply, in its next report, information on the measures taken to this end.*

The Committee also noted that under section 348 of the Maritime Law various other offences against labour discipline by seafarers such as incitement to neglect duty, assembling with others in a tumultuous manner, may be punished with imprisonment of up to five years (involving an obligation to work). The Committee referred to paragraph 179 of its 2007 General Survey on the eradication of forced labour where it pointed out that sanctions relating to acts tending to endanger the ship or the life or health of persons on board do not fall within the scope of the Convention. However, as regards more generally breaches of labour discipline, such as desertion, absence without leave or disobedience, all sanctions involving compulsory labour should be abolished under the Convention. In a great number of maritime nations, similar penal provisions have been repealed, restricted in scope to cases involving a danger to the ship or the life or health of persons, or otherwise amended so as to provide for a fine or some other penalty not falling within the scope of the Convention.

The Committee notes the Government's indication in its report that section 348 has not been repealed, but due consideration is being given to this section. *The Committee therefore expresses the firm hope that measures will soon be taken to bring section 348 of the Maritime Law into conformity with the Convention, and that the Government will provide information on the action taken to this end.*

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

## **Mauritius**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)**

*Article 1(c) of the Convention. Disciplinary measures applicable to seafarers.* The Committee previously noted the adoption of the Merchant Shipping Act, No. 26 of 2007, which had repealed the Merchant Shipping Act of 1986. The Committee noted, in particular, that under section 217(8)(n) of the Act, refusal to obey the master's order or neglect of duty by a seafarer is punishable with imprisonment (involving compulsory prison labour). Referring to the explanations in paragraphs 179–181 of its 2007 General Survey on the eradication of forced labour, the Committee recalls that, in order to be compatible with the Convention, provisions imposing penalties of imprisonment on seafarers for breaches of labour discipline should be restricted to actions that endanger the safety of the ship or the life or health of persons.

The Committee notes the Government's indication in its report that the Government has drawn the attention of the competent ministry that the above provision is not compatible with the Convention, and the ministry concerned has undertaken to initiate action towards the amendment of this provision in order to bring it into line with the Convention. *The Committee expresses the firm hope that the necessary measures will soon be taken to amend section 217(8)(n) of the Merchant Shipping Act, 2007, e.g. by limiting its scope to situations where the safety of the ship or the life or health of persons is endangered, so as to bring this provision into conformity with the Convention, and that the Government will provide, in its next report, information on the progress made in this regard.*

## **Republic of Moldova**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1993)**

The Committee notes with *satisfaction* that the Law No. 277-XVI of 18 December 2008 has repealed section 358(1) of the Criminal Code which imposed sanctions of imprisonment (involving compulsory prison labour) for the organization of or active participation in group actions breaking violently public order and resulting in disturbances of operation of

transport or work of enterprises, institutions or organizations. The Committee also notes with *satisfaction* that the same Law has amended section 285 of the Criminal Code (“Mass disorders”) by limiting the application of sanctions of imprisonment (involving compulsory labour) to acts of violence against persons, use of firearms and violent or armed resistance to representatives of authorities.

*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 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.

In its report, the Government expresses the view that both the punishment in form of community service work in the interest of society and the provisions of section 3(b) of Law No. 1352-XV of 11 October 2002 on the requisition of assets and performance of labour duty in the interest of society, does not represent forced or compulsory labour under ILO Convention No. 105, but falls within the exceptions allowed by Article 2(2) of the Forced Labour Convention, 1930 (No. 29).

The Committee refers in this connection to the explanations provided in paragraph 144 of its 2007 General Survey on the eradication of forced labour, in which it has considered that in the great majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of Convention No. 105, such as in the cases of the exaction of compulsory labour from common offenders convicted, for example, of robbery, kidnapping, bombing or other acts of violence or acts or omissions that have endangered the life or health of others, or numerous other offences. However, if a person has to perform compulsory prison labour because she or he holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by this Convention, which prohibits the use “of any form” of forced or compulsory labour as a sanction, as a means of coercion, education or discipline, or as a punishment in respect of the persons within the meaning of *Article 1(a), (c) and (d)*.

The Committee also recalls that *Article 1(b)* requires the abolition of any form of forced or compulsory labour as a means of mobilizing and using labour for purposes of economic development. The Committee previously noted in this regard that 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. As regards the exceptions allowed under Article 2(2)(d) of Convention No. 29, the Committee draws the Government’s attention to paragraphs 62–64 of its 2007 General Survey, in which it has considered that in order to respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency, or force majeure. The Committee has noted that the wording of section 3(b) of the above Law does not seem to be limited to such circumstances.

***The Committee therefore expresses the firm hope that the necessary measures will be taken to bring the above 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 regulation on the mobilization at the workplace, No. 751 of 24 June 2003, into conformity with the Convention. It asks the Government to provide in its next report, information on the progress made in this regard.***

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

## Myanmar

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1955)**

*Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)*

#### **Historical background**

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government’s gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was violated in national law and in practice in a widespread and systematic manner. In its recommendations, the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;

- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

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, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. The Committee of Experts has identified four areas in which “concrete action” should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

#### *Developments since the Committee’s previous observation*

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011, as well as the discussions and conclusions of that Committee (ILC, 100th Session, *Provisional Record* No. 18, Part Three (A) and Doc. D.5(C)).
- The documents submitted to the Governing Body at its 310th and 312th Sessions (March and November 2011), as well as the discussions and conclusions of the Governing Body during those sessions.
- The communication made by the International Trade Union Confederation (ITUC) received in August 2011, with appendices.
- The communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in October 2011, with appendices.
- The reports of the Government of Myanmar received on 9 December 2010, 16 February, 4 April, 2 and 27 June, 31 August, 27 September, 14 October and 18 November of 2011.

#### *The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism*

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. The Committee noted, in particular, that the SU set out a complaints mechanism, which had as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the Supplementary Understanding was extended for the fourth time, on 23 February 2011, for a further 12-month period from 26 February 2011 until 25 February 2012 (ILC, 100th Session, *Provisional Record* No. 18, Part Three, Doc. D.5.F). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

#### *Discussion and conclusions of the Conference Committee on the Application of Standards*

The Committee on the Application of Standards once again discussed this case in a special sitting during the 100th Session of the Conference in June 2011. The Conference Committee took note of certain steps taken by the Government, such as: the further extension of the SU for another year; certain awareness raising activities, including in ethnic minority regions; allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government; and certain improvements in dealing with under-age recruitment by the military, including release of children and disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition of penal sentences in certain cases. However, the Conference Committee regretted to note that there had been no substantive progress achieved towards complying with the recommendations of the Commission of Inquiry and strongly urged the Government to fully implement, without delay, these recommendations, as well as the comments and observations of the Committee of Experts, and in particular, to submit the draft proposals for amendment of the relevant legislative texts to the ILO for comment and advice aimed at ensuring their full conformity with the Convention, and ensure their early adoption into law and application in practice; to take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into the armed forces, forced

scription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work and human trafficking for forced labour, that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism.

### *Discussions in the Governing Body*

The Governing Body continued its discussions of this case during its 310th and 312th Sessions in March and November 2011 (GB.310/5, GB.312/INS/6). The Committee notes that, following the discussion in November 2011, the Governing Body welcomed the positive developments in Myanmar since March 2011 but remained concerned that serious problems in the use of forced labour persisted. It called for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry. The Governing Body noted that legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 is before Parliament; it urged the early adoption and coming into force of that legislation. The Governing Body urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual. The Governing Body welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and ending impunity. It also welcomed the commencement of direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities. While welcoming the release of a number of labour activists, the Governing Body strongly urged the early release of other labour activists remaining in detention. The Governing Body stressed again the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code. While welcoming the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, the Governing Body encouraged the continuation of this partnership activity and its expansion into other languages. Whilst recalling all of its previous conclusions and recommendations, the Governing Body encouraged the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its Supplementary Understanding, which should be further extended in February 2012. Finally, in the light of the above, the Governing Body considered it essential to strengthen the capacity of the Liaison Office and reiterated its repeated calls on the Government to issue without delay the visas necessary to that effect.

### *Communication received from workers' organizations*

The Committee notes the comments made by the ITUC in its communication received in August 2011. In these comments, the ITUC refers to several recent reports which contain detailed allegations about the continued use of forced labour, largely for portering, but also for road construction, collection and provision of bamboo and leaves to military camps, etc., which have occurred in the Karen, Shan and Arakan States. Appended to this communication was a report which contained allegations about the forced labour practices by civil and military authorities in North Arakan State/North Rakhine State over the nine months period which followed the national elections in November 2010. The report noted the observers' estimate that 35–40 per cent of forced labourers were children, some as young as ten years old. The report attributed the increase in forced labour to construction and repair of the border fence between Myanmar and Bangladesh, but noted that forced labour was also used for large scale road construction projects, construction of bridges, portering, military camp maintenance, patrol duties, collection of logs and bamboo poles and plantation work. The Committee also notes the comments made by the FTUC in its communication received in October 2011, which contained a report including translated copies of 207 Order documents issued by military and civilian officials to village heads in eastern Myanmar between March 2008 and July 2011. The tasks and services demanded according to these documents involved, inter alia, portering for the military; bridge construction and repair; production and delivery of thatch, bamboo and other materials; attendance at meetings; provision of money and food; forced recruitment into armed ceasefire groups; provision of information on individuals, households and non-state armed groups; etc. The report states that, in almost all cases, demands were uncompensated and backed by implicit or explicit threats of violence or other punishments for non-compliance. Copies of the above communications by the ITUC and the FTUC with annexes were transmitted to the Government, in September and October 2011 respectively, for its comments.

### *The Government's reports*

The Committee notes the Government's reports referred to above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning its continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation, discussion on the follow-up to the 100th Session of the International Labour Conference and the operation of the SU complaints mechanism. As regards the amendment of the legislation, the Government indicates that draft legislation prohibiting the use of forced

labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee notes the Government's ongoing efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) Awareness Raising Workshop held in Chin State in May 2011 and the distribution of booklets on the SU and informative simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-aged children and to release newly recruited under-aged soldiers, disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition of penal sentences in certain cases. However, the Committee notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC of August 2011 and the FTUK of October 2011 referred to above, as well as in the previous communication by the ITUC received in August 2010. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued imposition of forced or compulsory labour by military and civil authorities, which are documented in the above communications from the ITUC and FTUK, making particular reference to the "Order documents", which provide evidence of the systematic imposition of forced labour throughout the country.***

### **Assessment of the situation**

Assessment of the information available on the situation of forced labour in Myanmar in 2011 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### **(i) Amendment of legislation**

The Committee notes from the discussions in the Governing Body in November 2011, as well as from the Government's reports referred to above, that draft legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. ***While noting these positive developments, the Committee trusts that legislation prohibiting the use of forced labour in all its forms and repealing the Village Act and the Towns Act of 1907 will be adopted without delay in order to ensure compliance with the Convention, and that the Government will communicate to the ILO a copy of the new legislation, as soon as it is adopted.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens), which excepts from a prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public". The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with *regret* the Government's repeated statement in its reports that it is impossible to amend the 2008 Constitution, since it has been approved by 92.48 per cent of citizens' votes. ***The Committee expresses the firm hope that, following the legislative amendment referred to above, the necessary measures will be taken with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

#### **(ii) Measures to stop the exaction of forced or compulsory labour in practice**

##### *Information available on current practice*

The Committee notes that the communications received from the ITUC and the FTUK referred to above contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010–11 by military and civil authorities in some of the country's States. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been exacted both by military and civil authorities; it has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2011 (Doc. D.5.C) that, notwithstanding the awareness raising and training activities, complaints alleging the use of forced labour by both military and civilian authorities continue to be received (paragraphs 12–14). A considerable number of forced labour complaints have been lodged by farmers in Magway Region; they refer to the actions of the military in support of their commercial projects and self-sufficiency policy (paragraph 19). The ILO Liaison Officer also states that the generally positive responses from the Adjutant-General's Office in respect of under-age military recruitment and associated complaints is in contrast to the continuing difficulty in reaching satisfactory conclusions regarding complaints that allege the use of forced labour by the military. The ILO Liaison Officer further states that "non-verifiable evidence continues to suggest that the use of forced labour by the civilian authorities has been reduced, at least in some parts of the country" and suggests to verify this trend in a proposed labour force survey (paragraph 15). An increasing number of complaints under the SU mechanism continue to be received, which may be also seen as a sign of greater awareness among the public of their right under the law to complain and their increased confidence in seeking redress through the

use of the complaints mechanism (paragraph 10). However, according to the Governing Body document submitted to its 312th Session in November 2011, “Whilst recognizing the progress made in respect of civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including, in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; construction, maintenance and servicing of military camps; and forced agricultural work” (GB.312/INS/6, paragraph 28). In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (armed forces) Committee on ILO Affairs, at which all the issues and practices indicated above were discussed, and further meetings to clarify these issues were scheduled (GB.312/INS/6, paragraph 29). Regarding the under-age recruitment, the Committee notes that, since March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints launched under the SU; the total number of under-age recruits released or discharged under the SU since February 2007 was 208 (GB.312/INS/6, paragraph 31).

*Issuing specific and concrete instructions to the civilian and military authorities*

In its earlier comments, the Committee emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, were required to identify each and every field of forced labour and to explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee previously noted the Government’s statement in its June 2009 report that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. However, the Committee notes once again that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. It therefore reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee reiterates the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

*Ensuring that the prohibition of forced labour is given wide publicity*

In relation to ensuring that the prohibition of forced labour is given wide publicity, and noting, in particular, that the Governing Body and the Conference called for the continuing expansion of awareness-raising activities at community level, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2011. These included, inter alia, a joint ILO–MOL awareness-raising seminar in Chin State for local authority personnel (military, police, judges and civilian authorities); two presentations on the law and practice concerning forced labour to senior police, immigration and Ministry of Home Affairs personnel, and to the Myanmar Women’s Affairs Federation; and six training seminars/workshops (one of them on a regular two-months basis) for journalists, various NGO’s and community-based organizations. The Government’s translation of the information brochure in the Shan language (the most widely used of the national languages after the Myanmar language) was in the process of printing and distribution, and the brochure in the official Myanmar language was widely distributed in every State and region by the Government and the ILO with support from NGO’s and community-based organizations (GB.312/INS/6, paragraphs 22–24). ***Considering that the awareness-raising activities are of crucial importance in helping to ensure that the prohibition of forced labour is widely known and applied in practice, the Committee expresses the firm hope that such activities will continue and be expanded, both at State and community level.***

Noting also from the report of the ILO Liaison Officer to the Conference Committee in June 2011 referred to above that complaints alleging the use of forced labour by both military and civilian authorities continue to be received, the Committee reiterates its view that the complaints mechanism under the SU provides in itself an opportunity for the authorities to demonstrate that continued recourse to forced labour practices is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore reiterates its hope that the Government will continue to use the SU complaints mechanism as an important modality of awareness raising, and that it will provide, in its next report, the information on the impact the awareness-raising activities are having on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

*Making adequate budgetary provisions for the replacement of forced or unpaid labour*

In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalled in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage

payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.” Recalling also that both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated, the Committee notes from the Governing Body document submitted to its November 2011 session (GB.312/INS/6) that the first meetings of the ILO with the above Ministries took place in 2011, during which the budget formulation procedure and the basic procedures for pre-allocation planning were explained, and it was clarified that, under the new administration, financial policy was in the process of being reformed in accordance with the new Constitution. It was also recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations, and it was expected that such matters would be addressed under new governance and accountability structures (paragraphs 35–40). The Committee notes that the Government’s reports referred to above contain no new information on this issue, and that the Government merely repeats, in its report received on 2 June 2011, its previous indication that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***The Committee therefore hopes that the Government will provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour, as well as the information on the impact of the financial policy reform on these issues.***

### ***(iii) Ensuring the enforcement of the prohibition of forced labour***

In its earlier comments, the Committee referred to section 374 of the Penal Code, which provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It recalls that, following the recommendations of the Commission of Inquiry, both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied. The Committee notes from the Governing Body document submitted to its 312th Session in November 2011 (GB.312/INS/6) that, in respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken, punishments ranging from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, discharge and imprisonment (paragraph 42). The Government indicates in its reports received on 2 June and 31 August 2011 that, in the under-age recruitment cases, action was taken against 20 military officials and 110 other ranks for breaching the rules, five officials and five other ranks were dismissed and imprisoned. However, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the abovementioned provision of the Penal Code. As regards the exaction of forced labour by civilian authorities, the Committee previously expressed concern that the only prosecution of perpetrators under the Penal Code in response to complaints submitted had been reported in respect of a case in 2007 already noted by the Committee in its earlier comments. The ILO has been advised that another prosecution has been initiated under the Penal Code in respect of a civilian accused of being a party to the exaction of forced labour, though no information has yet been received as to the outcome of this prosecution (GB.312/INS/6, paragraph 42).

The Committee *regrets* to note once again that no new information has been provided by the Government in its 2011 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee therefore urges the Government to take measures to ensure that penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that perpetrators of the exaction of forced labour are prosecuted and punished with penal sanctions under section 374 of the Penal Code. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

### ***Concluding remarks***

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee welcomes the positive developments, such as submission to Parliament of the draft legislation repealing the Towns Act and the Village Act of 1907; the expanded awareness-raising activities; the improvements in dealing with under-age recruitment by the military, including release of children and imposition of disciplinary and penal sanctions on military personnel; cooperation in the functioning of the SU complaints mechanism and its further extension for another year. However, the Committee observes that, in spite of the efforts made towards the implementation of the recommendations of the Commission of Inquiry, the Government has not yet fully implemented these recommendations. Besides the steps taken towards the amendment of the legislation, the Government still has to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it still has to ensure that penalties for the exaction of forced labour under the Penal Code are strictly enforced against civil and military authorities. ***While noting the positive developments referred to above, the Committee urges the Government to redouble its efforts towards the full implementation of the recommendations of the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government. It expresses the firm hope that all the necessary***

*measures will be taken without delay to achieve full compliance with the Convention, both in law and in practice, so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.*

## Nigeria

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

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

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views.* In its earlier comments, the Committee referred to the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, which contains provisions imposing certain restrictions on the organization of public assemblies, meetings and processions (sections 1–4), offences being punishable with imprisonment (sections 3 and 4(5)), which involves compulsory prison labour. The Committee recalled that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 162 of its General Survey of 2007 on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. Since opinions and views opposed to the established system are often expressed at various kinds of meetings and assemblies, restrictions affecting the organization of such meetings and assemblies may give rise to similar problems of the application of the Convention, if such restrictions are enforceable with penalties involving compulsory labour.

While noting the Government's statement that the Public Order Act, Cap. 382, does not impose restrictions on the organization of public assemblies by workers for trade union activities and there is therefore no conviction for violation, the Committee observes, however, that the above Act still imposes restrictions on the freedom of expression enforceable with sanctions involving compulsory labour, which is incompatible with the Convention.

*The Committee therefore expresses the firm hope that the necessary measures will be taken in order to bring the provisions of the Public Order Act into conformity with the Convention. While having noted the Government's indication in its previous report that there was no record of the violation of the provisions of the Act, the Committee reiterates its hope that, pending the amendment, the Government will continue to provide information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed.*

In its earlier comments, the Committee referred to the Nigerian Press Council (Amendment) Act, 2002, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment (section 19(1) and (5)(a)), which involves compulsory prison labour. *While having noted the Government's repeated indication in its reports that no conviction has been made under the Act, and referring also to the explanations in point 1 of this observation, the Committee reiterates its hope that measures will be taken to repeal or amend these provisions in order to bring the legislation into conformity with the Convention and the indicated practice. Pending the amendment, the Government is requested to continue to provide information on the application of these provisions in practice, indicating, in particular, any convictions under the above Act and penalties imposed.*

*Article 1(c) and (d). Punishment for breaches of labour discipline and for participation in strikes.* In its earlier comments, the Committee referred to the following provisions enforceable with sanctions of imprisonment (which involves compulsory prison labour):

- section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison;
- section 117(b), (c) and (e) of the Merchant Shipping Act, under which seafarers are liable to imprisonment for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons;
- section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, under which participation in strikes may be punished with imprisonment.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council. It also noted the Government's indication in its 2005 report that the review of the labour laws had been completed and submitted to the federal Government for further action. In its latest report, the Government states that the provisions referred to above have been addressed in the Collective Labour Relations Bill. *The Committee expresses the firm hope that all of the legislative provisions referred to above will soon be amended, so as to bring legislation into conformity with the Convention, and that the Government will indicate, in its next report, the progress achieved in this regard.*

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

## Pakistan

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1957)**

The Committee notes a communication dated 21 November 2011, received from the Pakistan Workers Confederation (PWC), which contains observations on the application of the Convention by Pakistan. It notes that this communication was sent to the Government in December 2011 for any comments it might wish to make on the matters raised therein. *The Committee 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 also 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

#### A. Debt bondage

*Comments from workers' organizations.* In its comments made for a number of years, the Committee has noted the difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992. The Committee referred in this connection to the comments made by the All Pakistan Federation of Trade Unions (APFTU), the All Pakistan Trade Union Federation (APTUF) and the International Trade Unions Confederation (ITUC). In its latest communication dated 29 August 2008, the ITUC observed that, some 15 years after the adoption of the BLSA and six years after the approval of the National Action Plan (2001), bonded and forced labour was still commonly used in many industries across Pakistan. The ITUC referred in this connection to the rapid assessments commissioned by the Ministry of Labour in collaboration with the ILO, which were carried out in nine sectors (brick kilns, agriculture, carpet industry, mining, glass bangle making, tanneries, construction, domestic work and begging). The ITUC considered that the BLSA had not been properly applied and those who used bonded labour had been able to do it with impunity. The Pakistan Institute for Labour Education and Research (PILER) had only been able to document the release of some 8,530 people between 1990 and 2005; of these, 5,166 were released through judicial intervention, in combination with non-governmental organizations and local state officials, only 563 were released solely through state intervention. According to the ITUC views, the vigilance committees set up under the BLSA had not performed their functions of identifying and releasing bonded labourers and had not been restructured as envisaged in the National Action Plan. The lack of adequate labour inspection machinery was another key reason why bonded labourers were not being identified and released.

The Committee further notes that, in the communication received from the Pakistan Workers' Federation (PWF) on 30 July 2010, the PWF observes that no effective measures have been taken by the Government to eliminate bonded labour and rehabilitate workers.

*Implementation of National Policy and Plan of Action for the Abolition of Bonded Labour.* In its earlier comments, the Committee noted a number of initiatives undertaken by the Government within the framework of its 2001 National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers, including, inter alia, the organization of 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; the incorporation of 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 conducting of capacity-building seminars. The Committee also noted the Government's indication that, under the BLSA, inspection functions in the area of bonded labour had been assigned to the regular labour inspectorate, as well as to local government heads/officials and police departments. In its latest report, the Government refers to a number of studies undertaken with the technical assistance of the ILO with regard to bonded labour in various sectors in Pakistan.

***While having noted the Government's initiatives to combat bonded labour, the Committee expresses the firm hope that the Government will pursue its efforts with vigour in order to ensure the effective implementation of the 2001 National Policy and Plan of Action and will provide detailed information on progress made and practical results achieved, including copies of relevant reports on all of the activities, projects, institutions and mandates referred to in the action plan. The Committee asks the Government to provide, in particular, information on the activities of the National Committee for the Abolition of Bonded Labour and Rehabilitation of Bonded Labourers which had to be established to coordinate the implementation of the plan and to review the implementation of the BLSA, including copies of monitoring/evaluation reports concerning the functioning of the vigilance committees. Please also provide information on the activities of the fund established under the BLSA rules, to which the Government referred in its 2005 report. The Committee also asks the Government to indicate the measures taken or envisaged to assess and address the causes of debt bondage.***

*Debt bondage. Data-gathering measures to ascertain the current nature and scope of the problem.* The Committee previously noted a report entitled "Rapid assessment studies of bonded labour in different sectors in Pakistan", which contained findings and conclusions from a series of rapid assessment studies conducted at the initiative of the Ministry of Labour and the ILO by teams of social scientists and researchers under the auspices of the Bonded Labour Research Forum (BLRF), with a view to exploring the existence and nature of bonded labour in ten sectors (agriculture, construction, carpet weaving, brick making, marine fisheries, mining, glass bangles, tanneries, domestic work, and begging). 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. However, no such national survey has yet been carried out and the Government refers in this connection to the existing difficulties in the identification of bonded labourers.

While noting this indication, the Committee points out once again that accurate data are a vital step in both the development of the most effective systems to combat bonded labour and providing a true base for the assessment of effectiveness of those systems. ***The Committee therefore expresses the firm 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.***

#### B. Trafficking in persons

The Committee previously noted the adoption of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO). It also noted that, in accordance with the report of the International Organisation for Migration (IOM) entitled "Data and research on human trafficking: A global survey", Pakistan continued to be a major destination country for trafficked women, as well as a major transit country of persons trafficked from Bangladesh to Middle Eastern countries, where women are subject to sexual exploitation. The report emphasized that there was an urgent need to carry out comprehensive national baseline surveys with the aim of developing a South Asian database on trafficking in persons.

***The Committee reiterates its hope that the Government will undertake a national baseline survey on trafficking in persons, in cooperation with employers' and workers' organizations, as well as other organizations and institutions***

concerned, and that it will supply information on the progress achieved in this connection. Please also provide information on the application in practice of the Prevention and Control of Human Trafficking Ordinance (2002) referred to above, as well as, more generally, on the policies and measures aiming at the effective elimination of trafficking in persons, including copies of the relevant policy documents and available statistics.

### C. Restrictions on voluntary termination of employment

The Committee previously noted the Government's indication that an amendment to the Essential Services (Maintenance) Act, 1952, under which government employees who unilaterally terminate their employment without consent of the employer are subject to a term of imprisonment, was to be considered by the tripartite commission on the consolidation, simplification and rationalization of labour laws. *The Committee trusts that the necessary measures will be taken in order to bring the federal and provincial essential services Acts into conformity with the Convention and that the Government will report on the progress achieved in this regard.*

#### Article 25. Penalties for the illegal exaction of forced or compulsory labour

The Committee previously noted the Government's indications concerning the number of the trafficking-related complaints registered under the Prevention and Control of Human Trafficking Ordinance (2002), the number of investigations and the number of convictions obtained during the period 2007–09. It also noted the Government's indication concerning the penalties imposed on perpetrators.

*The Committee asks the Government to continue to provide updated information on the enforcement of the 2002 Ordinance, communicating the numbers of trafficking-related complaints registered, court proceedings initiated, convictions obtained and the penalties imposed, including sample copies of the relevant court decisions, indicating the minimum penalties imposed. Recalling also 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 any legal actions taken against employers of bonded labourers under the BLSA, including copies of any court decisions in order to demonstrate the effectiveness of its provisions and to indicate the penalties imposed.*

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

#### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)**

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

*Article 1(c) and (d) of the Convention. Work imposed as a means of labour discipline and as a punishment for having participated in strikes.* For a number of years, the Committee has been commenting on certain provisions of the Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts, under which employees are prohibited from leaving their employment without the consent of the employer or from striking, subject to penalties of imprisonment that may involve compulsory labour. The Committee previously noted the comments made under the Convention by the All Pakistan Federation of Trade Unions (APFTU), in which it stated that the provisions of the Essential Services Act apply, inter alia, to workers employed in various public utilities such as WAPDA, Railway, Telecommunication, Karachi Port Trust, Sui Gas, etc., and these workers cannot resign from their service and cannot go on strike. In its comments supplied in 2005, the APFTU reiterated its earlier statement that the Essential Services (Maintenance) Act continues to restrict the right to strike even in non-essential services. This view has been shared by the Pakistan Workers' Federation (PWF) in its communication received in 2008.

The Committee previously noted the Government's repeated statement in its reports that the application of the 1952 Act has been made very restrictive and it is extended only in cases of extreme nature, when peaceful and uninterrupted supply of goods and services to the general public appears to be disturbed. While having noted this indication, the Committee points out once again that 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 may be 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 addressed to the Government under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has observed that no penal sanction should be imposed against a worker for having carried out a peaceful strike, and therefore penalties of imprisonment should not be imposed on any account.

*Referring to the explanations provided in paragraph 189 of its 2007 General Survey on the eradication of forced labour, the Committee trusts that the Pakistan Essential Services Act and corresponding provincial Acts will be either repealed or amended in the near future, so as to ensure that, in conformity with the Convention, no penal sanction involving compulsory labour can be imposed against workers for peaceful participation in a strike, and that the Government will report the progress achieved in this regard.*

*Penal sanctions applicable to seafarers for various breaches of labour discipline.* For many years, the Committee has been referring to the provisions of the legislation concerning merchant shipping (Merchant Shipping Act, 1923, which was repealed and replaced by the Pakistan Merchant Shipping Ordinance, 2001 (No. LII of 2001)), 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. It noted, in particular, that under sections 204, 206, 207 and 208 of the Pakistan Merchant Shipping Ordinance, 2001, penalties of imprisonment, which may involve compulsory labour by virtue, inter alia, of section 3(26) of the General Clauses Act, 1897, may be imposed in respect of various breaches of labour discipline, such as absence without leave, wilful disobedience, or combining with the crew in "neglect" of duty, and seafarers may be forcibly conveyed on board ship.

While noting the Government's statement in the report that penalties of imprisonment may only be awarded by a competent court of law after a trial, the Committee refers to the explanations in paragraph 144 of its 2007 General Survey, where it pointed out that, in the great majority of cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Convention (such as in the cases of the exaction of labour from common offenders convicted, for example, of robbery, kidnapping, acts of violence or various acts or omissions that have endangered the life or health of others). But if a person has to perform compulsory prison labour because that person holds or has expressed particular political views, has committed a breach of labour discipline or has participated in a strike, the situation is covered by the Convention,

which prohibits the use “of any form” of forced or compulsory labour as a means of coercion, education or punishment for violation of labour discipline.

*The Committee expresses the firm hope that, after several decades of comments addressed to the Government on this point, the necessary measures will at last be taken to repeal or amend these provisions of the 2001 Merchant Shipping Ordinance which prescribe penalties of imprisonment for breaches of labour discipline (e.g. by limiting their scope to offences committed in circumstances endangering the safety of the ship or the life or health of persons) and to repeal the provisions under which seafarers may be forcibly returned on board ship to perform their duties. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.*

*Article 1(a). Penalties involving compulsory labour as a punishment for expressing political views.* In comments made for many years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10–13), the Political Parties Act, 1962 (sections 2 and 7) and the West Pakistan Press and Publications Ordinance, 1963, which gave the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

The Committee previously noted the adoption of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, which had repealed the West Pakistan Press and Publications Ordinance, 1963. It noted, in particular, the provisions of sections 5 and 28 of the 2002 Ordinance, under which a person who edits, prints, or publishes a newspaper in contravention of the Ordinance (for instance, without having made a declaration or without having a declaration authenticated by the District Coordination Officer) is liable to penalties of imprisonment (which may involve compulsory labour) for a term of up to six months.

*The Committee hopes that the necessary measures will be taken with a view to bringing these provisions of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, into conformity with Article 1(a) of the Convention, so that no penalty of imprisonment involving compulsory labour can be imposed as a punishment for expressing political views. Pending the adoption of such measures, the Committee asks the Government to provide information on the application of sections 5 and 28 in practice, indicating the penalties imposed and supplying sample copies of the relevant court decisions. Please also communicate a copy of any rules issued under section 44 of the 2002 Ordinance.*

As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, referred to above, the Committee previously noted that the Government’s Law and Justice Commission, in response to a Supreme Court ruling, had drafted legislative proposals for certain amendments to be made to the Security of Pakistan Act, 1952, and that proposals to amend other laws, including the Political Parties Act, 1962, were under consideration. *Noting that the Government’s latest report contains no new information on this subject, the Committee reiterates its hope that the Committee’s concerns will be taken into account by the Law and Justice Commission and that the necessary measures will soon be taken to bring the abovementioned provisions of the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, into conformity with the Convention. Pending the adoption of such measures, the Committee again requests the Government to provide information on the practical application of these provisions, indicating the number of convictions and supplying sample copies of the relevant court decisions.*

*Article 1(e). Penalties involving compulsory labour as a means of religious discrimination.* In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is punishable with penalties of imprisonment (which may involve compulsory labour) for a term of up to three years. The Committee previously noted the Government’s repeated statement 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 also stated that 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 further indicated that religious rituals referred to in Ordinance No. XX are prohibited only if exercised in public, whereas if they are performed in private without causing provocation to others, they do not fall under the prohibition.

While noting these indications, the Committee points out once again, referring to the explanations provided in paragraphs 154 and 190 of its 2007 General Survey, 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 reiterates the firm hope that 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 the adoption of such measures, the Committee again requests the Government to provide, in its next report, information on the application of these provisions in practice, including sample copies of the court decisions and indicating the penalties imposed.*

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

## Papua New Guinea

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1976)**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons.* The Committee notes a communication dated 31 August 2011, received from the International Trade Union Confederation (ITUC), which contains allegations concerning cases of trafficking in persons for sexual and labour exploitation. It notes that this communication was sent to the Government, on 13 September 2011, for such comments as it may wish to make on the matters raised therein. According to the allegations, there are cases where women and girls, especially from the tribal areas, are forced into prostitution or domestic servitude, and men are forced into labour in logging camps and mines. The ITUC alleges that there have been no investigations, prosecutions or convictions for trafficking in persons.

The Committee refers in this connection to its observation addressed to the Government under the Worst Forms of Child Labour Convention, 1999 (No. 182), in which it noted the report of the Office of the High Commissioner for Refugees on trafficking in persons in Papua New Guinea (“Trafficking Report”), which states that trafficking is a

significant problem in the country. According to the report, women and children are trafficked within the country for the purpose of commercial sexual exploitation and domestic servitude, and women and children from China, Malaysia, the Philippines and Thailand are trafficked to Papua New Guinea for forced prostitution. In this observation, the Committee expressed its deep concern that comprehensive legislation prohibiting all forms of trafficking has yet to be adopted.

*The Committee hopes that the Government will take the necessary measures, in the near future, in order to prevent, suppress and punish trafficking in persons. In particular, the Committee hopes that measures will be taken with a view to adopting comprehensive anti-trafficking legislation and that perpetrators of human trafficking will be prosecuted and punished with adequate penal sanctions, as required by Article 25 of the Convention. 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: 1976)**

*Article 1(c) and (d) of the Convention. Penal sanctions applicable to seafarers for various breaches of labour discipline.* Since many years, 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 has been also referring 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 to perform their duties.

Referring to the explanations contained in paragraph 179 of its 2007 General Survey on the eradication of forced labour, the Committee pointed out that 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 persons; but provisions imposing such sanctions which relate more generally to breaches of labour discipline (such as desertion, absence without leave or disobedience), often supplemented by provisions under which seafarers may be forcibly returned on board ship, are incompatible with the Convention.

The Committee has noted the Government's repeated indication in its reports that requests concerning the Committee's comments had been communicated to the Department of Transport, which is responsible for administering and applying the above legislation, with a view to amending these provisions. The Government indicates in its latest report that, according to the information received from the Department of Transport, update and reviewing of all transportation laws and regulations has commenced, and the provisions of the Convention will be taken into account in the course of the revision of the above legislation. The Government has renewed its commitment to review national provisions in order to ensure compliance with the Convention.

*While noting this information, the Committee expresses the 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 that the Government will provide, in its next report, information on the progress made in this regard.*

## **Senegal**

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)**

*Article 1(c) of the Convention. Imposition of sentences of imprisonment involving an obligation to work for breaches of labour discipline.* In its previous comments, the Committee emphasized the need to amend sections 624, 643 and 645 of the Merchant Shipping Code (Act No. 2002-22 of 16 August 2002). Under the terms of these provisions, unapproved absence from the vessel, verbal insults, gestures or threats towards a superior and a formal refusal to obey a service order are punishable by imprisonment, which involves compulsory prison labour in accordance with section 692 of the Code of Penal Procedure and section 32 of Decree No. 2001-362 of 4 May 2001 concerning the implementation and organization of penal sanctions. In view of the fact that the scope of these provisions of the Merchant Shipping Code is not confined to cases in which the breach of discipline would endanger the ship or the persons on board, the Committee has considered these provisions to be contrary to the Convention, which prohibits recourse to forced labour, including in the form of compulsory prison labour, as a means of labour discipline.

In this respect, the Committee noted the Government's indication that the merchant navy had itself considered excessive the penalties provided for and the violations penalized and that, for this reason, in practice penal sanctions were always disregarded in cases of breaches of discipline. In its latest report, the Government indicates that the question of the amendment of sections 642, 643 and 654 is still under examination and that measures will be taken to ensure that the legislation reflects established practice and is in conformity with the Convention.

The Committee recalls that it has been commenting on this matter for over 40 years. It also noted with regret that the Government did not take the opportunity of the adoption of the new Merchant Shipping Code in 2002 to amend the provisions on which it had been commenting. *In these circumstances, the Committee trusts that the Government will be able to indicate in its next report the amendment of sections 624, 643 and 645 of the new Merchant Shipping Code so as to ensure that breaches of labour which do not endanger the ship or the persons on board cannot be punished with prison sentences.*

*Article 1(d). Imposition of prison sentences involving an obligation to work as punishment for participation in strikes.* In its previous comments, the Committee referred to section L.276 of the Labour Code, which allows the administrative authority to requisition workers from private enterprises and public services and establishments who are engaged in jobs that are essential for the security of persons and property, the maintenance of public order, the continuity of public services and the satisfaction of the essential needs of the nation. Any worker who does not comply with the requisition order is liable to a fine and a sentence of imprisonment ranging from three months to one year, or only one of these two penalties (section L.279(m)). The Committee also noted that the Decree implementing section L.276 which was to establish the list of jobs concerned was in the process of being adopted and that, in the meantime, Decree No. 72-017 of 11 March 1972, establishing the list of posts, jobs and functions of which the occupants may be requisitioned which continued to apply. It also noted that, in its comments in 2006, the National Confederation of Workers of Senegal (CNTS) indicated that the requisitioning of certain workers sometimes amounted to abuse of authority intended to break strikes called by workers, and that certain employers in the private sector used this process to force workers to remain in their posts when this was not justified by necessity.

In this context, the Committee referred to the comments that it has been making concerning the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it has recalled that the power to requisition workers in the event of a strike must be limited to the workers required to maintain essential services in the strict sense of the term. In so far as the power to requisition workers may be exercised in respect of workers whose post, job or functions do not constitute essential services in the strict sense of the term and that workers who do not comply with a requisition order are liable to imprisonment involving the obligation to work (section L.279(m) of the Labour Code), the Committee requested the Government to take the necessary measures to ensure that the Decree implementing section L.276 of the Labour Code, which is in the process of being adopted, is in conformity with the Convention.

In its latest report, the Government confirms that the necessary measures will be adopted for this purpose. It adds that a study has recently been undertaken to identify cases of non-conformity of the national legislation with the ILO's fundamental Conventions ratified by Senegal, and the solutions which could be adopted in the context of the reform of the Labour Code and certain of its implementing texts. The Government emphasizes that this reform will take time, but that it is committed to comply with its international obligations. ***The Committee takes due note of this commitment and hopes that all measures will be taken to ensure that the new decree implementing section L.276 of the Labour Code will be adopted in the very near future and that it will limit the list of posts, jobs or functions in which workers may be subject to a requisition order to the posts, jobs or functions that are strictly necessary to ensure the operation of essential services in the strict sense of the term. Furthermore, as the Committee emphasized in paragraph 189 of its 2007 General Survey on the eradication of forced labour, in all cases and regardless of the legality of the strike action in question, any sanctions imposed should not be disproportionate to the seriousness of the violations committed, and the authorities should refrain from applying sentences of imprisonment against those who peacefully organize or participate in a strike.***

Finally, the Committee recalls that it emphasized the need to amend the last paragraph of section L.276 of the Labour Code, under the terms of which the exercise of the right to strike may not be accompanied by the occupation of the workplace or its immediate surroundings, under penalty of the sanctions set out in sections L.275 and L.279, with the latter envisaging a sentence of imprisonment ranging from three months to one year and a fine, or one of these penalties. ***The Committee trusts that the Government will be able to indicate in its next report that sections L.276, last paragraph, and L.279 of the Labour Code have been amended so as to ensure that striking workers who peacefully occupy the workplace or its immediate surroundings are not liable to prison sentences involving the obligation to work.***

## Sierra Leone

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1961)**

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

*Articles 1(1) and 2(1) of the Convention. Compulsory agricultural work.* Over many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on "natives". On numerous occasions, it requested the Government to repeal or amend this provision. The Committee also noted the Government's statement that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable. The Committee takes due note of the Government's repeated indication that section 8(h) is not applicable in practice and that information on any amendment of this section would be communicated to the ILO in the near future. ***As the Government has repeatedly indicated since 1964 that this legislation would be amended, the Committee reiterates firm hope that the necessary measures will at last be taken in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It requests the Government to provide, in its next report, information on the progress made in this regard.***

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

## Singapore

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1965)**

*Articles 1(1) and 2(1) of the Convention. Legislation concerning destitute persons.* For many years the Committee has been referring to certain provisions of the Destitute Persons Act, 1989, under which destitute persons may be required, subject to penal sanctions, to reside in a welfare home (sections 3 and 16) and to engage in any suitable work for which the medical officer of the home certifies them to be capable, either with a view to fitting them for employment outside the welfare home or with a view to contributing to their maintenance in the welfare home (section 13).

The Committee has 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. While noting the Government’s repeated indications in its reports that, in practice, no coercion is involved, since residents in the welfare home perform work with their consent and receive payment for the work done, the Committee asked the Government to bring the legislative provisions into conformity with the Convention, so as to ensure compliance both in law and in practice.

The Committee previously noted the Government’s intention expressed in its 2006 report to amend the Act in order to better articulate the voluntary nature of the activity. However, the Committee notes that the Government’s latest report contains no information on any developments of this kind. ***The Committee trusts that section 13 of the Destitute Persons Act will at last be amended so as to provide clearly that any work in a welfare home should be carried out voluntarily, thus bringing the abovementioned legislation into conformity with the Convention and the indicated practice, and that the Government will soon be in a position to provide information on the progress achieved in this regard.***

## 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.* The Committee previously noted that 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 e.g. compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance), had been declared null and void by the High Court of Swaziland (Case No. 2823/2000). The Committee asked the Government to provide information on the practical consequences of this decision.

The Government indicates in its report that the above Order is null and void, and there have been no reported cases of forced labour. It also states that Swazi citizens and the international community are encouraged to report the incidents of forced labour to the courts.

The Committee notes, however, that in a communication dated 30 August 2011 received from the Swaziland Federation of Trade Unions (SFTU), the SFTU alleges that the High Court’s nullification of the Order has never assisted in any manner in halting forced labour practices, which are rooted in the well established and institutionalized customary law through cultural activities which are largely unregulated. According to the allegations, the customary practice of “Kuhlehla” (rendering services to the local Chief or King) is still practiced and enforced with punitive measures for refusal to attend.

The Committee notes that this communication was sent to the Government, on 26 September 2011, for such comments as it may wish to make on the matters raised therein. ***The Committee hopes that the Government will supply such comments in its next report, as well as the information on measures taken or envisaged to ensure the observance of the Convention.***

## Syrian Arab Republic

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1960)**

*Articles 1(1) and 2(1) of the Convention. Freedom of persons in the service of the State to leave their employment.* For many years, the Committee has been referring to section 364 of the Penal Code (as amended by Legislative Decree No. 46 of 23 July 1974), under which a term of imprisonment from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body, or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority; or evading obligations to serve the same authorities, whether the obligation derives from a mission, a scholarship or a study leave.

The Committee previously noted the Government’s repeated indication that, in practice, a worker’s right to submit a request for resignation at any time is fully respected, and the competent authority is bound to accept the resignation, provided the continuity of the service is ensured. The Government also stated in its earlier reports that the Committee’s comments had been taken into account in the course of elaboration of the amendment to the Penal Code, in order to ensure conformity with the Convention.

The Government indicates in its latest report that a competent specialized committee is examining the amendments to the above provisions of the Penal Code. ***Taking into account the existing practice, the Committee trusts that the Government will take the necessary measures to adopt, without delay, the amendments to the Penal Code and that legislation will thereby be brought into conformity with the Convention. It asks the Government to supply a copy of the amendments, as soon as they are adopted.***

***Legislation on vagrancy.*** For a number of years, the Committee has been referring to section 597 of the Penal Code, which provides for the punishment of any person who is reduced to seeking public assistance or charity as a result of idleness, drunkenness or gambling. The Committee referred in this connection to the explanations in paragraph 88 of its 2007 General Survey on the eradication of forced labour, where it pointed out that provisions concerning vagrancy and similar offences, if defined in an unduly extensive manner, are liable to become a means of compulsion to work.

The Committee previously noted the Government's indication in its earlier report that the proposed amendments to the Penal Code would accommodate the Committee's request. ***Since the Government's latest report contains no information on this point, the Committee trusts that the necessary measures will soon be taken, in the context of the revision of the Penal Code, with a view to clearly excluding from the legislation any possibility of compulsion to work.***

***Article 2(2)(d). Work or services exacted in cases of emergency.*** In its earlier comments, the Committee has been referring to certain provisions of Decree No. 133 of 1952, under which compulsory labour could be exacted from the population in circumstances that go beyond the exception authorized by the Convention. The Committee notes that Legislative Decree No. 15 of 11 May 1971 concerning local administration, supplied by the Government with its report, has repealed the above mentioned Decree No. 133 of 1952. The Committee also notes that, under Legislative Decree No. 15 of 11 May 1971, certain kinds of work or services (national defence work, social services, road work) may be exacted only in the event of war, emergencies or natural disasters (section 23-Z).

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)**

***Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for participation in strikes.*** Over a number of years, the Committee has been referring to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a means of political coercion or as a punishment for expressing views opposed to the established political system, and as a punishment for breaches of labour discipline and for the participation in strikes. The Committee previously noted the Government's indication that it endeavours to resolve the problems identified in the Committee's comments by way of the adoption of the new Penal Code, which was going through various legal channels and phases of adoption.

The Committee expresses its ***deep concern*** regarding the current human rights situation in the country and recalls that restrictions on fundamental rights and liberties may have a bearing on the application of the Convention, if such measures are enforced by sanctions involving compulsory labour. The Committee notes, in this regard, the statement of the President of the UN Security Council of 3 August 2011 (6598th Meeting), in which the Security Council expressed its grave concern at the deteriorating situation in the Syrian Arab Republic, condemned the widespread violations of human rights and the use of force against the peaceful protesters, and stressed that the only solution to the crisis was through a political process that addressed the legitimate concerns of the population and allowed the exercise of the freedoms of expression and assembly.

The Committee 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, and that sanctions involving compulsory labour are incompatible with the Convention if they enforce a prohibition of the peaceful expression of views that are critical of Government policy and the established political system, whether the prohibition is imposed by law or by an administrative decision (see General Survey of 2007 on the eradication of forced labour, paragraph 154). ***The Committee urges the Government to take all the necessary measures to ensure that persons who express views or an opposition to the established political, social or economic system, benefit from the protection accorded by the Convention and that in any case penal sanctions involving compulsory labour could not be imposed on them. In this connection the Committee expresses the firm hope that, a new Penal Code will be adopted without delay and that 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, and the legislation and practice will be brought into conformity with the Convention.***

## **Thailand**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1969)**

The Committee notes the observations submitted on 30 December 2010 by the National Congress of Thai Labour (NCTL) on the application of the Convention by Thailand. In its comments, the NCTL observes that, despite the Government's significant effort in combating trafficking in persons, statistics have shown that the number of arrests and prosecutions related to trafficking is still low if compared to the number of offenders. The NCTL also expresses concern

about the lack of participation of employers' and workers' organizations in the implementation of the Convention in the country. **The Committee hopes that the Government will provide information on these observations with its next report.**

*Articles 1(1), 2(1) and 25 of the Convention. Trafficking in persons. Prevention and protection measures, law enforcement.* The Committee notes with **interest** the adoption of the new Anti-Trafficking in Persons Act B.E. 2551 (2008), which repeals the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997) and provides for a broad definition of "exploitation" to cover sexual exploitation, production and distribution of pornography, other forms of sexual exploitation, slavery, forced begging, forced labour, or other similar forms of exploitation. The Committee notes, in particular, the information on the mechanisms and special procedures developed by the Government, under the new Act, to ensure the effective prevention of human trafficking as well as protection of victims noting, in particular, the establishment of the Operational Guidelines on the Prevention and Suppression of Trafficking for Labour Purposes, and Assistance and Protection for Trafficked Persons. The Committee further notes that under the new Act, victims may claim compensation from the offenders for the damages caused by human trafficking.

The Committee also notes the statistics provided by the Government on the number of cases related to human trafficking during the period of June 2009 and June 2010, as well as the information on the activities of the Anti-Human Trafficking Division (AHTD), which has been established within the Royal Thai police and is, since 2009, the main body responsible for the prevention and investigation of human trafficking crimes. Finally, the Committee notes the information on the activities of the Centre against International Trafficking under the Office of the Attorney-General.

**Noting the detailed information provided by the Government, which demonstrates its significant effort to combat trafficking, the Committee asks the Government to continue to provide information, in particular on the application in practice of the Anti-Trafficking in Persons Act B.E. 2551 (2008), providing copies of further court decisions concerning trafficking and forced labour cases, as well as information on any difficulties encountered by the competent authorities in identifying victims and in initiating legal proceedings.**

*Trafficking in persons for the purpose of exploitation. Migrant workers.* In its earlier comments, the Committee noted the observations on the application of the Convention by Thailand, made by the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC). In its communication dated 31 August 2006, the ICFTU expressed its concern about the persistence of trafficking in persons from and into Thailand and referred to a report published by the UN Office on Drugs and Crime (April 2006), in which Thailand had been listed in the group of countries which had a very high level of trafficking, as a country of destination, origin and transit. According to the report, Cambodian and Lao women and girls were trafficked into Thailand for factory and domestic work and the sex trade; Burmese, Cambodian and Lao men were trafficked into Thailand for forced labour in such sectors as construction, agriculture and in particular the fishing industry.

In its reply to the observations submitted by the ICFTU, the Government indicates that the new Anti-Trafficking in Persons Act B.E. 2551 (2008) addresses both female, child and male victims equally, providing for heavier penalties on offenders involved in human trafficking, as well as victim protection and a fund to be established to support the prevention and suppression of human trafficking. As regards bonded and forced labour in particular, the Government indicates that, together with the new Act, provisions of the Labour Protection Act (B.E. 2541) concerning overtime work and minimum wages (such as sections 70, 90, 24, 25 and 144) can also serve as tools to prevent bonded and forced labour.

The Government further indicates that, as regards trafficking and forced labour, its practices on labour inspection and labour protection include coordination with relevant government agencies, NGOs, international organizations and Thai embassies overseas to ensure victims' protection, recovery and reintegration to prevent them from being re-trafficked. Finally, it informs that repatriation programmes have been arranged with Cambodia, the Lao People's Democratic Republic, Myanmar and the Yunnan Province of China in order to develop effective and safe repatriation procedures.

As regards statistics and documentation on the problems of trafficking and exploitation for forced labour of workers from Myanmar on board Thai vessels and in Thai ports, the Government informs that during the fiscal year 2005–06, 15 complaints concerning workers on board Thai fishing vessels were submitted to the Department of Labour Protection and Welfare (DLPW), two of which were categorized as forced labour cases.

The Committee notes the addendum to the report of the United Nations Special Rapporteur on the human rights of migrants, presented at the 17th Session of the UN Human Rights Council on 17 May 2011 (document A/HRC/17/33/Add.1), which contains communications to and from governments. In the communications addressed to the Government of Thailand, the Special Rapporteur expresses its concern regarding violations of the human rights of migrants in the country, in particular as regards the negative impact of the National Verification (NV) registration process for migrant workers. The Committee notes that, according to the report, approximately 300,000 migrant workers who failed to enter the NV process by the extended deadline of 31 March 2010 and an estimated 1 million unregistered migrant workers who were ineligible for the NV process are deemed as migrants with irregular status and particularly vulnerable to arbitrary arrest, violence and exploitation. According to the report, unregistered migrant workers may be asked to pay bribes ranging from 200 to 8,000 baht (THB) or more to the police in exchange for their freedom, either when stopped by the police or when in police custody.

The Committee further notes the information in the report concerning the Prime Minister's order of 2 June 2010, issued to set up a Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground (No. 125/1223), according to which the Centre is mandated to suppress, arrest and prosecute alien workers who illegally enter the country. The Special Rapporteur expresses particular concern about the pattern of arbitrary arrest, violence and exploitation of migrants, which was exacerbated by the mentioned order and notes that an increasing number of cases of systematic abuse of official powers have been reported, "including the 'sale' of irregular migrants to various brokers who then transfer the migrants back to their worksites for fees or who 'resell' or traffic the individuals to various employers in the fishing and domestic industries". Finally, the Special Rapporteur expresses concern about information received suggesting that arrested migrant workers from Myanmar were deported to their country of origin by boat through informal checkpoints controlled by the Democratic Karen Buddhist Army (DKBA) and that the DKBA demanded fees from the deportees in exchange of their freedom. According to the report, migrants who cannot afford the fees imposed are subject to beating and forced labour.

Corroborating the communications of the UN Special Rapporteur, the Committee notes the report of the International Organization for Migration (IOM) on Trafficking of Fishermen in Thailand (14 January 2011), which refers to violations on the human rights of migrant workers in Thailand, in particular in the fishing sector. In its report the IOM expresses concern about the conditions under which migrant workers are hired to work in the Thai fishing industry, with labour recruitment processes that remain largely informal, mostly on the basis of verbal agreements, often leading to abuse and fostering human trafficking. In addition, the IOM draws attention to the fact that many fishermen are "sold" to fishing boat owners by brokers, having to work for long periods without receiving any wages in order to repay their debts. The IOM further notes that, despite the degrading working conditions, fishermen often have no alternative but being subject to them, since fishing boats tend to be offshore for long periods of time, preventing workers to leave or escape. According to the report, migrant fishermen, who are usually undocumented and unregistered, are often held on boats indefinitely, working and being forcibly transferred between fishing boats in case one boat needs to return to shore, under threats of being reported to immigration authorities.

While noting this information, and considering the seriousness of the facts abovementioned, the Committee recalls that, despite the Government's efforts in preventing, combating and suppressing trafficking in persons, the uncertainty surrounding the legal status of migrant workers, in particular those employed in the fishing sector, put them in an extremely vulnerable situation. Such vulnerability could lead to abuse and practices likely to undermine the protection provided by the Convention. Moreover, the itinerant nature of this type of work and the long periods of time spent away from shore hampers the identification of migrant fishermen victims of trafficking and working under forced labour conditions.

*The Committee therefore requests the Government to take effective measures to protect migrant workers, particularly those in the fishing industry, with a view to the complete elimination of the exaction of forced labour from this category of workers. It also requests the Government to take the necessary measures to further strengthen its law enforcement mechanisms, including measures to enforce anti-trafficking laws against those who target migrant fishermen and that such measures address the problems identified in the abovementioned reports. The Committee hopes that the Government will provide, in its next report, detailed information about the progress of such measures, including not only numbers of prosecutions and convictions, but the specific criminal penalties which have actually been imposed on employers of migrant fishermen convicted under the new Anti-Trafficking Act. Please also provide information on the application in practice of the above Prime Minister's order of 2 June 2010, issued to set up a Special Centre to Suppress, Arrest and Prosecute Alien Workers Who Are Working Underground (No. 125/1223). In this connection and bearing in mind the seriousness of the situation, the Committee requests the Government to provide information on the measures taken to prevent the exploitation of migrant workers and to ensure protection of their rights, regardless of their legal status.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)**

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

*Article 1(c) of the Convention. Sanctions involving compulsory labour as a means of labour discipline.* The Committee previously noted that sections 131–133 of the Labour Relations Act BE 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed on any employee who violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, 22–24, 29 and 35(4) of the Labour Relations Act, were incompatible with the Convention. The Government states that the Ministry of Labour (MOL) is trying its best to take the necessary measures to bring the Labour Relations Act into closer conformity with the Convention. To this end, the Government indicates that its Committee on Revision of Labour Relations Laws in conformity with the principles of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), will take into consideration the provisions of the Labour Relations Act BE 2518 that are in contravention of Convention No. 105. The Committee notes in particular the Government's indications concerning an analysis to be conducted by the above Committee on the conformity of the Act with the Convention.

*The Committee reiterates the firm hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, either by repealing sanctions involving compulsory labour or by limiting their scope to acts endangering the life or health of persons. It asks the Government to provide a copy of any proposed amendments to the Labour Relations Act elaborated to this end.*

*Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes.* The Committee has previously referred to the following provisions of the Labour Relations Act BE 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes:

- section 140 read in conjunction with section 35(2): if the minister orders the strikers to return to work, being of the opinion that the strike may affect the national economy or cause hardship to the public or endanger national security or be contrary to public order;
- section 139 read in conjunction with section 34(5): if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the minister under section 23(1), (2), (6) or (8) or by the Labour Relations Committee under section 24.

*While noting the Government's intention to bring these provisions into account of the Committee on Revision of Labour Relations Laws referred to above, the Committee expresses the firm hope that the necessary measures will be taken in the near future with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, by ensuring that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in a strike.*

Previously, the Committee had referred to the State Enterprise Labour Relations Act BE 2543 (2000) (SELRA), which prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77). The Committee notes the Government's indications in its report that the Committee on Revision of Labour Relations Laws referred to above is going to take into account the feasibility of revising the SELRA to bring it into conformity with the Convention. *The Committee trusts that the necessary measures will soon be taken with a view to amending the above provisions of the SELRA in order to bring the legislation into conformity with the Convention, by providing that no sanctions involving compulsory labour can be imposed for the mere fact of a peaceful participation in a strike. It asks the Government to provide, in its next report, information on progress made in this regard.*

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

## Trinidad and Tobago

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

*Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for breaches of labour discipline and participation in strikes.* For many 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 Act and section 69(1)(d) and (2) of the Industrial Relations Act, 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 previously noted the Government's indication in its reports that efforts were under way to amend the provisions mentioned above and that no sanctions had been imposed under these provisions in practice.

The Government indicates in its latest report that no amendments have been made to the above legislation, and that it is not anticipated that amendments would be made to section 8(1) of the Trade Disputes and Protection of Property Act and section 69(1) and (2) of the Industrial Relations Act in 2011–12. As regards the Shipping Act, 1987, the Government indicates that a policy document with respect to its amendment is under preparation, and that the Maritime Service Division shall give due consideration to the provisions of the Convention while determining whether further amendments to the Act are required.

*While noting this information, the Committee expresses the firm hope that the necessary measures will soon be taken in order to amend the abovementioned provisions with a view to bringing legislation into conformity with the Convention. Recalling that the legislative amendments required have been under consideration for many years, the Committee hopes that the Government will provide, in its next report, information on the progress made in the revision of the Shipping Act, as well as the Industrial Relations Act and the Trade Disputes and Protection of Property Act, in order to ensure compliance with the Convention.*

## Uganda

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1963)**

*Articles 1(1) and 2(1) of the Convention.* 1. *Legislation concerning compulsory placement of unemployed persons on agricultural enterprises in rural areas.* For many years, the Committee has been referring to section 2(1) of the Community Farm Settlement Decree, 1975, under which any unemployed able-bodied person may be settled on any farm settlement and required to render service. Section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person who fails or refuses to live on any farm settlement or who deserts or leaves such settlement without authorization. The Government indicated in its earlier report that the abovementioned Decree was in the process of being repealed. The Committee also noted the statement of the Government representative before the Conference Committee on the Application of Standards in June 2006, that the 1975 Decree was a “dead law” which was no longer applied in practice, and that it should be repealed. *Noting that the Government's report contains no new information on this issue, the Committee calls on the Government to formally repeal the Community Farm Settlement Decree, 1975,*

*and that legislation will be brought into conformity with the Convention. The Committee asks the Government to supply a copy of the repealing text, as soon as it is adopted.*

2. *Freedom of career military officers to leave their service.* The Committee previously noted a provision of section 28(1) of the Uganda Peoples' Defence Forces (Conditions of Service) (Officers) Regulations, under which the Board may permit officers to resign their commission in writing at any stage during their service. The Committee previously noted the Government's repeated indication in its reports that the officer applying for the resignation must give his/her reasons for it, and the Board will consider these reasons and, if it finds them fit, will grant a permission to resign.

The Committee observed that, under section 28(1) of the above Regulations, the application to resign may be either accepted or refused. Referring also to the explanations provided in paragraphs 46 and 96–97 of its 2007 General Survey on the eradication of forced labour, the Committee pointed out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. *The Committee trusts that the necessary measures will at last be taken with a view to amending section 28(1) of the above Regulations, so as to ensure conformity with the Convention. Pending the amendment, the Committee requests the Government once again to provide information on the application of section 28(1) in practice, indicating in particular the criteria applied by the Board in accepting or rejecting a resignation, as well as the number of resignations accepted and refused.*

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1963)**

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

*Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.* For a number of years, the Committee has been referring to the following legislation:

- the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour;
- sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such combination illegal and punishable with imprisonment (involving an obligation to perform labour).

As the Committee repeatedly pointed out, any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed on persons convicted for expressing political views or views opposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations (see, for example, paragraphs 152–166 of its General Survey of 2007 on the eradication of forced labour).

*The Committee expresses the firm hope that the necessary measures will at last be taken to repeal or amend the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, and of the Penal Code, in order to bring the legislation into conformity with the Convention, and that the Government will provide, in its next report, information on progress made in this regard.*

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

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

## **United Kingdom**

### **Forced Labour Convention, 1930 (No. 29) (ratification: 1931)**

*Articles 1(1), 2(1) and (2)(c) of the Convention. Privatization of prisons and prison labour. Work of prisoners for private companies.* For a number of years, the Committee has been making comments on the privatization of prisons and work of prisoners for private companies in the United Kingdom. The Committee recalls 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. It clearly follows from the wording of this provision that the exception of compulsory prison labour from the scope of the Convention does not extend to work of prisoners for private parties (including privatized prisons and prison workshops), even under public supervision and control. The Committee therefore asked the Government to take the necessary measures in order to ensure that, with regard to contracted-out prisons and prison industries, any work by prisoners for private companies be performed under the conditions of a freely consented upon labour relationship, without the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free labour relationship.

The Committee notes with *concern* that there has been no change in the Government's position and in national law and practice since the Government's previous report. The Government reiterates that the United Kingdom continues to have in place a robust set of rules and regulations to ensure that prison labour is not abused, and that both public and private sector prisons and workshops are subject to rigorous independent inspections, both domestically and internationally. The Government also takes the view that, if it accepts the interpretation of the Convention by the

Committee of Experts, working of prisoners in a number of prisons in the United Kingdom would no longer be viable, and therefore, compliance with the Committee's views would be highly damaging for prisoners and their rehabilitation.

While noting these views and comments, the Committee points out once again that the privatization of prison labour falls outside the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. However, the Committee has considered that the work of prisoners for private companies may be held compatible with the Convention where it does not involve compulsory labour, which requires the formal, freely given and informed consent of the persons concerned. Such voluntary consent, since it is given in the context of a captive labour force having no alternative access to the free labour market, should be authenticated by the conditions of work approximating a free labour relationship, which is the most reliable indicator of the voluntariness of labour and which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health (see paragraphs 59–60 and 114–120 of the Committee's 2007 General Survey on the eradication of forced labour).

As the Committee repeatedly pointed out, in spite of the express prohibition for prisoners to be hired to or placed at the disposal of private parties under the terms of the Convention, it is fully possible for ratifying States to apply the Convention when designing or implementing a system of privatized prison labour, once the abovementioned requirements are complied with. The Committee draws the Government's attention once again to paragraphs 61 and 122 of its 2007 General Survey where it observed that a certain number of countries have made progress towards full compliance with the Convention by taking measures, both in law and in practice, so that conditions of the private employment of prisoners progressively approach those of free workers.

*While noting the Government's indication in the report that it is currently exploring possible models for increased work in prisons, as well as the Government's commitment to have regard to the relevant ILO Conventions in developing these models, the Committee trusts that measures will be taken to ensure that formal, freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, such consent being authenticated by the conditions of work approximating those of a free labour relationship, as regards wage levels (leaving room for deductions and attachments), social security and occupational safety and health. The Committee expresses the firm hope that such measures will be taken both in law and in practice, in order to grant prisoners working in privately operated facilities and other prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this basic human rights instrument ratified by the United Kingdom more than 80 years ago, and that the Government will soon be in a position to report the progress made in this regard.*

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

## Uzbekistan

### **Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)**

*Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production).* In its earlier comments, the Committee noted the allegations made in 2008 and 2009 by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) concerning the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan. The Committee recalled that similar allegations were made in 2004 by the Council of the Trade Unions Federation of Uzbekistan, which referred to practices of a mobilization and use of labour for purposes of economic development in cotton production, in which public sector workers, schoolchildren and university students were involved.

As regards practices of forcible involvement of schoolchildren in the cotton harvest, the Committee previously asked the Government to refer to its comments on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), likewise ratified by Uzbekistan.

However, as the Committee previously noted from the above allegations made by employers' and workers' organizations, not only children but also adults were subject to forced labour during the cotton harvest. The ITUC asserted, in particular, that, despite the existence of the legal framework against the use of forced labour, local administration employees, teachers, factory workers and doctors were commonly forced to leave their jobs for weeks at a time and pick cotton with no additional compensation; in some instances refusal to cooperate could lead to dismissal from work; even elderly people and mothers of young babies had been reportedly ordered by local government officials to pick cotton or lose their pensions or child benefits.

The Committee previously noted that, in its reply to the above communications by the IOE and the ITUC, the Government denied the allegations about coercion of large numbers of people to participate in agricultural works and reiterated that under no circumstances employers may use compulsory labour for the production or harvesting of agricultural products in Uzbekistan, the exaction of forced labour being punishable with penal and administrative sanctions and employers being liable for violation of labour legislation. The Government further indicates in its reply to the Committee's comments received in May 2011 that, according to the legislation in force, public sector workers and university students may participate in the cotton harvest, if such work is performed under the labour contract concluded

between an employer and a worker under section 72 of the Labour Code, any other exaction of labour from these categories without payment being considered as compulsion to work, which involves responsibility and punishment of perpetrators in accordance with the legislation. The Government also adds in its 2011 report that the State Legal Labour Inspection intervenes upon every revealed fact of the exaction of forced labour and applies appropriate legal measures, while informing the competent bodies of the detected violations of labour legislation. It further recalls the recent legislative measures aiming at improving the legal framework for the abolition of forced labour, such as the adoption of the Law on Measures to Combat Trafficking in Persons and respective amendments to the Criminal Code.

The Committee refers, however, to its comments addressed to the Government under Convention No. 182, in which it noted the ITUC observations under that Convention received in 2010, and in particular, the ITUC assertion that, despite the Government's denial, sources in the country confirm the widespread mobilization of forced labour (particularly of children) in the 2009 cotton harvest in a number of Uzbekistan's regions.

*The Committee therefore hopes that the Government will provide, in its next report, information on concrete measures taken, including through labour inspection, in order to eliminate any possibility of using compulsory labour of public sector workers and university students in cotton production, so as to ensure the observance of the Convention, which prohibits the use of compulsory labour for purposes of economic development. Noting also the general statistical data concerning a number of violations of the labour legislation detected in 2010 and a number of cases in which administrative penalties (fines) have been imposed on responsible public officials for such violations, the Committee hopes that the Government will provide statistics on the number of cases of forced labour detected by the State Legal Labour Inspection, to which reference is made in the Government's report, indicating in particular, whether judicial proceedings have been instituted in such cases and indicating the penalties imposed on perpetrators.*

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

## 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, Belarus, Belgium, Belize, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Chile, Comoros, Congo, Costa Rica, Croatia, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Fiji, Finland, France, France: French Polynesia, Ghana, Guatemala, Guinea, Guinea-Bissau, Honduras, India, Iraq, Ireland, Italy, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Liberia, Madagascar, Malawi, Mali, Mauritius, Republic of Moldova, Mongolia, Montenegro, Nepal, Nigeria, Oman, Panama, Papua New Guinea, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Senegal, Serbia, Syrian Arab Republic, Tajikistan, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, Ukraine, United Kingdom, United Kingdom: Anguilla, United Kingdom: Montserrat, United Kingdom: St Helena, Uzbekistan, Yemen); **Convention No. 105** (Albania, Angola, Azerbaijan, Bangladesh, Barbados, Belarus, Belize, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Chile, Comoros, Congo, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Estonia, Fiji, Ghana, Grenada, Guinea, Guinea-Bissau, Honduras, Hungary, India, Indonesia, Iraq, Italy, Kenya, Kiribati, Kyrgyzstan, Lebanon, Liberia, Madagascar, Malawi, Mali, Republic of Moldova, Mongolia, Montenegro, Nepal, Oman, Pakistan, Panama, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Slovakia, Tajikistan, Thailand, Togo, Turkmenistan, Uganda, Ukraine, Uzbekistan, Yemen).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 105** (The former Yugoslav Republic of Macedonia, United Kingdom).

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

### Algeria

#### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6)** (ratification: 1962)

*Article 3(1) of the Convention. Period during which night work is prohibited.* In its previous comments, the Committee noted that, under section 27 of Act No. 90-11 of 21 April 1990 respecting conditions of employment, the term “night work” means any work performed between 9 p.m. and 5 a.m. It also noted that section 28 of the Act respecting conditions of employment prohibits the employment in night work of workers of either sex, aged under 19 years. The Committee noted that the Act respecting conditions of employment reiterated the provisions of sections 13 and 14 of Act No. 91-03 of 21 February 1981, on which it had been commenting for many years, as the prohibition of night work for children did not cover a period of at least 11 consecutive hours. The Government indicated that the revision of the labour legislation and the preparation of a new Labour Code would provide an opportunity to remedy the legal shortcomings noted in relation to night work. In this respect, the Committee reminded the Government that, under the terms of *Article 3(1)* of the Convention, the term “night” signifies a period of at least 11 consecutive hours, including the interval between 10 p.m. in the evening and 5 a.m. in the morning. It observed that the provisions of section 27 of the Act respecting conditions of employment, although complying with the interval provided for by this provision of the Convention (between 9 p.m. and 5 a.m.), does not specify the period during which night work is prohibited, namely for 11 consecutive hours.

The Committee notes the Government’s indication that the concerns raised by the Committee are taken into account in a draft text of the new Labour Code, which is currently being finalized. **Observing that the Government has been indicating since 1990 that it would take into account the Committee’s comments, it urges the Government to take the necessary measures in the near future to give full effect to Article 3(1) of the Convention, and accordingly to ensure that the prohibition of night work for children covers in all cases a period of at least 11 consecutive hours, including the interval between 10 p.m. in the evening and 5 a.m. in the morning. It requests the Government to provide information on any progress achieved in this respect as soon as possible.**

#### **Minimum Age Convention, 1973 (No. 138) (ratification: 1984)**

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted that, in the context of a project on the National Strategy for Children, the administrative department responsible for the family had organized a strategic planning workshop on the protection of children in February 2007 in collaboration with UNICEF, following which recommendations were formulated on child protection. The Committee also noted that the Government had launched a Bill on the protection of children and requested it to provide a copy once it had been adopted.

The Committee takes due note that a National Plan of Action for Children in Algeria was formulated under the aegis of the ministry responsible for the family and the situation of women, with the participation of the national institutions concerned (20 ministerial departments, ten national institutions), civil society, an advisory group of children and young persons, and UNICEF. This Plan of Action, officially launched on 25 December 2008 under the heading “Algeria worthy of children”, is to be implemented over the period 2008–15 and covers four main areas, namely: (1) the rights of the child; (2) the promotion of a healthy life and a better existence; (3) the quality of education; and (4) the protection of the child. The Committee notes, among other aspects, that the fourth field of action relating to the protection of the child, includes a section on child labour. In this respect, the Plan of Action calls for the development and updating of the legislation on the protection of the child, as well as the strengthening and development of mechanisms for the application of the legislation that is in force. However, the Committee notes that in its concluding observations of 7 June 2010, the Committee on Economic, Social and Cultural Rights expressed its concern about the high rate of child labour in Algeria “with estimates of approximately 300,000 children under 16 years of age who are working” (E/C.12/DZA/CO/4, paragraph 17). Furthermore, the Committee notes that the Government still does not appear to have adopted the Act on the protection of children, which it initiated in 2007. **The Committee urges the Government to take the necessary measures for the adoption of the Act on the protection of children and to provide a copy once it has been adopted. It also strongly encourages the Government to renew its efforts to combat child labour. In this respect, it requests the Government to provide detailed information on the impact of the Plan of Action on the elimination of work by children under 16 years of age.**

*Article 2(1) and Part V of the report form. Scope of application and effect given to the Convention in practice.* In its previous comments, the Committee noted that Act No. 90-11 respecting conditions of work of 21 April 1990 does not apply to employment relations which are not governed by a contract, such as work done by children on their own account, since persons working on their own account are covered by other regulations, which determine the minimum age of admission to non-wage work. In this respect, the Government indicated that, by virtue of section 40 of Ordinance No. 75-58 of 26 September 1975 issuing the Civil Code, the age of majority is 19 years, and that section 5 of Ordinance

No. 75-59 of 26 September 1975 issuing the Code of Commerce provides that any emancipated minor of either sex, aged 18 or above, who wishes to engage in a commercial activity, may not commence commercial operations or be considered of majority age with regard to any commitments she/he enters into for commercial purposes, unless the said minor has received prior authorization from her/his father or mother or, in the absence of the father and mother, through a decision of the family council approved by a court of law. The Government added that, under section 5 of the Code of Commerce, regulations respecting admission to employment are of a general nature and apply to all forms of employment, whether waged or own account. The Committee noted that the provisions of the Code of Commerce regulate the possibility for emancipated minors of either sex, aged 18 or above, to engage in a commercial activity in the formal economy. The Committee however observed that the provisions of the Code of Commerce do not regulate all the economic activities that a child under 16 years of age may carry on in the informal economy or on her or his own account and which are covered by the Convention, for example in the agricultural and domestic sectors, where the economic exploitation of children is more frequent.

The Committee notes the Government's indication that in 2009, the labour inspectorate filed reports of 21 violations relating to the employment of 49 children under the age for admission to work (16 years). However, the Committee notes with *regret* that the Government's report is silent on the issue of children working on their own account or in the informal economy, and on the application of section 5 of the Code of Commerce. ***The Committee therefore urges the Government to take the necessary measures to strengthen and adapt the labour inspection services with a view to ensuring that the protection afforded by the Convention is guaranteed for children who work on their own account or in the informal economy. In this respect, it requests the Government to provide information on the number and nature of violations involving children under 16 years of age who work on their own account or in the informal economy.***

*Article 3(1) and (2). Minimum age for admission to hazardous work and determination of these types of work.* The Committee previously noted that a revision of the national labour legislation was in progress and that the question of prohibiting the employment of persons under 18 years of age in hazardous types of work would be taken into account. It noted that a list of prohibited types of work was to be established by regulation. The Committee also noted the Government's indication that the adoption of specific provisions that would clarify any ambiguity on these matters was envisaged in the future Labour Code.

The Committee once again recalls that *Article 3(2)* of the Convention envisages that hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***Recalling that it has been raising this matter for several years, and noting the absence of information in the Government's report, the Committee urges the Government to take the necessary measures for the adoption of the relevant legislation respecting the types of hazardous work prohibited for children. It also requests the Government to take the necessary steps to ensure that the revision of the Labour Code is completed in the near future and that provisions giving full effect to Article 3(1) and (2) of the Convention are adopted as soon as possible. In this respect, it expresses the firm hope that these provisions will ensure that the minimum age for admission to all hazardous types of employment or work is not lower than 18 years and these types of employment or work are determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee requests the Government to provide information in this respect in its next report.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and sanctions applied. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that sections 343 and 344 of the Penal Code prohibit the trafficking of persons, including children under 18 years of age, for the purposes of prostitution. The Committee requested the Government to take the necessary measures to improve the protection of young persons under 18 years of age against trafficking, for both economic and sexual exploitation.

The Committee notes with *satisfaction* that section 303bis(4) of Act No. 09-01 of 25 February 2009 amending and supplementing Ordinance No. 66-156 of 8 June 1966 issuing the Penal Code provides that the following shall be considered as trafficking of persons: "the procuring, transport, transfer, hosting or reception of one or more persons, under the threat of or use of force or other forms of constraint, abduction, fraud, deceit, abuse of authority or of a situation of vulnerability, or the offer or acceptance of payment or benefits, in order to obtain the consent of a person exercising authority over another for the purposes of exploitation. Exploitation shall include exploitation of the prostitution of another person, through begging, forced labour or services, slavery or similar practices, servitude or the removal of organs. [...] Where trafficking is exercised in respect of a person whose situation of vulnerability is a result of her or his age [...], the sentence shall be imprisonment of from five to 15 years and a fine of from DZD500,000 to DZD1,500,000." Furthermore, section 303bis(5) provides that trafficking of persons shall be punished with a sentence of imprisonment of from ten to 20 years and a fine of from DZD1 million to DZD2 million where the offence is committed under certain specific circumstances, including in cases where the perpetrator "exercises authority over the victim". ***The Committee requests the Government to provide information on the application in practice of sections 303bis(4) and 303bis(5) of Act No. 09-01, including the number of prosecutions, convictions and the sanctions imposed.***

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations of October 2005 (CRC/C/15/Add.269, paragraph 78), noted with deep concern that child prostitution is on the increase in the country, and that not only girls but also boys who are working as traders, messengers or domestic servants are particularly at risk of sexual exploitation. The Committee noted that sections 342 and 343 of the Penal Code prohibit and punish the procuring or offering of persons, particularly children, for prostitution. It requested the Government to provide information on the effect given to these provisions in practice. The Committee notes with *regret* that the Government's report once again does not contain any information on this subject. **The Committee therefore once again requests the Government to take the necessary measures to ensure that in-depth investigations and effective prosecutions are conducted of persons who engage in the sexual exploitation of children under 18 years of age for commercial purposes. It also urges the Government to provide information in its next report on the effect given in practice to sections 342 and 343 of the Penal Code including, for example, statistics on the number and nature of the infringements reported, investigations conducted, prosecutions, convictions and the penal sanctions applied. To the extent possible, the information provided should be disaggregated by sex and age.**

*Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee observed that no legislative provision prohibits these worst forms of child labour and it requested the Government to indicate the measures taken to resolve this matter. The Committee notes with *regret* that the Government's report does not contain any further information on this subject. The Committee reminds the Government that, under the terms of *Article 3(b) and (c)* of the Convention, the use, procuring or offering of a child for the production of pornography or for pornographic performances, as well as for illicit activities, in particular for the production and trafficking of drugs, constitute worst forms of child labour. Furthermore, under the terms of *Article 1*, immediate and effective measures shall be taken to secure the prohibition of these worst forms of child labour. **The Committee therefore urges the Government to take the necessary measures as a matter of urgency to ensure, in law and practice, the prohibition of the use, procuring or offering of a child under the age of 18 years for the production of pornography or for pornographic performances, as well as for illicit activities, in particular for the production and trafficking of drugs, and to provide for sufficiently effective and dissuasive sanctions. It requests the Government to provide information in its next report on the progress achieved in this respect.**

*Clause (d). Hazardous work. Children working on their own account.* In its previous comments, the Committee observed that Act No. 90/11 respecting conditions of work of 21 April 1990 applies to individual and collective employment relations, but does not cover to children working on their own account. The Committee notes with *regret* that once again the Government's report is silent on the issue of children working on their own account and performing hazardous work types for work. **With reference to its comments under the Minimum Age Convention, 1973 (No. 138), the Committee urges the Government to take the necessary measures to ensure the protection of children working on their own account and engaged in hazardous types of work, for example by reinforcing and adapting the labour inspection services so as to ensure that such children are covered by the protection afforded by the Convention. It requests the Government to provide information on the progress achieved in this respect in its next report.**

*Article 4(1). Determination of hazardous work.* In its previous comments, the Committee noted the Government's indication that the issue of determining hazardous types of work had been taken into account in the context of the new Labour Code that was being prepared. It noted that a list of prohibited types of work was to be set out by regulation. The Committee notes with *regret* that the Government's report does not contain any further information on this subject. It reminds the Government that under the terms of *Article 4(1)* of the Convention, hazardous types of work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, and that under *Article 1* immediate and effective measures shall be taken as a matter of urgency to secure the prohibition of these worst forms of child labour. **With reference to its comments under Convention No. 138, the Committee urges the Government to take the necessary measures for the adoption of legislation on the types of hazardous work that are prohibited for children, as a matter of urgency. It urges the Government to provide information in its next report on any progress achieved in this respect.**

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

## Antigua and Barbuda

### Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

*Article 2(1) and (3) of the Convention. Minimum age for admission to employment and age of completion of compulsory schooling.* The Committee previously requested the Government to prohibit the employment of persons under 16 years of age, in conformity with the minimum age for admission to employment specified by the Government when ratifying the Convention.

In this regard, the Committee notes with *satisfaction* that the Education Act of 2008 (Act No. 21 of 2008) prohibits employing a child of school age during the school year (pursuant to section 47(1)) and specifies that education is compulsory for all persons under 16 years of age (pursuant to section 27(1)). The Committee also notes that section 47 of

Act No. 21 of 2008 establishes a penalty of a fine not exceeding \$2,000 for any person or corporation who employs a child of compulsory school age (of 16 years), as well as every director and officer of such a corporation who authorizes, permits or acquiesces in such contravention. Moreover, the Committee notes that Act No. 21 of 2008 provides that, pursuant to section 37, it shall be the duty of every parent to cause a child of compulsory school age to receive an education by regular attendance in school, and pursuant to section 46, any parent who neglects or refuses this duty commits an offence and is liable to a fine not exceeding \$1,000. The Committee further notes that section 39 of Act No. 21 of 2008 provides for the designation of school attendance counsellors to assist with the enforcement of the compulsory attendance provisions of the Act. In this respect, the Committee notes that, pursuant to section 41 of Act No. 21 of 2008, school attendance counsellors may enter premises where it is believed that a child of compulsory school age is employed in contravention of the Act. Pursuant to section 43, a school attendance counsellor may apprehend and deliver to school a child of compulsory school going age who is absent from school.

*Article 3(1) and (2). Minimum age for admission to hazardous work and determination of these types of work.* The Committee previously noted the Government's indication that consultations were held with the unions and employers' federation regarding the activities and occupations to be prohibited to persons below 18 years. The Committee noted that though a recommendation was made, it was not taken before the National Labour Board, as it was the Government's aim to revamp the occupational health and safety legislation.

The Committee notes the Government's statement that proposed amendments to the section of the Labour Code on occupational health and safety provisions have been circulated to Cabinet, but have not yet been adopted. The Government also indicates that technical assistance is being sought in consideration for new and separate occupational health and safety legislation. The Committee further notes that members of the Department of Labour attended a training workshop in June 2011, organized within the framework of the Occupational Safety and Health and Environment Programmes in the Caribbean. The Committee once again reminds the Government that *Article 3(1)* of the Convention provides that the minimum age for admission to any type of employment or work, which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years. It also reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee urges the Government to take the necessary measures to ensure that a list of activities and occupations prohibited for persons below 18 years of age is adopted in the near future, in accordance with Article 3(1) and (2) of the Convention. It encourages the Government to pursue its efforts in this regard through amendments to the occupational health and safety legislation, and to continue to provide information on progress made. Lastly, it requests the Government to provide a copy of the amendments to the occupational health and safety legislation once adopted.***

*Article 4(2). Exclusion of limited categories of employment or work.* The Committee previously noted that, in the Government's first report, it excluded from the application of the scope of the Convention limited categories of employment or work, pursuant to *Article 4(2)* of the Convention. In this regard, the Committee noted that section E3 of the Labour Code provides that the prohibition upon the employment or work of children, 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 an organization, nor to a child who is working together with adult members of his/her family on the same work and at the same time and place. The Committee requested the Government to indicate any changes in law and practice in respect of these excluded categories. In this regard, the Committee notes the Government's statement that there are no new legislative or other measures affecting the application of the Convention.

## Azerbaijan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1992)**

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

The Committee takes note of the Government's report as well as the discussions that took place at the 100th Session of the Conference Committee on the Application of Standards in June 2011.

*Article 2(1) of the Convention and Part V of the report form.* 1. *Scope of application and the application of the Convention in practice.* The Committee previously observed that the provisions relating to the minimum age of admission to employment or work in the Labour Code did not appear to apply to work performed without an employment agreement, including self-employment or work in the informal sector. The Committee also noted the Government's indication that, according to section 308 of the Labour Code, the Office of the Public Prosecutor, as well as the State Labour Inspectorate, exercise control over the strict application of the Labour Code. However, the Committee noted that the Committee on the Rights of the Child, in its concluding observations of 17 March 2006 (CRC/C/AZE/CO/2, paragraphs 61–62), expressed concern at the high number of working children in Azerbaijan, especially in rural areas, and that the regulations protecting children from exploitative and hazardous work were not consistently applied and respected. It further noted that according to a survey conducted by the State Statistical Committee of the Republic of Azerbaijan in

cooperation with ILO–IPEC, entitled *Working children in Azerbaijan – The analysis of child labour and labouring children survey, 2005* more than 156,000 children aged between 5 and 17 years are estimated to be engaged in some form of economic activity, out of which 84.4 per cent work in the agricultural sector, and about 67.6 per cent of working children are estimated to be engaged in hazardous work. This survey also indicated that the majority of working children (about 65 per cent) are employed as unpaid family workers, while 25.1 per cent of children work on their own account and less than 10 per cent are wage workers.

The Committee notes the Government’s statement that, pursuant to section 1 of the Labour Code, labour legislation in the Republic of Azerbaijan shall include international agreements ratified by the Government. In this regard, the Government indicates that the Convention constitutes part of the labour legislation in the country, and must therefore be implemented by all employers and private individuals. The Government also indicates that the Convention applies to all forms of child labour, including hired labour and labour contracted under civil law, as well as illegal labour. The Committee notes the Government’s statement during the discussions of the Conference Committee on the Application of Standards that, as of January 2011, 20,000 children were working in agriculture, out of which 5,000 were self-employed. The Committee further notes the information in the Government’s report that official orders are issued to employers, based on the findings from the State Labour Inspectorate, in order to eliminate the exploitation of child labour and violations related to the employment of women. The Government indicates that 34 such orders were issued in 2004, 62 such orders in 2008 and 23 orders in 2010. However, the Committee observes that it is not indicated whether such orders concerned both the formal and the informal economies.

The Committee notes the conclusions of the Conference Committee stating that there was an absence of information on the practical measures taken to apply the Convention to children working outside of an employment relationship, which constituted the majority of working children. The Conference Committee urged the Government to take concrete measures to ensure that the protection envisaged by the Convention was provided to children who work on their own account or in the informal economy. **Recalling that the Convention applies to all forms of work or employment, the Committee requests the Government to take measures to expand the reach and strengthen the capacity of the labour inspectorate to better monitor children carrying out an economic activity in the informal economy, on their own account or on an unpaid basis. The Committee requests the Government to provide information on specific measures taken in this regard, as well as the results achieved. Lastly, it requests the Government to take measures to ensure that up-to-date statistical information on the economic activities of children and young persons is made available, including the number of children working under the minimum age, and to provide this information in its next report.**

2. *Minimum age for admission to employment or work.* The Committee previously noted that, upon ratification of the Convention, the minimum age of 16 was specified under *Article 2(1)* of the Convention. However, it noted that section 42(3) of the Labour Code allows a person who has reached the age of 15 to be part of an employment contract and section 249(1) specifies that “persons who are under the age of 15 shall not be employed under any circumstances”. Observing that the minimum age specified in the Labour Code was below that specified by the Government upon ratification, the Committee urged the Government to take the necessary measures to ensure that no child under the age of 16 years is permitted to work, except for light work as permitted under *Article 7* of the Convention.

The Committee notes that the conclusions of the Conference Committee on the Application of Standards recalled that the fundamental objective of the Convention consisted of progressively raising the minimum age for admission to employment and did not permit the lowering of the minimum age from the age specified upon ratification. The Conference Committee on the Application of Standards urged the Government to take immediate measures to ensure that national legislation was amended to establish a minimum age of 16 years, for admission to employment or work in all sectors.

The Committee notes the Government’s statement that work is underway, with support from the ILO, to improve the labour legislation to provide that persons aged 15–16 can engage in light work. In this regard, the Committee notes with *interest* that, pursuant to technical assistance from the ILO, a draft has been developed entitled “On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of ILO Convention No. 138 on Minimum Age for Admission to Employment”. This draft proposes to amend section 249.1 of the Labour Code to raise the minimum age for admission to employment from 15 years to 16 years of age. **Taking due note of the quick action taken by the Government to address this issue, the Committee strongly encourages the Government to pursue its efforts to ensure the adoption, in the near future, of the draft entitled “On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of ILO Convention No. 138 on Minimum Age for Admission to Employment”, so as to raise the minimum age for admission to employment from 15 to 16 years of age.**

*Article 3(2). Determination of types of hazardous work.* The Committee previously noted the Government’s indication that a list of arduous and hazardous industries or occupations had been approved, and it requested a copy of the relevant legislation.

The Committee notes with *satisfaction* the detailed list of industries and jobs with arduous and hazardous conditions prohibited to persons under 18, established pursuant to Decision No. 58 of the Cabinet of Ministers of the Republic of Azerbaijan on 24 March 2000. The Committee notes that this list contains over 200 prohibited tasks for persons under the age of 18, in 35 fields of work, including in mining and underground activities; metallurgy; electrical repair; oil drilling

and production; oil, gas and coal processing; chemical production; the production and preparation of biological materials; mechanical engineering; shipbuilding and ship repair; manufacturing and repairing aircraft parts; producing electronic appliances; some activities in construction; installation and repair work; ceramic production; glass production; woodworking; cotton and textile processing; food production; transportation; agriculture; and utility services.

*Article 7. Light work.* The Committee had previously noted that section 249(2) of the Labour Code allows youths who have reached the age of 14 to work after school hours in light duty work, which poses no hazard to their health, and upon the written consent of their parents. The Committee requested the Government to supply further information on the types of permissible light work.

The Committee notes the information in the Government's report that the Labour Code was amended in 2009 to remove section 249 (2), which had permitted light work to be performed from the age of 14. The Committee also notes that the draft "On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of ILO Convention No. 138 on Minimum Age for Admission to Employment" proposes to amend paragraph 2 of section 249 of the Labour Code to state that persons between 15 and 16 years of age are allowed to do light work that does not affect their health and development, school attendance in compulsory secondary education, vocational guidance and other training programmes, or the opportunity to benefit there from. Light work tasks identified in this draft include lifting, carrying and delivering goods weighing less than 5 kilograms; the sale of knick-knacks, souvenirs and other small scale commodities; and the watering of trees and flowers, gathering fruit and vegetables and other farming activities. ***The Committee requests the Government to take the necessary measures to ensure the adoption, in the near future, of the draft text entitled "On amendments and adjustments to some legal acts of the Republic of Azerbaijan to give effect to the implementation of ILO Convention No. 138 on Minimum Age for Admission to Employment", to determine the types of light work permissible to persons between the ages of 15 and 16.***

*Article 9(1). Penalties.* The Committee previously requested the Government to indicate the provisions establishing penalties for the breach of the provisions giving effect to the Convention.

The Committee notes with *interest* that section 53.9 of the Code on Administrative Offences provides that persons who employ persons under the age of 15 shall be punished with a fine of between a AZN1,000–1500 (approximately US\$1,271–1,907) and legal entities shall be fined between AZN3,000–5,000 (approximately US\$3,815–6,358). Section 53.10 of the Code of Administrative Offences states that a person who employs children in activities which threaten their life, health and morality, shall be fined between AZN3,000–5,000, while legal entities shall be fined between AZN10,000 and AZN13,000 (approximately US\$12,717–16,533).

## Bangladesh

### ***Minimum Age (Industry) Convention (Revised), 1937 (No. 59)*** ***(ratification: 1972)***

*Part V of the report form. Application of the Convention in practice.* The Committee had previously noted that, the Memorandum of Understanding (MOU) signed by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA), the ILO and UNICEF had led to the withdrawal of more than 27,000 children from work. It had also noted 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 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 existed 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). Observing that the practice was inconsistent with the legislation and the Convention, and 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 had strongly encouraged the Government to redouble its efforts to improve the situation. It had also requested 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, and school enrolment or attendance rates.

The Committee notes the Government's statement that the Parliamentary Standing Committee of the Ministry of Labour and Employment is currently working for the restructuring and strengthening of the Department of Inspection for Factories and Establishments (DIFE). It notes the Government's information that it has recently taken measures to strengthen the inspection services by increasing the number of labour inspectors, and by establishing district level labour offices all over the country. The Government also states that the fines imposed under section 284 of the Bangladesh Labour Law for employing children and young persons in contravention of the provisions of the Labour Law amounted to 90,000 taka (approximately US\$1,197), in 2006.

The Committee further notes with *interest* the following policies and measures taken by the Government to reduce child labour, as indicated in the Government's report:

- A National Child Labour Elimination Policy has been formulated by the Government in 2010, with a National Plan of Action being developed for the elimination of child labour. Within this framework, the Government has taken initiatives to establish national/district/sub-district level monitoring committees as well as a National Child Labour Welfare Council to assess the child labour situation as well as to coordinate all promotional activities carried out by the Government, NGOs and international organizations.
- A National Education Policy of 2010 has been adopted which aims to ensure compulsory and free primary education for every child up to grade eight (14 years).
- The Ministry of Labour and Employment started implementing the third phase of the project entitled “Eradication of Hazardous Child Labour in Bangladesh” targeting the withdrawal of 50,000 children working in hazardous sectors through non-formal education and skills development training.
- Basic Education for the Hard-To-Reach Urban Working Children which has reached its second phase aims to achieve quality life skills-based quality education, livelihood education, and advocacy for improved environment for working in six divisional cities in Bangladesh. This project targets 200,000 working children of ages between ten and 14 years for basic education through establishing 8,000 learning centres, and targets 20,000 children of over 13 years for livelihood education.
- The Child Labour Unit (CLU) under the ILO–IPEC *Time-bound Programme* towards the elimination of the worst forms of child labour (*TBP–UIE*), which compiles and disseminates child labour-related issues, has developed a child labour management information system (CLMIS) and a website was launched on 29 June 2011.

The Committee further notes the Government’s indication that net primary enrolment rates increased significantly from 61 per cent in 1990 to 94 per cent in 2009, and the primary school completion rate increased from 43 per cent to 55 per cent from 1990 to 2008. According to the Multiple Indicator Cluster Survey –Bangladesh, 2006, 76.9 per cent of children were attending school. It further notes the information from the ILO–IPEC – Bangladesh Child Labour Data-Country Brief, that according to the results of Bangladesh Child Labour Survey of 2002–03, 13.4 per cent of all children aged 5-14 years were working, of which 62 per cent were in the agricultural sector, 23.3 per cent in the services, and 14.7 per cent were in the industrial sector. *The Committee encourages the Government to continue its efforts to improve the situation of child labour in the country. It requests the Government to provide information on the impact of the National Child Labour Elimination Policy and National Education Policy in eliminating child labour, particularly in the industrial sector. The Committee further requests the Government to provide updated statistical information on the extent of child labour in the country, as well as on the practical application of the Convention, including reports of inspection services, number and nature of violations reported and penalties applied.*

## Benin

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6)** (ratification: 1960)

*Articles 2(2), 4 and 7 of the Convention. Non-application of the Convention.* In its previous comments the Committee noted that section 153(1) of the Labour Code prohibits night work by young persons under the age of 18 years. It nonetheless observed that section 153(2) of the Code allows exemptions from such prohibition to be granted by decree issued by the Council of Ministers. It accordingly asked the Government to indicate whether Order No. 233 of 11 September 1978 issuing a corrigendum to Order No. 1781 of 12 July 1954, adopted pursuant to the Labour Code of 1952 and providing for exemptions from the prohibition on night work for children, is still in force.

The Committee notes the information supplied by the Government to the effect that the provisions of Order No. 233 of 11 September 1978 may be used for all relevant purposes. In this regard, the Committee observes that, under section 5 of the abovementioned Order, the prohibition on night work by children over 16 years of age may be lifted, temporarily and by a mere advance notice, for the purpose of preventing or remedying accidents in the industries cited in *Article 2(2)* of the Convention. The Committee notes with *satisfaction* that section 5 of Order No. 233 is consistent with the provisions of the Convention.

## Plurinational State of Bolivia

### **Medical Examination of Young Persons (Industry) Convention, 1946** (No. 77) (ratification: 1973)

*Article 2(1) of the Convention. Medical examination for fitness for employment.* The Committee previously 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 Ministry of Labour, free medical examinations are carried out of boys, girls and young persons who are working in the industrial and agricultural sectors and who work on their own account in urban or rural areas, under the terms 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, under the terms of which young persons engaged in work shall periodically undergo medical examination. It observed that the expression “medical examinations” contained in section 1 of Decision No. 001 of 11 May 2004 only appears to refer to the periodical medical examinations that young persons have to undergo during employment, but not the thorough medical examination of their fitness for work. Observing that the Ministry of Labour, with the technical assistance of the Bolivian Standardization and Quality Institute (IBNORCA) had drawn up regulations under the General Occupational Safety, Health and Welfare Act, covering work by children in industry, commerce, mining and agriculture, the Committee requested the Government to provide information on the progress achieved in terms of the establishment of a thorough medical examination before admission to employment in the framework of the implementation of these regulations.

The Committee notes the information provided by the Government that the regulations under the General Occupational Safety, Health and Welfare Act, which address work by children in industry, commerce, mines and agriculture, have not been approved. However, the Government indicates in its report that the Ministry of Labour, Employment and Social Welfare is preparing a new Bill on occupational safety and health. ***The Committee expresses the firm hope that the Bill on occupational safety and health will be adopted in the very near future and that it will contain provisions to the effect that children and young persons under 18 years of age may not be admitted to employment in an industrial enterprise unless they have been found fit for the employment in which they will be engaged following a thorough medical examination. It requests the Government to provide information on any progress achieved in this respect.***

***With regard to the frequency of the periodical medical examinations (Article 3(2) and (3)), the medical examinations required until the age of at least 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 children and young workers found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations (Article 6), the Committee expresses the firm hope that the Bill on occupational safety and health will be adopted in the near future so as to guarantee compliance with these provisions of the Convention. It requests the Government to provide information in its next report on any progress achieved in this respect.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that, due to economic constraints, there are certain shortcomings in the application of the Convention, particularly in the capitals of remote departments, such as Cobija and Trinidad, and in rural areas. Nevertheless, it noted that the Government has adopted 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 notes the information provided by the Government that the Ministry of Labour, Employment and Social Welfare has registered three cases of children aged between 10 and 14 years who underwent a medical examination during the course of 2009. ***The Committee encourages the Government to continue providing information on the progress achieved in relation to the application of the Convention in practice, including through the provision, insofar as the available capacity so allows, of statistical data on the number of children and young persons who are engaged in work and have undergone the periodical medical examinations envisaged in the Convention, as well as extracts from the reports of the inspection services relating to the infringements reported and the penalties imposed.***

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1973)**

*Article 7(2) of the Convention. Supervision of 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.* Further to its previous comments, the Committee notes the Government’s indication that the Ministry of Labour, Employment and Social Welfare is preparing a new Bill on occupational safety and health. ***The Committee expresses the firm hope that the Bill on occupational safety and health will be adopted in the near future and that it will contain provisions determining the measures of identification to ensure 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 in places to which the public have access, as well as the other methods of supervision to be adopted for ensuring the strict enforcement of the Convention, in accordance with Article 7(2). In this respect, the Committee requests the Government to take into account the indications contained in the Medical Examination of Young Persons Recommendation, 1946 (No. 79), and particularly in Paragraph 14 on methods of supervision.***

The Committee also invites the Government to refer to its comments concerning the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77).

### **Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1977)**

In its previous comments the Committee noted that the Ministry of Labour, with the technical assistance of the Bolivian Standardization and Quality Institute (IBNORCA), had drafted the implementing regulations for the General Act concerning occupational safety, health and welfare, in relation to the work of young persons in industry, commerce,

mining and agriculture. It requested the Government to provide information on the progress made with regard to the adoption of this legal text.

The Committee notes the information supplied in the Government's report concerning the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), according to which the implementing regulations for the General Act concerning occupational health, safety and welfare have not been approved. However, the Government indicates in its report that the Ministry of Labour, Employment and Social Welfare is drafting a new bill concerning occupational safety and health. **Observing that the Plurinational State of Bolivia ratified the Convention more than 30 years ago, the Committee expresses the firm hope that the bill concerning occupational safety and health will be adopted in the near future in order to give effect to the provisions of the Convention. It requests the Government to provide information in its next report on any progress made in this regard.**

*Part V of the report form. Application of the Convention in practice.* Further to its previous comments, the Committee notes the Government's indication that the Ministry of Labour, Employment and Social Welfare presented, on 22 August 2011, the child labour inspection system (SITI), which will make it possible to obtain information on the number of children and young persons working in the country. It notes that this inspection system is based on a standard questionnaire which seeks to evaluate the conditions of work of these children and young persons and which is particularly concerned with the issue of the medical examination concerning fitness for employment. **Further to the introduction of the new child labour inspection system, the Committee requests the Government to provide information in its next report on the number of children and young persons covered by the Convention and also extracts from the reports of the inspection services.**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1997)**

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* With reference to its previous comments, the Committee takes due note of the information provided by the Government on the various measures adopted in the framework of the National Plan for the Gradual Elimination of Child Labour (2000–10) (PNEPTI (2000–10)) and the Three-year Plan (2006–08), adopted following the mid-term review of the PNEPTI (2000–10). It observes that the Ministry of Labour, Employment and Social Welfare has been providing training since 2003 on the subject of child labour, particularly for judges. It notes that the experience acquired during these training courses has been set down in two manuals intended for the staff of the labour inspection services. The Government adds that training workshops on the standards applicable in the field of child labour have been undertaken by the labour inspectorate, with the participation in 2009 of around 700 employers, workers and young persons. In addition, in 2009 labour inspectors undertook over 90 technical inspections in various sectors of the economy, such as the sugar-cane harvest and work in mines. Finally, the Committee notes that the final evaluation of the PNEPTI (2000–10) and of the Three-year Plan (2006–08) is currently being carried out and that the Government envisages formulating a new five-year plan based on the results of this evaluation.

The Committee notes the study on the extent and characteristics of child labour in Bolivia, contained in the 2008 national report published by ILO–IPEC in 2010 based on the results of the child labour survey carried out by the National Statistical Institute (INS) in collaboration with the ILO–IPEC Statistical Information and Monitoring Programme on Child Labour (SIMPOC) during the last quarter of 2008. According to the results of the survey, nearly 23 per cent of children aged between 5 and 14 years, or 491,000 children, are engaged in economic activity in the country. This phenomenon is particularly common in rural areas, where nearly 60 per cent of children aged 5–14 years are engaged in an economic activity, with the rate being higher among boys than girls. The Committee also notes with **concern** that over 14 per cent of children under 14 years of age, or 437,000 children, are engaged in hazardous work. **While taking due note of the efforts made by the Government to combat child labour, the Committee observes that a significant number of children below the minimum age are engaged in work, including in hazardous conditions, and it therefore urges the Government to renew its efforts to ensure the progressive elimination of child labour, paying particular attention to children living in rural areas and engaged in hazardous types of work. In this respect, it requests the Government to provide detailed information in its next report on the implementation of the new five-year plan. Furthermore, the Committee requests the Government to continue providing information on the application of the Convention in practice, including statistics on the employment of children under 14 years of age and extracts from the reports of the inspection services.**

*Article 3(2). Determination of hazardous types of work.* In its previous comments, the Committee noted that, according to the information provided in the ILO–IPEC report of December 2007 concerning the project “Eradicating child labour in Latin America (Phase III)”, a process was initiated in 2007 for the determination of a list of hazardous types of work prohibited for children under 18 years of age.

The Committee takes due note of the Government's indication that the Ministry of Labour, Employment and Social Welfare has submitted a draft Presidential Decree to determine the list of hazardous types of work. It notes that this draft text is currently being examined by the Political and Economic Review Unit. **The Committee once again expresses the hope that the list of the types of work prohibited for children under 18 years of age will be adopted in the very near future. It requests the Government to provide information on any progress achieved in this respect and on the consultations that are held with employers' and workers' organizations for the determination of these types of work.**

*Article 6. 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. It also noted that sections 137 and 138 of the Code of Children and Adolescents, 1999 (the 1999 Code), regulate apprenticeship, but do not specify the minimum age required for admission to apprenticeship. The Government indicates in its report that labour inspectors are responsible for implementing measures to ensure that children under 14 years of age are not engaged in apprenticeships. The Committee acknowledged that measures to reinforce the labour inspection services are essential to combat child labour. However, it noted that labour inspectors need a basis in law consistent with the Convention to enable them to ensure that children are protected against conditions of work liable to jeopardize their health or development. Moreover, it observed that the provisions of the national legislation regulating the age of admission to apprenticeship are not consistent with the Convention.

The Committee notes with *regret* that the Government's report does not provide information on this matter. However, it notes that, according to the information contained in the ILO-IPEC report of July 2010 on the project entitled "Eradicating child labour in Latin America (Phase III)", the National Commission for the Elimination of Child Labour has worked on a proposed reform of the 1999 Code with the support of UNICEF and the ILO. In this respect, the Committee reminds the Government that, by virtue of *Article 6* of the Convention, the latter does not apply to work done by persons *at least 14 years of age* in undertakings, where such work is carried out as part of a course of education or a programme of training or guidance, in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned. ***Observing that the Plurinational State of Bolivia ratified the Convention over ten years ago, the Committee urges the Government to take the necessary measures to bring the provisions of the national legislation into conformity with Article 6 of the Convention by establishing a minimum age for admission to apprenticeship of 14 years. It requests the Government to provide information in its next report on any progress achieved in the adoption of a draft reform of the Code of Children and Adolescents of 1999.***

*Article 9(3). Keeping of registers.* In its previous comments, the Committee noted that the national legislation does not contain provisions giving effect to the obligation of the employer to keep registers. The Government indicated that a ministerial resolution was being drafted requiring employers to keep a register of children under 18 years of age who work for them.

The Committee notes that the Government's report does not provide information concerning the adoption of the ministerial resolution. ***Observing that this matter has been raised for many years, the Committee expresses the firm hope that the ministerial resolution will be adopted in the very near future and that it will contain provisions giving full effect to Article 9(3) of the Convention. It requests the Government to provide information in its next report on any progress achieved in this respect.***

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)***

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Debt bondage and forced or compulsory labour. Child labour in sugar cane and Brazil nut harvesting.* In its previous comments, the Committee noted a communication from the International Trade Union Confederation (ITUC) indicating that over 10,000 children work with their parents in the sugar harvest in the country. The tasks performed by children vary: boys work with the men in cutting sugar cane, and girls and young children work with the women in gathering, stripping and bundling the cane. They work very long hours, suffer from respiratory ailments and sustain injuries through the use of machetes. The ITUC added that, in the case of the Brazil nut harvest, children start at the age of 7 helping their parents in plantations, assisting with picking and processing the fruit. The work they do is hazardous because they use machetes to crack the nuts and extract the kernels, and they have to walk for hours to find the fruit-bearing trees and work begins in the middle of the night. According to the ITUC, child labour in the sugar industry and in the nut harvest is a practice similar to slavery because the children have no alternative but to work with their parents. They therefore have joint liability with their parents for the debt and are compelled to work to help their parents repay it. The Committee also noted the study entitled *Enganche y Servidumbre por Deudas en Bolivia* (Entrapment and debt bondage in Bolivia), published by the Office in January 2005, which reports that tens of thousands of indigenous agricultural workers are in a situation of debt bondage in the country, certain of whom are subject to permanent or semi-permanent forced labour in the Chaco region, as well as in the areas of Santa Cruz and Tarija (sugar harvesting) and the northern Amazon (Brazil nut harvesting).

The Committee notes the information contained in the Government's report that, following an assessment of the situation carried out in 2007 by the NGO *Cedla* at the request of the Ministry of Labour, Employment and Social Welfare, with the support of UNICEF, on the situation of children and their families working in the sugar cane and Brazil nut harvest in the departments of Beni and Pando (frontier regions with Brazil), it was found that, of the 16,957 workers identified in total, 4,671 were under 18 years of age and worked under conditions of exploitation. The Committee, however, notes that the Government's report does not provide information on the number of investigations conducted and prosecutions initiated following this assessment.

The Committee also notes that the United Nations Committee on the Rights of the Child (CRC), in its concluding observations of 16 October 2009 on the Government's fourth periodic report (CRC/C/BOL/CO/4, paragraph 73), expressed particular concern at the situation of the Guarani children living in conditions of servitude, who are victims of

forced labour and abuses in the Chaco region. ***The Committee once again urges the Government to take the necessary measures to ensure that persons using the labour of children under 18 years of age in the sugar cane and Brazil nut harvesting industry in conditions of debt bondage or forced labour are prosecuted and that effective and dissuasive sanctions are applied to them. It once again requests the Government to provide information in its next report on the effect given in practice to the provisions of the national legislation respecting these worst forms of child labour, including statistics on the number and nature of the offences reported, the investigations undertaken, prosecutions, convictions and penal sanctions applied.***

*Article 3(d). Hazardous work. Children working in mines.* The Committee previously noted ITUC's indications that over 3,800 children work in the tin, zinc, silver and gold mines in the departments of Ururo, Potosí and La Paz. Children who work in the rivers of gold mines are engaged in extracting and washing gold deposits. However, the rivers are contaminated with mercury, sulphur and other chemicals used in mining. Furthermore, because of their small size, children aged 8 to 12 years are sent into certain narrow parts of the mine where an adult would not be able to pass. Children also work on extracting ore and preparing and exploding dynamite. Sometimes, in mines where there are no wagons to shift heavy ore, the children have to carry it on their shoulders to the ore processing area. In the first step of processing, the children have to handle a tool – a very heavy stone that can weigh up to 60 kilos, which they balance with the help of a metal plank on smaller stones. In the second phase, they have to recover the remaining ore, which is mixed with chemicals, and are in danger of suffering burns and inhaling toxic gases. The Committee notes that section 134 of the Code on Children and Adolescents contains a detailed list of the types of hazardous work prohibited for young people, some of which are related to the work carried out by children in mines, including the transport of heavy loads, the handling or inhaling of toxic substances and the handling of dangerous tools or explosives. It requested the Government to provide information on the application in practice of the national legislation.

The Committee observes that the Government's report does not provide information in this regard. It notes that the CRC, in its concluding observations of 16 October 2009 on the Government's fourth periodic report (CRC/C/BOL/CO/4, paragraph 73), expressed particular concern at the situation of children engaged in hazardous work in mining. ***The Committee urges the Government to take the necessary measures in law and practice to protect children under 18 years of age from hazardous work in mining. In that respect, it requests it to take the necessary steps to ensure that in-depth investigations and effective prosecutions are carried out against persons who employ children under 18 years of age in hazardous work in mines and that sufficiently effective and dissuasive sanctions are applied to them. It once again requests the Government to provide information in its next report on the effect given in practice to the provisions of the national legislation.***

*Article 5. Monitoring mechanisms.* Further to its previous comments, the Committee notes the Government's indication that the Ministry of Labour, Employment and Social Welfare now has four labour inspectors specialized in child labour. These inspectors are located in the departments of Santa Cruz, Tarija, Potosí and Beni. According to the Government, 90 technical inspections were carried out in 2009 in the sugar cane industry in Santa Cruz and Bermejo, in the Brazil nut harvest in Riberalta and in the mining sector in Potosí. These inspections showed that the use of children under 14 years of age for work was only found in 5 per cent of cases. The Committee, nevertheless, notes that, according to the information contained in a report on the worst forms of child labour of 15 December 2010, available on the website of the United Nations High Commissioner for Refugees, labour inspectors carry out inspections in response to complaints, but not surprise inspections, due to the lack of resources. Moreover, inspectors encounter difficulties in gaining access to plantations in the Chaco region. ***The Committee therefore requests the Government to intensify its efforts to strengthen the capacities of the labour inspection services and to ensure that regular inspections, including unscheduled inspections, are carried out with a view to improving the surveillance of child labour, particularly in sugar cane and Brazil nut harvesting, as well as in the mining sector. It requests the Government to continue providing information on the results achieved through these inspections.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and providing assistance for their removal from such labour and for their rehabilitation and social integration.* 1. *Debt bondage and forced and compulsory labour. Child labour in the sugar cane and Brazil nut harvesting industry.* In its previous comments, the Committee noted that an education strategy had been put into effect by the Ministry of Labour and the *Fundación Hombres Nuevos*, in collaboration with UNICEF, in ten municipalities in the sugar cane area of Santa Cruz. Over 3,000 girls and boys and their families, and 60 teachers from education units, were to benefit from the strategy. The Committee requested the Government to provide information on the results achieved.

The Committee notes that the Government's report does not provide information on this matter. However, it notes the indication that the Government is envisaging the formulation of a new five-year plan based on the results of the final evaluation of the National Plan for the Gradual Elimination of Child Labour (2000–10) (PNEPTI (2000–10)) and the Three-Year Plan for the Progressive Elimination of Child Labour (2006–08) (Three-Year Plan (2006–08)). ***The Committee strongly encourages the Government to strengthen its efforts and requests it to take effective time-bound measures in the context of the five-year plan to prevent children becoming victims of debt bondage or forced labour in the sugar cane and Brazil nut harvesting industry and to remove child victims from these worst forms of child labour***

**and ensure their rehabilitation and social integration. It requests the Government to provide detailed information in its next report on the measures adopted in this respect and the results achieved.**

2. *Child labour in mines.* The Committee previously noted the awareness-raising and educational measures and the economic alternatives offered to the families of children working in mines. It noted with interest that 20 per cent of the children who participated in the vocational training programme stopped working in mines and that the remaining 80 per cent reduced their hours of work. Finally, it noted that the Three-Year Plan (2006–08) and the PNEPTI (2000–10) had both set the objective of the elimination of child labour in mining.

The Committee notes the information contained in the Government's report that the Inter-Institutional Commission for the Elimination of Child Labour (CIEPTI), in collaboration with the NGO Care, has been implementing, since May 2009 a project entitled *Oportunidades Educativas para adolescentes en Distritos Mineros del Cerro Rico de Potosí* (Educational opportunities for young persons in the mining areas of the Cerro Rico de Potosí). The primary objective of the project is to prevent young persons working in mines through the provision of vocational training programmes. It also notes that awareness-raising and educational measures have continued in two mining districts, Llallagua and Potosí, with the participation of 167 students in 2009. Finally, the Committee notes that the Government envisages the adoption of a new five-year plan as a follow up to the PNEPTI (2000–10) and the Three-Year Plan (2006–08). **The Committee strongly encourages the Government to pursue its efforts and requests it to provide information on the measures adopted or envisaged in the context of the five-year plan to: (a) prevent children under 18 years of age from being engaged in hazardous types of work in mines; and (b) provide 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 results achieved in terms of the number of children and young persons benefiting from these measures.**

*Clause (d). Identifying and reaching out to children at special risk. Indigenous children.* In its previous comments, the Committee noted that in the large estates of the Chaco region, families of the Guarani community are subject to debt bondage, as a result of which the children of these families are in the same situation. It noted that a national plan of action for the elimination of forced labour was to be adopted, which would take into account the problem of Guarani families in a situation of debt bondage and include special measures for the children of these families.

The Committee notes the Government's indication that the CIEPTI held consultations in 2009 with 80 Quechua and Guarani communities concerning their views and position with regard to the issue of child labour. The final objective of this consultation process is the formulation of public policies on the matter. The Government's report adds that the NGO Dya, in collaboration with the CIEPTI, has been implementing a three-year project (October 2007 – January 2011) in the department of Santa Cruz, with the objective of offering educational opportunities to 5,800 indigenous children and young persons who are engaged, or are liable to be engaged in agricultural work, domestic service, agro-industry, trading and forced labour.

The Committee nevertheless notes that the CRC, in its concluding observations of 16 October 2009 on the Government's fourth periodic report (CRC/C/BOL/CO/4, paragraph 73), expressed particular concern at the persistence of the economic exploitation of indigenous children. **Observing that the children of indigenous peoples are often the victims of exploitation, which takes on very diverse forms, and are a population at risk of being subject to the worst forms of child labour, the Committee requests the Government to intensify its efforts to protect these children from the worst forms of child labour. It requests the Government to continue providing information on the measures adopted, particularly in the context of the National Plan of Action for the Elimination of Forced Labour, to prevent these children from being in a situation of debt bondage or forced labour and from being recruited to carry out hazardous work in mines.**

*Part V of the report form. Application of the Convention in practice.* Further to its previous comments, the Committee notes the study on the extent and characteristics of child labour in Bolivia, contained in the 2008 national report published by the ILO–IPEC in 2010 and based on the results of the child labour survey carried out by the National Statistical Institute (INS) in collaboration with the ILO–IPEC Statistical Information and Monitoring Programme on Child Labour (SIMPOC) during the last quarter of 2008. According to the survey, 848,000 children, or nearly 28 per cent of children and young persons in the country between the ages of 5 and 17 years, are engaged in a paid or unpaid economic activity. Most of them work in agriculture and mining and are unpaid family workers. The Committee also notes that the great majority of these children perform hazardous types of work (746,000 children and young persons between 5 and 17 years of age). This is particularly the case for indigenous children and young persons in rural areas (between 78 and 80 per cent of the total population of indigenous girls and boys in rural areas). The Committee nevertheless observes that, with regard to the worst forms of child labour, only statistics concerning hazardous types of work were captured in the 2008 survey. **Expressing grave concern at the number of children and young persons performing hazardous types of work, and particularly indigenous children in rural areas, the Committee strongly encourages the Government to intensify its efforts to ensure the elimination of the worst forms of child labour in the country. It requests the Government to continue providing information on the nature, extent and trends of the worst forms of child labour, particularly in the agricultural and mining sectors. To the extent possible, all information should be disaggregated by sex and age.**

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

## Botswana

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that most sexual offence provisions in the Penal Code referred only to girls, and that there did not appear to be any similar provisions protecting boys. However, the Committee noted the information in a report entitled “Discussion document on child labour in Botswana”, released by the Ministry of Social Security in conjunction with the ILO in 2006, that some boys, as well as girls, were victims of commercial sexual exploitation. The Committee requested the Government to take measures immediately to secure the prohibition of the use, procuring or offering of both boys and girls for the purpose of prostitution.

The Committee notes with **satisfaction** that sections 57(1) and 57(3) of the Children’s Act of 2009 (adopted on 16 June 2009) penalizes any person who induces, coerces or encourages any child to engage in prostitution, or who induces, coerces or encourages any person to prostitute or cause the prostitution of any child, and that section 2 of the Act defines a child as any person under 18 years of age. The Committee also notes that such an offence is subject to a fine and imprisonment, pursuant to section 57 of the Children’s Act of 2009.

*Use, procuring or offering of a child for the production of pornography or for pornographic performances.* Following its previous comments, the Committee notes with **satisfaction** that section 58(1) of the Children’s Act of 2009 prohibits the involvement of a child in the making of pornographic materials. The Committee also notes that such an offence is subject to a fine and imprisonment, pursuant to section 116 of the Children’s Act of 2009.

*Clause (c). Use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs.* The Committee previously observed an absence of legislative provisions prohibiting the use, procuring or offering of a child for the production and trafficking of drugs. In this regard, the Committee notes with **satisfaction** that section 60 of the Children’s Act of 2009 prohibits the use of a child in the production or trafficking of narcotic or intoxicating drugs. The Committee also notes that such an offence is subject to a fine and imprisonment, pursuant to section 63 of the Children’s Act of 2009.

*Article 4(1). Determination of hazardous work.* The Committee previously noted that, pursuant to section 108 of the Employment Act, the Commissioner may notify any employer that the kind of work in which a young person (defined as a person between 15 and 18) is employed is harmful to his health and development, dangerous, immoral or otherwise unsuitable and that “every employer who is so notified shall immediately cease to employ the young person concerned”. The Committee noted that Commissioner had not yet determined the types of hazardous work prohibited to persons under 18 years of age, although consultations with social partners were ongoing on this issue.

The Committee notes the Government’s statement that the list of hazardous types of work has been considered by the Tripartite Labour Advisory Board. In this regard, the Committee notes the information in the ILO–IPEC report for Phase II of the project entitled “Towards the elimination of the worst forms of child labour” (TECL) of September 2010 that this list will be undergoing another review before its endorsement and subsequent presentation to the Minister for Labour, to be gazetted as an official legal document. This ILO–IPEC report also indicates that the Department of Labour has circulated a cabinet memorandum to all the relevant ministries accompanied by this draft list for their endorsement. **The Committee urges the Government to pursue its efforts to ensure the adoption, in the near future, of the list determining the types of hazardous work prohibited to persons under 18 years of age. It requests the Government to supply a copy of this list, once it has been adopted.**

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour. Child victims of commercial sexual exploitation.* Following its previous comments, the Committee notes the Government’s statement that prevention and withdrawal efforts related to child commercial sexual exploitation are ongoing, and that two implementing agencies have been engaged to work in this area. In this regard, the Committee notes the information in the ILO–IPEC Outline Summary for the action programme entitled “Contributing to the elimination of worst forms of child labour in Botswana with special emphasis on agriculture and the commercial sexual exploitation of children” of March 2010 that this action programme seeks to prevent 28 boys and 86 girls from becoming victims of commercial sexual exploitation, as well as removing two boys and seven girls from this worst form of child labour. This ILO–IPEC document indicates that children withdrawn from commercial sexual exploitation will be referred to a counsellor for psychosocial support and, as necessary, referred to social workers for linkage with social services, hospitals for medical check-ups and the police. The Committee welcomes this initiative, especially in view of the fact that the United Nations Committee on the Elimination of Discrimination Against Women, in its concluding observations of 26 March 2010, expressed concern that women and girls in Botswana are entering prostitution to support themselves and their families as a result of poverty (CEDAW/C/BOT/CO/3, paragraph 27). **The Committee urges the Government to strengthen its efforts, in collaboration with ILO–IPEC, to provide the necessary and appropriate direct assistance for the removal of child victims of commercial sexual exploitation and to ensure their rehabilitation and social integration, including through poverty reduction measures. It requests the Government to provide information on the number of children removed from commercial sexual exploitation and who have benefited from rehabilitative services through the effective and time-bound measures taken.**

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

## Brazil

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Article 1 of the Convention and Part V of the report form. National policy and practical application of the Convention.* In its previous comments, the Committee noted the ILO–IPEC information that the operation of a **Time-bound Programme**, as well as other programmes of action, had created a favourable environment for combating child labour in the country. It also noted that the federal Government, as well as the state and municipal governments, have been collaborating with ILO–IPEC since March 2008, to strengthen the national policy for the elimination of child labour and the worst forms thereof and that a subcommittee of the National Council for the Elimination of Child Labour (CONAETI) was established to review the National Plan for the Prevention and Elimination of Child Labour and Protection of Young Workers. Lastly, the Committee noted that, within the context of the Bahia Decent Work Agenda, the Brazilian authorities and ILO–IPEC had begun implementing a project to make Bahia the first state in the country without child labour.

The Committee notes the Government’s statement that the subcommittee finalized the new National Plan for the Prevention and Elimination of Child Labour and Protection of Young Workers and that this National Plan was approved by CONAETI in April 2010, and by the National Council for Children’s Rights (CONANDA) in May 2010. The Government indicates that the new version is awaiting signature by the Ministers of State concerned by the Plan prior to publication. The Committee notes the information in the ILO–IPEC report on the project “Eliminating the worst forms of child labour in Brazil – Support for the **Time-bound Programme** on the elimination of the WFCL (Addendum)” of August 2010 that the revised National Plan for the Prevention and Elimination of Child Labour and Protection of Young Workers sets up time-bound targets and assigns national institutions specific responsibilities for implementing programmes and activities. The Committee also notes the information in the Government’s report that it has a specific inspection scheme regarding the elimination of child labour, which is part of the Programme for the Elimination of Child Labour (under the direction of the Ministry of Social Development and Combating Hunger). The Government indicates that, between 2003 and the first half of 2010, a total of 56,460 young persons have been reached through labour inspections. In 2007 and 2009, labour inspections resulted in the regularization of 18,776 children and young persons, who were removed from premature employment and placed under the Child and Youth Protection Network, which includes the possibility of participating in income transfer initiatives, such as the *Bolsa Família* programme. The Government indicates that, although it has steadily increased the number of labour inspections carried out (from 981 inspections in 2007 to 1,109 in 2008 and 1,240 in 2009), the number of working children detected has decreased, as a result in the overall decline in the number of working children.

With regard to initiatives in Bahia, the Committee notes the information in the ILO–IPEC report for the project “Support to national efforts towards a child labour-free state, Bahia” of September 2010 that the Ministry for the Social Development and Combating Hunger and the Labour Prosecutor’s Office are jointly implementing a mechanism that actively searches and monitors potential child labourers. Measures have also been taken to raise awareness among key partners and to train identification agents in municipalities where the active identification of children in child labour is necessary. This ILO–IPEC report indicates also that 11,993 children in child labour have been identified thus far, and the project has reached 172 per cent more beneficiaries than initially targeted for withdrawal, including 6.02 per cent of all the child labourers in the state of Bahia.

Lastly, the Committee notes the detailed statistical information provided in the Government’s report from the 2008 National Household Sample Survey, conducted by the Brazilian Geographical and Statistical Institute. The Committee notes with **interest** that child labour has declined steadily in recent years. Between 1992 and 2008, the rate of child labour dropped from 3.6 per cent to 0.9 per cent for children between the ages of 5 and 9 years, and from 21.9 per cent to 9.6 per cent for children between the ages of ten and 15 years. In this respect, the Committee welcomes the measures taken by the Government to abolish child labour, which it considers to be an affirmation of its political will to develop strategies to combat this problem. However, despite the significant progress achieved, the Committee observes that important challenges remain. For example, in 2008, approximately 2,144,770 children aged 5–15 continued to be engaged in child labour (1,447,750 boys and 697,020 girls). The 2008 Household Sample Survey also indicates that, while the percentage of working girls decreased by 25 per cent between 2006 and 2008, the percentage of working boys decreased more slowly (by 18.6 per cent) over this same period. In this regard, the Committee notes that 67.5 per cent of working children in Brazil are boys. **The Committee therefore strongly encourages the Government to pursue its efforts to combat child labour in Brazil. It also encourages the Government to pursue its efforts to make Bahia the first state in Brazil without child labour. It requests the Government to continue to provide information on the measures taken in this respect, as well to continue to provide statistical information on the results achieved, particularly with regard to decreasing the number of boys working under the minimum age. Lastly, it requests the Government to provide a copy of the National Plan for the Prevention and Elimination of Child Labour and Protection of Young Workers, once published.**

*Article 2(1) of the Convention. Minimum age for admission to employment or work. Work performed in streets and public places.* The Committee previously noted that section 405(2) of the Consolidated Labour Act states that work

performed by a minor between 14 and 18 years of age in streets and other public places must be subject to prior authorization by a juvenile court. The Committee observed that this appeared to permit work in streets or other public places from the age of 14, although the specified minimum age for admission to employment or work is 16 years. It requested the Government to indicate the measures taken or envisaged to ensure that no minor under 16 years of age is admitted to employment or work in the streets or other public places.

The Committee notes with *satisfaction* the Government's statement that, as work on the street or other public places is identified on the List of the Worst Forms of Child Labour (Decree No. 6.481 of 12 June 2008), the minimum age for this type of work is 18 years. In this regard, the Committee notes that item 73 of Decree No. 6.481 prohibits persons under 18 from working in the streets or other public places, listing the examples of street vendors, car attendants, tour guides and work involving the transportation of persons or animals.

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children for economic and sexual exploitation.* In its previous comments, the Committee noted that although the national legislation prohibits the sale and trafficking of children, it continued to be a problem in practice. It noted the information in a 2006 ILO-IPEC report that Brazil is a country of transit, origin and destination for the sale and trafficking of children for the purpose of prostitution. Girls and boys are also victims of internal trafficking, particularly for economic exploitation in agriculture, mining and charcoal production. The Committee welcomed the adoption of a National Policy to Combat the Trafficking of Persons in 2006 and the adoption of a National Plan to Combat the Trafficking of Persons in 2008, but expressed concern at the persistence of the problem on a substantial scale in the country.

The Committee notes the information in the ILO-IPEC report for the project "Support to national efforts towards a child labour-free state, Bahia" of September 2010 that, as part of the National Plan to Combat the Trafficking of Persons, the Ministry of Justice is currently monitoring initiatives aimed at combating trafficking in the states of Acre, Bahia, Ceará, Goiás, Pará, Pernambuco and Rio de Janeiro. The Ministry of Justice is conducting technical visits to assess the results achieved through the US\$1 million invested (since 2008) to combat this crime. However, the Committee notes the statement in a 2008 report of the United Nations Office on Drugs and Crime (UNODC) entitled "Brazil National Conference: Challenges to the Implementation of the National Plan to Combat the Trafficking of Persons" that, in addition to the increased susceptibility of children to exploitation of trafficking, the growing phenomenon of sex tourism also increased the number of trafficked children and lowered the age at which they are exploited. The Committee also notes the information in a January 2010 report of the Government entitled "Enfrentamento ao Tráfico de Pessoas – Relatório do Plano Nacional" (Facing the Trafficking in Persons – Report of the National Plan) available on the UNODC website, that 38 persons were convicted of trafficking in 2006, 38 in 2007 and 28 in 2008. The Committee further notes the indication in this report that the trafficking of children continues to be reported and that the National Hotline for the Denunciation of Sexual Abuse and Exploitation of Children received 381 reports of cases of child trafficking from February 2005 to 2009. Lastly, the Committee notes the statement in a report of the International Trade Union Confederation (ITUC), for the World Trade Organization General Council on the trade policies of Brazil of 9–11 March 2009, entitled "Internationally recognized core labour standards in Brazil" that, despite the legal prohibition on trafficking, the trafficking of women and children for the purpose of sexual exploitation is common in Brazil, both domestically and internationally. ***The Committee therefore requests the Government to intensify its efforts to combat the trafficking of children for sexual and labour exploitation. It requests the Government to provide, in its next report, information on the concrete measures taken to this end and on the results achieved. In this regard, it requests the Government to supply information on the application in practice of the provisions of national legislation prohibiting the sale and trafficking of persons under 18 years of age, including, in particular, statistics relating to the number of investigations, prosecutions, convictions and penalties imposed. To the extent possible, all information provided should be disaggregated by sex and age.***

*Article 5. Monitoring mechanisms. Commercial sexual exploitation of children.* The Committee previously noted the Government's indication that an information system on locations of child labour (SITI) had been established, containing detailed information on locations where child labour, including the worst forms of child labour, occurs, including information concerning the commercial sexual exploitation of children. This information system contributed to the planning of actions by the labour inspectorate, particularly by the regional superintendencies for labour and employment.

The Committee notes the statement in the Government's report that the SITI continues to report on locations where child labour occurs, contributing to the planning of inspections and the combating of the worst forms of child labour. The Government also indicates that, in July 2009, the Secretariat of Labour Inspection (SIT) decided that actions to eliminate child labour should, as a priority, target activities related to the worst forms of child labour. However, the Committee notes an absence of information in the Government's report on any specific measures taken to combat the commercial sexual exploitation of children. ***The Committee therefore requests the Government to provide information on the concrete measures taken, including by the SIT, to combat the commercial sexual exploitation of children, and on the results achieved.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assistance for their removal from these worst forms of child labour and for their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee previously requested the Government to provide information on the time-bound measures taken, within the context of the National Policy and the National Plan to Combat the Trafficking of Persons.

The Committee notes the information from ILO-IPEC that its project entitled “Integrated action to combat trafficking of girls and boys for commercial sexual exploitation in Brazil” came to an end in September 2008, and that the ILO-IPEC project entitled “Combating trafficking in persons in Brazil” came to an end in October 2008. The Committee also notes the information in the ILO-IPEC report for the project entitled “Support to national efforts towards a child labour-free state, Bahia” of September 2010 that, as part of the National Plan to Combat the Trafficking of Persons, the Ministry of Justice has undertaken activities to provide training to persons who work with victims of this worst form of child labour. The Committee further notes the information in the Government’s report of January 2010 available on the UNODC website, entitled “Facing the trafficking in persons – Report of the National Plan” that, as part of the National Plan to Combat the Trafficking of Persons, a survey was conducted in 2007 and 2008 on the best practices and experiences of services aimed at preventing the trafficking of children, in partnership with the ILO. This report also indicates that, in September and October 2009, a survey was conducted on special social protection service units, by the Ministry of Social Development and Combating Hunger, to determine which units provide services to persons at risk of trafficking or sexual exploitation, and which units provide services to child and adolescent victims of these worst forms of child labour. In addition, the Committee also notes the information from the International Organization for Migration (IOM) that it is operating a regional project which provides assistance to victims of trafficking in the tri-border area of Argentina, Brazil and Paraguay. ***The Committee requests the Government to continue to provide information on the measures taken within the framework of the National Plan to Combating the Trafficking of Persons, to prevent children from becoming victims of trafficking, and to provide rehabilitation services to children removed from this worst forms of child labour. The Committee also requests the Government to supply information on the results achieved, including the number of children who have received appropriate services for their rehabilitation and social reintegration.***

*Clause (d). Identifying and reaching out to children at special risk. Child domestic workers.* The Committee previously noted the indication from the ITUC that, according to the 2004 ILO-IPEC study, there were over 500,000 child domestic workers in Brazil, many vulnerable to exploitation and working under conditions prohibited by the Convention. These children, particularly girls, do not attend school, and over 88 per cent of them begin well before the minimum age for admission to employment, normally at five or six years of age. However, the Committee noted that the List of the Worst Forms of Child Labour (Decree No. 6.481 of 12 June 2008) included child domestic work as one of the types of activities prohibited to any person under 18 years of age. It also noted that, according to the 2008 ILO-IPEC report on the ***Time-bound Programme***, a sectoral plan on domestic workers (PLANSEQ) was being implemented to support this category of workers and inform them of their rights.

Referring to its 2010 comments made under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee notes the continued implementation of the PLANSEQ. The Committee also notes the Government’s statement that, under section 6 of the Normative Instruction 77/2009 of the SIT, the inspectorate combats child domestic work by advising the general public in the course of their duties and forwarding complaints to the competent authorities, in addition to awareness-raising measures. The Committee further notes the information in the ILO-IPEC report for the project “Support to national efforts towards a child labour-free state, Bahia” of September 2010 that initiatives regarding child domestic workers are ongoing in Bahia. Lastly, the Committee notes the Government’s indication in its report that, according to the 2008 National Household Sample Survey, 15.1 per cent of child labourers in the 5–13 year age group are domestic workers (approximately 192,050 child domestic workers between the ages of 5 and 13). ***Noting that a significant number of children are engaged in domestic work, the Committee urges the Government to pursue its efforts to ensure that persons under 18 are not involved in this prohibited type of work, in conformity with Decree No. 6.481 of 12 June 2008. It requests the Government to provide information on the impact of the specific measures taken in this regard, including through the PLANSEQ, particularly with regard to the number of child domestic labourers under 18 years of age removed from this type of work.***

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

## Burkina Faso

### ***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, clause (a), and Article 7(1), of the Convention. Sale and trafficking of children and sanctions.* In its previous comments, the Committee noted that there is a high level of trafficking of children for labour exploitation both within the country and as a source of child labour for other countries. The Committee also noted with interest that, since the adoption and implementation of Act No. 038-2003/AN of 27 May 2003 defining and repressing the trafficking of children (Act

No. 038-2003/AN of 27 May 2003), 31 cases of trafficking had been prosecuted in the 19 higher courts and 18 individuals had been sentenced to terms of imprisonment ranging from one to three years.

The Committee noted with interest the adoption of Decree No. 2008-332/PRES of 19 June 2008 promulgating Act No. 029-2008/AN of 15 May 2008 on combating trafficking in persons and similar practices (Act on combating trafficking in persons and similar practices). Under section 26 of this Act, Act No. 038-2003/AN of 27 May 2003 is repealed. The Committee took due note that sections 3 and 4 of the Act on combating trafficking in persons and similar practices provides for terms of imprisonment ranging from five to 20 years.

The Committee noted the information provided by the Government that it has continued and stepped up its efforts to combat the trafficking of children. It also noted the several court decisions handed down by the High Court between 2004 and 2007. The Committee noted that the individuals who have been prosecuted for the trafficking of children were found guilty and sentenced to terms of imprisonment ranging from two to 24 months, sometimes accompanied by a fine, and were ordered to pay costs. The Committee noted, however, that of the seven prison sentences handed down, six were suspended; one person was sentenced to two months' imprisonment and another to a fine of 50,000 CFA francs. The Committee reminded the Government that the trafficking of children is a serious crime and that, under *Article 7(1)*, of the Convention, the Government is obliged to take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect the Convention, including *the application of sufficiently effective and dissuasive penal sanctions. The Committee requests the Government to take the necessary measures to ensure that the penalties imposed on individuals found guilty of trafficking of children are sufficiently effective and dissuasive and that they are applied in practice. It requests the Government to provide information in this regard. The Committee also requests the Government to continue providing information on the application in practice of the Act on combating trafficking in persons and similar practices, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.*

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of labour. 1. Sale and trafficking of children.* The Committee previously took due note of the information provided concerning the implementation in the country of the ILO-IPEC Programme on Combating Trafficking in Children for Labour Exploitation in West and Central Africa (LUTRENA) and noted, in particular, that 632 children had benefited from the project and from educational support. It requested the Government to continue providing information on the measures taken in the context of the implementation of the LUTRENA programme. The Committee noted with interest the information provided by the Government that 716 children have been intercepted and returned to their families with the support of the social, technical and financial partners, including the vigilance committees. It also noted the Government's indication that, to ensure better care for victims of trafficking and their reintegration into their families, transit centres have been equipped with facilities in the three provinces of Fada, Pama and Diapaga. The Committee also noted that financial assistance is given to families of child victims of trafficking for income-generating activities and the children are placed in workshops and various vocational training centres or reintegrated into the school system. Furthermore, the Wend Zoodo reception centre has been renovated and four literacy centres have been equipped with facilities. Finally, the Committee noted that the country is participating in phase V of the LUTRENA programme. The Committee took due note of the measures taken by the Government to remove children from sale and trafficking and to ensure their rehabilitation and social integration, which it regards as a manifestation of its political will to eliminate this worst form of child labour. *The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to remove child victims from sale and trafficking by indicating, in particular, the number of children who have actually been removed from this worst form of labour, and on the specific rehabilitation and social integration measures taken for these children.*

*2. Project for small-scale gold mines in West Africa.* In its previous comments, the Committee noted that Burkina Faso is participating in the ILO-IPEC project entitled "Prevention and elimination of child labour in artisanal gold mining in West Africa (2005-2008)" (the ILO-IPEC project on artisanal gold mining), the objective of which 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 noted that, according to the information contained 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 gold mines and were receiving a school education.

The Committee noted with interest the detailed information provided by the Government concerning the ILO-IPEC project on artisanal gold mining which has been implemented on the gold-bearing site of Gorol Kadjè in Séno and the gold-bearing site of Zinguima in Bam. It noted, in particular, that two small schooling programmes have been implemented which have allowed the schooling of 248 children, including 130 girls, namely 93 children on the Zinguima site in Bam by the NGO Coalition in Burkina Faso for Children's Rights (COBUFADE) and 155 children on the Gorol Kadjè site in Séno by the NGO Action for the Promotion of Children's Rights in Burkina Faso (APRODEB). Overall, 657 children have been removed from the worst forms of labour in gold washing and have benefited from pre-school and school services, support in the form of school equipment, school clothing and afternoon snacks, and medical care. Furthermore, 16 groups of villagers have been created for income-generating activities in animal fattening, trading, dyeing and soap manufacture, including six groups of women and two groups of girls.

The Committee noted that two ILO-IPEC programmes are currently being implemented in the country, namely a programme on the rehabilitation and integration of child gold washers on the gold-bearing site of Gorol Kadjè through education and vocational training, and another which concerns support for the schooling of 310 children and the integration of 90 child workers, the protection of 120 child workers in the context of three young person clubs, support for income-generating activities for 90 mothers of gold-washing children and the mobilization of the community on the Zinguima site. Finally, the Committee noted that a basic study on child labour in gold washing in Zinguima and Gorol Kadjè is being carried out in the country. *The Committee requests the Government to continue its efforts to remove children from the worst forms of child labour in small-scale gold mines. It also requests it to continue providing information on the time-bound measures taken, particularly in the context of the implementation of the two ILO-IPEC programmes currently under way in the country, to provide 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, the Committee requests the Government to provide information on the basic study on child labour in gold washing in Zinguima and Gorol Kadjè as soon as it has been completed.*

*Clause (e). Taking account of the special situation of girls.* The Committee previously noted that, according to ILO-IPEC information on the LUTRENA programme, internal trafficking, which accounts for 70 per cent of cases, mainly concerns girls who are engaged in domestic labour or working as street vendors in the country's major cities. It noted that girls, particularly those employed in domestic work, are often 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 this work. The Committee requested the Government to provide information on the measures taken in the context of the LUTRENA programme to protect girls against labour and sexual exploitation. The Committee noted the information provided by the Government concerning the measures it has taken in the context of the ILO-IPEC project on artisanal gold mining to take into account the situation of girls, in particular through financial assistance for income-generating activities and their insertion into training centres to learn a trade or their reintegration into the school system. The Committee noted, however, that no information is provided with regard to the measures taken in the context of the LUTRENA programme. **The Committee therefore requests the Government to provide information on the time-bound measures taken in the context of the implementation of phase V of the LUTRENA programme to protect girls from the worst forms of child labour, including, in particular, the number of girl victims of sale and trafficking for labour or sexual exploitation who have actually been removed from this worst form.**

*Article 8. International cooperation and assistance.* 1. *Regional cooperation.* The Committee previously noted that the Government has signed bilateral cooperation agreements on the cross-border trafficking of children with the Republic of Mali and multilateral cooperation agreements on combating the trafficking of children in West Africa. It requested the Government to provide information on the implementation of these agreements. The Committee noted the Government's indication that statistics will be provided as soon as they are available. **The Committee expresses the hope that the Government will be able to provide information in its next report and once again requests it to 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.* In its previous comments, the Committee noted the draft Decent Work Country Programme for Burkina Faso. It noted 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. The Committee noted that the Government does not provide any information on this matter. **Noting once again 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 the implementation of the Decent Work 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 and those who carry out hazardous work in mines and quarries.**

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

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

## Burundi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

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

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. It also noted the statement by the Government that the socio-political crisis experienced by the country had aggravated the situation of children, some of whom were obliged to perform work "illegally" to support their families, very frequently in the informal economy and in agriculture. The Committee noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including farms, where such work is carried out on behalf of and under the supervision of an employer.

In its report, the Government confirmed that the country's regulations did not apply to the informal sector, which consequently escapes any control. Nevertheless, the question of extending the application of the labour legislation to this sector was to be discussed in a tripartite context on the occasion of the revision of the Labour Code and its implementing texts. The Committee reminded the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship, including own-account work. **It once again expresses the firm hope that the Government will take the necessary measures to extend the scope of application of the Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee requests the Government to provide information in this respect.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the ITUC's indications that the war had weakened the education system due to the destruction of many schools and the death or abduction of a large number of teachers. According to the ITUC, the school attendance rate is lower and the illiteracy rate higher for girls. The Committee further noted that, according to a report of the International Bureau of Education (UNESCO) of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi does not provide for free and compulsory primary education. Entry into primary education is around the age of 7 or 8 years and lasts six years. Children therefore complete primary education around the age of 13 or 14 years and then have to pass a competition to enter secondary education. The Committee further noted that in 1996 the Government had prepared a Global Plan of Action for Education designed to improve the education system, among other measures, by reducing inequalities and disparities in access to education and achieving a gross school attendance rate of 100 per cent by the year 2010.

The Committee duly noted the information provided by the Government in its report with regard to the various measures adopted in the field of education. It noted that, under article 53(2) of the Constitution of 2005, the State is under the obligation to organize public education and promote access to such education. It further noted that basic education is free of charge and that the number of children attending school tripled during the 2006 school year. In 2007, primary schools would be constructed and other mobile and temporary schools would be established. Furthermore, coordination units for girls' education had been established and over 1,000 teachers recruited. **The Committee once again encourages the Government to pursue its efforts in the field of education and to provide information on the impact of the above measures in terms of increasing the school attendance rate and reducing the drop-out rate, with special attention to the situation of girls. It also requests the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.**

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

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

The Committee notes the Government's report and the detailed discussion held during the 99th Session of the Conference Committee on the Application of Standards in June 2010.

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted with concern the use of children by the armed forces of the State as soldiers or helpers in camps, or to obtain information, as well as the low minimum age for recruitment into the armed forces. It noted that the Penal Code had been amended to provide improved protection for children against war crimes and that it now provides that the recruitment of children *under 16 years of age* in armed conflicts constitutes a war crime. It therefore requested the Government to take measures as a matter of urgency to amend the national legislation and prohibit the forced recruitment of young persons under 18 for use in armed conflict. The Committee also noted that, considering the relative calm experienced over most of the national territory since the Arusha Peace and Reconciliation Agreement of August 2000 and the Comprehensive Ceasefire Agreement, the Government had launched the implementation of a vast programme for the demobilization and reintegration of former combatants through three organizations, namely the National Commission for Demobilization, Reinsertion and Reintegration (CNDRR), the National Structure for Child Soldiers (SEN), and the ILO-IPEC project on "Prevention and reintegration of children involved in armed conflicts: An inter-regional programme".

The Committee notes with *satisfaction* that in his Report on children and armed conflict of 13 April 2010, the Secretary-General of the United Nations indicated that the revised Penal Code adopted by the National Assembly on 22 April 2009 now prohibits the recruitment of children into the national defence forces and lays down that 18 years is the minimum age for conscription (A/64/742-S/2010/181, paragraph 38). In addition, the Secretary-General of the United Nations also indicates that eight focal points from Agathon Rwasa's *Forces nationales de libération* (FNL) were named as being responsible for facilitating the separation of children associated with FNL combatants (A/64/742-S/2010/181, paragraph 17). On 10 April 2010, the remaining 228 children were released from five FNL pre-assembly areas. On 8 June 2010, 40 children associated with alleged FNL dissidents in the Randa and Buramata assembly areas were also released. The Committee notes with *interest* that, according to the report of the Secretary-General, it has been confirmed that the FNL has ceased to recruit children, and that since June 2010, no reported new cases of the recruitment or use of children by the FNL have been recorded (A/64/742-S/2010/181, paragraph 54). Consequently, Burundi has been removed from the list of countries monitored in accordance with Security Council Resolution No. 1612 (2005).

However, the Committee notes that the Secretary-General of the United Nations expressed concern at reports of militant activities by youth groups allegedly associated with certain political parties that are generating fear and suspicion (A/64/742-S/2010/181, paragraph 56). Furthermore, in his Seventh Report on the United Nations Integrated Office in Burundi of 30 November 2010, the Secretary-General of the United Nations adds that, owing to the heightened tensions that surrounded the general elections in 2010, there is a considerable risk that children and young people will be recruited, which therefore requires continued monitoring and preventive action (S/2010/608, paragraph 47).

In this respect, the Committee refers to the Conference Committee on the Application of Standards which, in its conclusions, requested the Government to ensure that the perpetrators of the forced recruitment of children under 18 years of age by armed groups and the rebel forces were prosecuted and that sufficiently effective and dissuasive penalties were applied. ***Observing that the situation in Burundi remains fragile and that there is still a risk of child soldiers being recruited, the Committee requests the Government to take the necessary measures to ensure the protection of children under 18 years of age against forced recruitment for use in armed conflict, by ensuring thorough investigations and robust prosecutions of offenders, and that sufficiently effective and dissuasive sanctions are imposed in practice. It requests the Government to provide information on the progress achieved in this respect.***

*Clause (b). Use, procuring or offering of children for prostitution.* The Committee previously noted that, in its communication, the Trade Union Confederation of Burundi (COSYBU) had indicated that the extreme poverty of the population encourages parents to allow their children to engage in prostitution. It noted that, although the national legislation prohibits this worst form of child labour, the use, procuring or offering of children for prostitution remains a problem in practice.

The Committee notes with *interest* that, under the terms of sections 512 and 519 of Act No. 1/05 of 22 April 2009 revising the Penal Code, the fact of using, procuring or offering a child under 18 years of age for prostitution remains a penal offence in Burundi, which may be punished by a sentence of penal servitude of three to five years and a fine of between 100,000 to 500,000 francs. However, the Committee notes that, according to the information contained in a 2009 report on the worst forms of child labour in Burundi, available on the website of the United Nations High Commissioner for Refugees, the sexual exploitation of children for economic purposes still occurs. Sometimes women initially offer accommodation to girls, and then force them to engage in prostitution to pay their expenses.

The Committee notes the conclusion of the Conference Committee on the Application of Standards that, although the law prohibits the commercial sexual exploitation of children, it remains an issue of serious concern in practice. ***The***

***Committee requests the Government to take immediate and effective measures on an urgent basis to ensure that persons who use, procure or offer a child under 18 years of age for prostitution are prosecuted and that sufficiently effective and dissuasive sanctions are applied in practice. It requests the Government to provide information on the number and nature of violations reported and penal sanctions applied.***

*Clause (c). Use, procuring or offering of children for illicit activities. Street children.* In its previous comments, the Committee noted the indication by COSYBU that the extreme poverty of the population drives parents to allow their children to engage in begging. The Committee expressed 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 requested the Government to take the necessary measures to protect street children and to prohibit, in the national legislation, the use, procuring or offering of children for illicit activities.

The Committee notes with **satisfaction** that section 518 of the Penal Code provides that it is prohibited “to induce, directly, a child to commit an unlawful act or an act that is liable to harm her or his health, morals or development” and that, under the terms of section 512 of the Penal Code, the term “child” means any person under 18 years of age.

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms and providing for their rehabilitation and social integration.* 1. *Child soldiers.* In its previous comments, the Committee noted that, in the framework of the ILO–IPEC inter-regional project, the United Nations programme for demobilization, reintegration and prevention and the National Structure for Child Soldiers, thousands of children had been demobilized and socially reintegrated. The Committee noted that, according to the Government, all the children had been demobilized, except for those used by the armed movement FNL, which had not yet laid down its arms.

The Committee takes due note of the Government’s indication that all the children who had been enrolled in the FNL have been reintegrated into civilian life and that many of them have returned to school. In this respect, in his Seventh Report on the United Nations Integrated Office in Burundi of 30 November 2010, the Secretary-General of the United Nations indicates that the reintegration of 626 children formerly associated with armed groups was successfully concluded on 31 July 2010 (S/2010/608, paragraph 48). Of these 626 children, over 104 have returned to school in their original communities and the others have been engaged in vocational training or income-generating activities.

However, the Committee notes that the Government representative at the Conference Committee on the Application of Standards indicated that combating poverty in Burundi was the basic problem preventing the successful social reintegration of demobilized child soldiers. ***With reference to the conclusions of the Conference Committee on the Application of Standards, the Committee strongly encourages the Government to continue adopting effective time-bound measures for the rehabilitation and social integration of children previously involved in armed conflict.***

2. *Commercial sexual exploitation.* The Committee previously requested the Government to take the necessary measures for the removal of children under 18 years of age from prostitution and for their rehabilitation and social integration. The Committee notes that, in the context of the National Programme of Action for the Elimination of the Worst Forms of Child Labour (PAN), prepared in collaboration with ILO–IPEC for the period 2010–15, one of the objectives is to reduce the vulnerability of children to the worst forms of child labour through the implementation of community development programmes including, among other elements, education and socio-economic reintegration of children engaged in or removed from the worst forms of child labour. ***The Committee requests the Government to provide information on the number of child victims of commercial sexual exploitation who have, in practice, been removed from this situation and provided with rehabilitation and social integration, particularly following the implementation of the PAN.***

*Clause (d). Children at special risk. Street children.* The Committee noted previously that, in its report of 23 September 2005, the United Nations independent expert on the situation of human rights in Burundi had indicated that, according to some estimates, there were over 3,000 street children in the country (E/CN.4/2006/109, paragraph 55). It also noted that, in the report of 19 September 2006 of the independent expert on the situation of human rights in Burundi, the Secretary-General of the United Nations had indicated that the numbers of street children were on the rise in Bujumbura (A/61/360, paragraph 79).

The Committee notes that the PAN has to be implemented so as to provide protection in particular for children in a situation of vulnerability. The Committee also notes that, in its concluding observations of 20 October 2010, the Committee on the Rights of the Child noted the efforts made by Burundi to address the widespread phenomenon of children in street situations through, inter alia, the establishment of centres for care, protection and reintegration of children in street situations (CRC/C/BDI/CO/2, paragraph 72). However, the Committee on the Rights of the Child expressed concern at the high number of children in street situations identified in the main towns, who are predominately children living in poverty and HIV/AIDS orphans.

In this regard, the Conference Committee on the Application of Standards also expressed its serious concern that the number of children working on the streets remained high and that these children were exposed to various forms of exploitation. ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee strongly encourages the Government to pursue its efforts to protect them from the worst forms of child labour, to remove children from work in the streets and for their rehabilitation and social integration. It requests the Government***

to provide information on the impact of the PAN in this regard, as well as on the number of street children who are in practice removed from that situation and socially reintegrated through the action of protection and reintegration centres for street children.

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

## Cambodia

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2006)

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* The Committee previously noted that section 15 of the Labour Code of 1997 (Labour Code) states that forced or compulsory labour is forbidden, including for domestics or household servants. It also noted that section 177(2) of the Labour Code prohibits children under 18 years from any kind of employment or work which, by its nature, could be hazardous to their health, safety or morality. Yet, the Committee noted that children are employed as domestic servants, and that most child domestics are girls aged 14–17 years, although it is not uncommon to find workers as young as 6 or 7 years. The child domestic workers typically work 12–16 hours a day, seven days a week.

The Committee notes that, according to the Child Domestic Worker Survey conducted in Phnom Penh in 2003 with ILO–IPEC collaboration, an estimated 27,950 children aged 7–17 years (9.6 per cent) in Phnom Penh work as domestic employees. According to this survey, many of these child domestic workers suffer hardship and abuse in the workplace. Furthermore, in its concluding observations of 20 June 2011, the Committee on the Rights of the Child still expresses serious concern that thousands of children work as domestics, mainly in the capital Phnom Penh, in slavery-like conditions (CRC/C/KHM/CO/2, paragraph 67).

The Committee expresses its *serious concern* at the exploitation of young persons under 18 years of age employed in domestic work under conditions similar to slavery or under hazardous conditions. It reminds the Government that, under *Article 3(a) and (d)* of the Convention, work done by young persons under 18 years of age under conditions similar to slavery or under hazardous conditions constitutes one of the worst forms of child labour and, under the terms of *Article 1*, should be eliminated as a matter of urgency. **The Committee requests the Government to take immediate and effective steps to ensure that thorough investigations and robust prosecutions of persons who subject children under 18 years of age to forced or hazardous domestic labour are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the number of investigations, prosecutions, convictions, and penal sanctions applied.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously noted that Cambodian national legislation does not appear to prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee requested the Government to indicate whether there are legislative provisions that prohibit this worst form of child labour.

The Committee notes the Government's statement that the Ministry of Social Works, Veterans and Youth Rehabilitation has drafted the Law on Juvenile Justice and that this draft law has been submitted to the Council of Ministers. **The Committee expresses the firm hope that this draft law provides for the prohibition of the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. It requests the Government to take the necessary measures to ensure that the draft Law on Juvenile Justice is adopted as a matter of urgency, and to communicate a copy of it as soon as it is adopted.**

*Clause (d). Hazardous work. Self-employed workers.* The Committee previously noted that the Labour Code appears to only apply to those with an employment relationship. In this regard, it noted that the Labour Code does not cover many areas of informal sector work such as family businesses and farms, begging, scavenging, hauling and day labour, where the most serious child labour problems exist. The Committee brought the Government's attention to the fact that the Convention applies not only to work under an employment contract, but to all types of work or employment. It requested the Government to take the necessary measures to ensure that self-employed workers under 18 years of age are protected from hazardous work. **Noting that the Government refers to the draft Law on Juvenile Justice, the Committee requests the Government to indicate whether this draft law provides for the protection of self-employed children from hazardous work, and to communicate a copy of it as soon as it is adopted.**

*Article 5. Monitoring mechanisms. The police.* The Committee previously noted that local police are responsible for enforcing laws against child trafficking and prostitution. It had noted that, although the Government has increased arrests and prosecutions of traffickers, anti-trafficking efforts continue to be hampered by reported corruption and a weak judicial system.

The Committee notes the Government's information that an inter-ministerial mechanism to combat the trafficking of women and children, led by the Deputy Prime Minister and Minister of the Interior, is in charge of trafficking issues. In this regard, the Committee notes that, according to a report on findings on the worst forms of child labour in Cambodia of 2009, available on the website of the High Commissioner for Refugees (WFCL report of 2009), the Prime Minister signed a sub-decree forming a single policy-making entity called the National Committee on Suppression of Human Trafficking,

Smuggling, and Labour and Sexual Exploitation. This National Committee includes representatives from all 18 ministries and is chaired by the Ministries of Women's Affairs, Social Affairs, Justice, and Labour and Vocational Training. Furthermore, the WFCL report of 2009 indicates that laws against trafficking, child sexual exploitation, and illicit activities are enforced by the Ministry of the Interior and 24 municipal and provincial anti-human trafficking and juvenile protection offices. Moreover, the Government partnered with NGOs to train over 4,000 police, social workers, court officials, and other employees on human trafficking. The WFCL report of 2009 also indicates that there are approximately 200 anti-human trafficking police officers at the national level and about 312 officers at the municipal and provincial levels. Cambodian police investigated 72 human trafficking cases from April through December 2009, arresting 112 perpetrators, and rescuing 473 victims, 105 of which were children.

The Committee notes, however, the particular concern expressed by the Committee on Economic, Social and Cultural Rights (CESCR) in its concluding observations of 12 June 2009, about the low number of prosecutions and convictions of traffickers, a concern that is shared by the Committee on the Rights of the Child (CRC) in its concluding observations of 20 June 2011 (CRC/C/KHM/CO/2, paragraph 73). ***While duly noting the measures taken by the Government, the Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out, particularly by strengthening the capacity of the authorities responsible for the enforcement of the law. It requests the Government to provide information on the progress made in this regard, as well as on the number of investigations, prosecutions, convictions and penal sanctions applied.***

*Clause (d). Children at special risk. Child domestic workers.* Following its previous comments, the Committee notes that one of the sectors of targeted interventions of the ***Time-bound Programme (TBP)*** is child domestic workers in Phnom Penh. Moreover, one of the prioritized sectors of intervention of the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2008–12) (NPA–WFCL) is also that of children in domestic labour. ***The Committee encourages the Government to redouble its efforts in order to protect child domestic workers from hazardous work. It once again requests the Government to provide information on the number of child domestic workers who were prevented from performing hazardous work, or withdrawn from hazardous work and rehabilitated and socially integrated, as a result of the implementation of the TBP–Phase II and of the NPA–WFCL, in its next report.***

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes that, in its concluding observations of 20 June 2011, the CRC expresses concern that over 1.5 million children are still economically active in Cambodia and that around 250,000 are engaged in the worst forms of child labour (CRC/C/KHM/CO/2, paragraph 67). The Committee also notes the Government's statement that it is collaborating with ILO–IPEC to conduct a survey, within the framework of the ***TBP–Phase II***, on the situation of child labour in Cambodia, and especially its worst forms, for 2011. ***The Committee expresses its deep concern at the high number of children involved in the worst forms of child labour, and accordingly urges the Government to redouble its efforts to ensure in practice the protection of children from these worst forms. The Committee also requests the Government to provide a copy of the results of the survey on child labour in Cambodia, once it is finalized. To the extent possible, all information provided should be disaggregated by age and sex.***

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

## Cameroon

### ***Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1970)***

*Part V of the report form. Application of the Convention in practice.* In its previous comments the Committee noted that Order No. 15 of 15 October 1979 on the organization and running of the occupational medical services, which gives effect to some provisions of the Convention, has remained in force following the adoption of Act No. 92/007 of 14 August 1992, issuing the Labour Code. In addition to the abovementioned Order and the Labour Code, the Committee noted that Order No. 17 of 27 May 1969 on child labour continues to give effect to the provisions of the Convention. It further noted the information supplied by the Government to the effect that the commission responsible for evaluating and following up implementation of ILO Conventions had met and examined this Convention among others, and that its report would be sent to the Office. The Government also indicated that neither statistical data nor labour inspection reports were available but that measures had been taken to set up a database on child labour.

The Committee notes that the Government's report contains no new information. It observes, however, that the Government has sent the Office the annual inspection report for 2008 with its report submitted under the Labour Inspection Convention, 1947 (No. 81). According to the inspection report, labour inspectors are responsible for monitoring, inter alia, the implementation of the Labour Code and Order No. 15 of 15 October 1979 on the organization and running of occupational medical services. The Committee notes that in the area of occupational health and medicine, 79 infringements were reported, and that 64 observations and ten warnings were issued in this connection. As regards children's working conditions, five infringements were reported, giving rise to five observations and one warning. The Committee notes that only 20 children and young persons working in the hotel and catering sector were monitored, whereas 13,132 men and 4,054 women in 1,125 establishments were inspected. However, in its comments under the

Minimum Age Convention, 1973 (No. 138), the Committee observed that, according to statistics communicated by the Government and compiled by the National Report on Child Labour in Cameroon published in December 2008, 41 per cent of children aged from 5–17 years, i.e. 2,441,181, worked in Cameroon in 2007. The Committee must therefore express its *concern* at the weak application of the provisions giving effect to the Convention. *It urges the Government to take the necessary measures to ensure that the provisions of the Labour Code, Order No. 15 of 15 October 1979 on the organization and running of the occupational medical services and Order No. 17 of 27 May 1969 on child labour that gave effect to the Convention, are applied in practice, in particular by strengthening the capacity of labour inspectors. It requests the Government to provide information on the measures taken to this end and on the results achieved. It again requests the Government to send as soon as possible the report of the commission responsible for the evaluation and follow-up of the implementation of ILO Conventions.*

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1970)**

The Committee takes note of the communication of 9 September 2011 from the General Union of Workers of Cameroon (UGTC) and the Government's report.

In its previous comments the Committee noted with regret that despite repeated promptings the Government had still not taken legislative measures to give effect to the provisions of the Convention, and expressed the firm hope that the Government would take such measures. *Noting once again that the Government provides no new information in its report, the Committee can but reiterate its hope that the Government will take measures at an early date to give effect to the Convention.*

*Article 1 of the Convention. Scope of application.* In its previous comments, the Committee noted that there were no provisions in the national legislation allowing the Convention to be applied to children and young persons working on their own account, employees and apprentices being covered by the provisions of Order No. 17 of 27 May 1969 and the Labour Code. It also noted that the Government had indicated once again that medical examinations for young persons were to be extended, *inter alia*, to young persons engaged in own-account activities in the informal economy and that some municipalities had done this for a category of workers. The Committee further noted comments from the UGTC to the effect that although provision was made for systematic inspections in the formal sector, no measures had been taken for young persons in the informal economy despite the efforts undertaken for young people in the context of combating HIV/AIDS. The Government said in this connection that it was very difficult to get young persons in the informal economy to undergo a medical examination for fitness for employment insofar as it was unable to exercise any control over employers in the informal sector. The Committee nonetheless noted the information sent by the Government to the effect that some young persons in the informal economy do undergo medical examinations for example unregistered street vendors operating in the sales areas made available by the public services. The Committee expressed the hope that the Government would take the necessary steps, with assistance from the ILO, to ensure the application of the Convention.

The Committee notes that in its report submitted under the Minimum Age Convention, 1973 (No. 138), the Government provides some statistics from the National Report on Child Labour in Cameroon produced by the National Statistics Institute in cooperation with ILO–IPEC and published in December 2008. The results of this survey show that in 2007, 41 per cent of children aged from 5 to 17 years (2,441,181 children) work in Cameroon. Of these economically active 5 to 17 year-olds, 85.2 per cent are used in agriculture, fisheries, forestry and crop picking, and 4.4 per cent are affected by hazardous work. Furthermore, 79.3 per cent of the children are engaged in unpaid work as family workers. *Noting once again that the provisions of the national legislation on medical examination for fitness for employment are applied only to young workers in the formal sector and reminding the Government once again that children employed on their own account are automatically covered by the Convention (Article 1(1)), the Committee once again urges the Government to take the necessary measures to ensure that the Convention is applied in law and in practice to all young workers covered by the Convention, including those working in the informal sector. In view of the significant number of children who work in the informal economy, some of them on their own account, the Committee can only express once again the firm hope that, in its next report, the Government will give an account of progress made in this regard.*

## **Central African Republic**

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee notes the Government's report. It also notes the detailed discussions that took place within the Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010.

*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 UNICEF statistics for 2007, 57 per cent of children between five and 14 years of age are engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls). It noted the Government's indication that, in the context of the adoption of new Act No. 09.004 issuing the Labour Code of the Central African Republic in January 2009 (Labour Code of 2009), the Labour Department has worked on the preparation of texts to implement the Code. The Government indicated that a national policy aimed at

progressively abolishing child labour and increasing the minimum age for admission to employment or work will be prepared once the implementing texts have been issued.

The Committee notes the Government's statement that the National Council for the Protection of Children (CNPT) has been established under the direction of the Prime Minister with the task of assisting the Government in relation to coordination, support, advice and evaluation of policies and strategies concerning the protection of children. This Council is composed of various representatives of government ministries, members of development partnerships and members of NGOs. The Committee also notes that a study financed by UNICEF on violence connected with child labour, highlighting the different sectors of activity in which children are involved, has been published recently. However, the Committee notes that the implementing regulations for the Labour Code have still not been published and that consequently the national policy aimed at the progressive abolition of child labour has not been adopted to date.

While noting the establishment of the CNPT, the Committee expresses its *deep concern* at the considerable number of children under 14 years of age engaged in economic activity, and also at the lack of a national policy designed to combat this phenomenon. ***Observing that the Government has been referring to the adoption of a national policy aimed at the effective abolition of child labour for many years, the Committee endorses the conclusions of the Conference Committee on the Application of Standards and urges the Government to take the necessary measures to implement such a policy as soon as possible. It also requests the Government to provide a copy of the UNICEF study on violence connected with child labour with its next report.***

*Article 2(1). Scope of application and minimum age for admission to employment or work. Self-employment.* The Committee previously noted that most children work in sectors of the informal economy, such as diamond workshops, portage, or diving in search of diamonds. The Committee noted that the Labour Code of 2009 is not applicable to self-employed workers (section 2) but only governs professional relationships between workers and employers deriving from employment contracts (section 1). Noting the Government's indication that the juvenile courts and the Children's Parliament ensure the application of the protection envisaged by the Convention in respect of children who work on their own account, the Committee asked the Government to provide information on the manner in which the aforementioned bodies guarantee such protection.

The Committee observes that the Government's report does not contain any information in this respect. However, it notes the Government's indication that it is planning to take measures to adapt and strengthen the inspection services in such a way as to ensure protection for children working outside an employment relationship. The Committee observes that the Conference Committee on the Application of Standards, in its conclusions, noted with deep concern that an increasingly large number of children under 14 years of age are working in the informal economy and are often employed in hazardous work. ***Referring to the comments of the Conference Committee on the Application of Standards, the Committee urges the Government to take the necessary measures to strengthen the capacity of the labour inspection services in such a way as to guarantee the protection laid down in the Convention for children who work on a self-employed basis. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the adoption in 2005 of the Plan of Action on Education for All (NPA-EFA), the objective of which is to increase the school attendance rate, reduce the school drop-out rate and ensure the completion of the full cycle of primary education by all children. The Committee observed that, according to UNICEF statistics for 2007, the net school enrolment rate for primary education was a source of deep concern, amounting to barely 53 per cent for boys and 38 per cent for girls. It asked the Government to supply information on the results achieved in the context of the NPA-EFA.

The Committee notes that the Government's report does not contain any information on this matter. It observes that, according to UNESCO statistics for 2009, the net school enrolment rate for primary education appears to have increased slightly despite the fact that it remains relatively low, especially for girls (57 per cent for girls compared with 77 per cent for boys). However, the Committee notes that the proportion of children of primary school age (6–15 years) who do not attend school still remains substantial (33 per cent), as does the repetition rate in primary education, which stands at 24 per cent. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to continue its efforts to improve the operation of the education system in order to guarantee access to compulsory basic education for children under 14 years of age, especially girls. It again requests the Government to provide information on the measures taken and the results achieved in the context of the NPA-EFA.***

*Article 3(2). Minimum age for admission to hazardous types of work and determination of these types of work.* The Committee previously noted that section 263 of the Labour Code of 2009 prohibits work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children under 18 years of age. It also noted that section 261 of the Labour Code of 2009 provides that a joint order of the Minister of Labour and the Minister of Public Health, issued further to the opinion of the Standing National Labour Council, shall determine the nature of the types of work and the categories of enterprises prohibited for children and the age limit up to which this prohibition applies.

The Committee notes that the Government undertakes to adopt measures in the near future to determine the list of types of employment or work prohibited for persons under 18 years of age. **Recalling that, under Article 3(2) of the Convention, hazardous types of work must be determined in consultation with the organizations of employers and workers concerned, the Committee endorses the conclusions of the Conference Committee on the Application of Standards and expresses the firm hope that the list of types of employment or work prohibited for children and young persons under 18 years of age will be adopted as soon as possible. It requests the Government to provide information on all progress made in this respect.**

*Article 9(3). Keeping of registers by employers.* In its previous comments the Committee noted that, under section 331 of the Labour Code of 2009, the employer must always keep an up-to-date employment register containing the personal details and types of contract of all workers engaged in the enterprise. The employment register must be kept at the disposal of labour inspectors, who may require it to be produced at any time. However, the Committee noted that section 331 also provides that certain enterprises or establishments, as well as certain categories of enterprises or establishments, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity, by order of the Ministry of Labour further to an opinion of the Standing National Labour Council. The Committee reminded the Government that *Article 9(3)* of the Convention did not envisage such exemptions.

The Committee notes the Government's indication that it undertakes to take account of these observations when adopting the implementing regulations for the Labour Code of 2009. **Referring to the conclusions of the Conference Committee on the Application of Standards, the Committee urges the Government to take the necessary measures to ensure that the legislation is in conformity with the Convention, ensuring that no employer may be exempted from the obligation to keep a register of persons under 18 years of age employed by them or working for them.**

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted with satisfaction that new Act No. 09.004 issuing the Labour Code of the Central African Republic (Labour Code of 2009), adopted in January 2009, prohibits the forced or compulsory recruitment of children under 18 years of age for use in armed conflict throughout the territory of the Central African Republic and establishes fines and terms of imprisonment for violations.

The Committee notes the report of 13 April 2011, of the United Nations Secretary-General on children and armed conflict in the Central African Republic (S/2011/241), for the reporting period December 2008 to December 2010. It notes that, according to the information in the report (paragraphs 43–45), the Government of the Central African Republic signed the N'Djamena Declaration of 9 June 2010, in which it undertook to stop the use of children within the armed forces and to adopt specific institutional measures to ensure the release and reintegration of children associated with armed groups. The Government also participated in the African Union ministerial meeting of 13 and 14 October 2010 concerning the Lord's Resistance Army (LRA), further to which the participating States undertook, inter alia, to set up a joint operations centre and conduct joint patrols along the borders of the countries affected by LRA attacks.

However, the Committee observes that the United Nations Secretary-General noted in his report that the recruitment of children by armed groups remains a source of serious concern, especially in the north-east and east of the country (paragraph 15). The report reveals that children are still among the ranks and continue to engage in combat with the various armed groups, namely, the *Armée populaire pour la restauration de la République et de la démocratie (APRD)*, the *Union des forces démocratiques pour le rassemblement (UFDR)*, the *Convention des patriotes pour la justice et la paix (CPJP)*, the *Mouvement des libérateurs centrafricains pour la justice (MLJC)* and the *Front démocratique du peuple centrafricain (FDPC)* (paragraphs 16–19). The Committee notes that these various groups, with the exception of the CPJP, all signed the 2008 Libreville Comprehensive Peace Agreement (paragraphs 3 and 4). The presence of children in the ranks of local self-defence groups, supported by the local authorities to provide protection for civilians in the absence of national defence and security forces, also remains a source of serious concern, especially in the areas affected by the LRA (paragraph 51). Moreover, the Secretary-General's report indicates that the LRA continues to abduct and forcibly recruit children for use as fighters, spies, domestic servants, sexual slaves and porters. Finally, the Committee notes that murders of children and rapes and other forms of aggression committed against children by armed groups remain a source of deep concern (paragraphs 20–24).

The Committee notes that despite the adoption of the Labour Code of 2009, which prohibits the forced or compulsory recruitment of children under 18 years of age for their use in armed conflict throughout the territory of the Central African Republic and the signature of the 2008 Libreville Comprehensive Peace Agreement, children are still present in the ranks of the various armed groups and local self-defence militia. The Committee, therefore, expresses its **deep concern** at the persistence of this practice, especially as it results in other violations of the rights of the child, such as abductions, murders and sexual violence. **The Committee urges the Government to intensify its efforts to eliminate in practice the forced recruitment of children under 18 years of age by armed groups and local self-defence militia supported by the local authorities, especially in the north-east and east of the country. Referring to Security Council**

*resolution 1998 of 12 July 2011, which recalls “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee urges the Government to take immediate and effective measures to ensure the thorough investigation and robust prosecution of persons who forcibly recruit children under 18 years of age for use in armed conflict and to ensure that adequate penalties constituting an effective deterrent are imposed in practice. It requests the Government to supply information on the number of investigations conducted, prosecutions brought and convictions handed down pursuant to the provisions of the Labour Code of 2009.*

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and, wherever possible and appropriate, to vocational training. Child soldiers.* Further to its previous comments, the Committee notes the information provided in the report of 13 April 2011 of the United Nations Secretary-General (S/2011/241, paragraphs 52–58), according to which UNICEF is responsible for coordinating the disarmament, demobilization and reintegration process of children in the Central African Republic. In 2009 and 2010, a total of 525 children, including 37 girls, were demobilized from the ranks of the APRD by UNICEF and its implementing partners. The Committee notes that all these children were reintegrated into their families and communities and received assistance with rehabilitation and social integration. The report also reveals that between 2007 and 2010 a total of 1,300 children were demobilized from the APRD. Moreover, in 2010, a total of 95,797 vulnerable children (62 per cent boys and 38 per cent girls), including children associated with the armed groups and armed forces, benefited from educational and vocational training activities, income-generating packages, psychological and social support, counselling and access to health services. The Committee also notes that four transit centres were built in 2009 and 2010 to receive and provide care for children affected by armed conflict. The report reveals, nevertheless, that various problems continue to arise with regard to catering for children previously associated with the armed groups. A particular issue is that these children are reintegrated into communities which have limited access to basic services and few possibilities for subsistence, with the result that some of them rejoin the ranks of the armed groups in order to receive the benefits provided in the context of the disarmament, demobilization and reintegration process or engage in economic activity, especially in the mines. ***The Committee requests the Government to intensify its efforts to provide appropriate direct assistance for the removal of child victims of forced recruitment from the armed groups and ensure their rehabilitation and social integration so as to guarantee the long-term definitive demobilization of these children. It expresses the strong hope that the Government will take the necessary measures to facilitate the establishment and implementation of plans of action by the armed groups to stop the recruitment and use of children in their ranks. It requests the Government to provide information in its next report on the progress made in this respect.***

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

## Chad

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict.* With reference to its previous comments, the Committee noted that, under section 14 of Ordinance No. 01/PCE/CEDNACVG of 16 January 1991 reorganizing the armed forces of Chad [Ordinance No. 1 of 16 January 1991], the age of recruitment is 18 years for volunteers and 20 years for conscripts.

The Committee noted that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532, for the period July 2007–June 2008), the political, military and security situation in the country remains highly volatile, owing to the continuation of armed conflict between the Chad armed forces and armed rebel groups, the presence in eastern Chad of foreign rebel groups, cross-border raids by the Janjaweed militia and continuing inter-ethnic tensions. The Committee noted that, according to the Secretary-General’s report, the Government of Chad and the three main rebel groups, namely the *Union des forces pour la démocratie et le développement* (UFDD), the *Rassemblement des forces pour le changement* (RFC) and the *Concorde nationale tchadienne* (CNT), signed a peace agreement on 25 October 2007 which provided for an immediate ceasefire. However, despite the signature of this agreement, fighting has continued and all the parties concerned have continued to recruit and use children in the conflict.

The Committee noted that the Secretary-General’s report showed that the forced recruitment and use of child soldiers in the conflict in Chad is related to the regional dimension of the conflict. The Toroboro or Sudanese armed groups allied with the Government of Chad are recruiting children from two refugee camps, at Tréguine and Bredjing, during the rainy season. Furthermore, heavy recruitment also occurs on the basis of needs in Darfur. The Sudanese rebel movement Justice and Equality Movement (JEM) continues to recruit in and around refugee camps, notably Oure Cassoni (Bahai). According to information in the Secretary-General’s report, between 7,000 and 10,000 children are associated with the armed forces and armed groups. The Committee noted that the Working Group on Children and Armed Conflict, in its conclusions of December 2008 (S/AC.51/2008/15), expressed grave concern that all parties to the conflict continue to recruit and use children and called for measures to be taken to prosecute the perpetrators and put an end to impunity.

The Committee noted that the situation in Chad has been unstable for many years and that it remains fragile. The Committee also noted that, despite the fact that Ordinance No. 1 of 16 January 1991 provides that the age of recruitment is 18 years for volunteers and 20 years for conscripts, the recruitment of children for use in armed conflict is continuing in practice. In this regard, it noted that no penalties are laid down for violations of this prohibition. The Committee expressed *deep concern* at

the current situation, especially as the persistence of the worst forms of child labour leads to other violations of the rights of the child, such as abduction, death and sexual violence. It reminded the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, members States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***The Committee requests the Government to take the necessary measures as a matter of urgency to stop in practice the forced recruitment of children under 18 years of age by armed forces and groups and immediately undertake the full demobilization of all children. With reference to Security Council resolution 1612 of 26 July 2005, which recalls the “responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee urges the Government to take immediate steps to ensure that perpetrators are investigated and prosecuted and that penalties which are sufficiently effective and dissuasive are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. It requests the Government to supply information in this respect.***

*Article 7(2). Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, including access to free basic education and vocational training. Children who have been enlisted and used in armed conflict.* Further to its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532), the Government of Chad signed an agreement with UNICEF on 9 May 2007 to ensure the release and sustainable reintegration of all child soldiers associated with armed forces and groups in the country. According to the Secretary-General's report, since the agreement was signed, 512 child soldiers have been released to UNICEF, which has provided support at five transit centres. So far 265 children have voluntarily returned to or been reunited with their families, and 220 have been placed in schools and 85 in professional activities. Most of the demobilized children were associated with non-governmental armed groups. Very few children associated with the Chadian armed forces have been released. According to the Secretary-General's report, negotiations are under way for placing the demobilized children in vocational training institutions and providing them with gainful employment. Some NGOs which are partners of UNICEF are currently working on the reintegration programme. Moreover, the encouraging start of disarmament, demobilization and reintegration activities in Chad is likely to lead to the release of another estimated 2,500 children associated with armed forces and groups.

The Committee also noted that, according to the Secretary-General's report, Chad undertook to release as a matter of priority children associated with armed groups held in detention. Moreover, it decided that an inter-ministerial task force would be established to coordinate and ensure effective reintegration of children. The Committee on the Rights of the Child, in its concluding observations of February 2009 (CRC/C/TDC/CO/2, paragraph 71), urged the Government to take the necessary measures immediately to facilitate contact between armed groups operating in Chad and the United Nations in order to promote the demobilization of children and prevent the recruitment of children, particularly in refugee camps. In this regard, the Committee on the Rights of the Child urges the Government to extend the disarmament, demobilization and reintegration programme, placing particular emphasis on the demobilization and reintegration of girls.

The Committee noted the measures taken by the Government to demobilize and reintegrate child soldiers, particularly through collaboration with UNICEF. It noted, however, that the current situation in the country remains a source of concern. ***The Committee therefore requests the Government to intensify its efforts and continue its collaboration with UNICEF and other organizations in order to improve the situation of child victims of forced recruitment for use in armed conflict. Moreover, the Committee requests the Government to take effective and time-bound measures to ensure that child soldiers removed from armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever possible and appropriate. It requests the Government to supply information in this respect.***

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

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

## Chile

### ***Night Work of Young Persons (Industry) Convention, 1919 (No. 6)*** ***(ratification: 1925)***

*Article 3(1) of the Convention. Period during which it is prohibited to work at night.* In its previous comments the Committee noted that even though section 18 of the Labour Code prohibits young persons under 18 years of age from performing any night work between 10 p.m. and 7 a.m. in industrial establishments, this section is not in conformity with *Article 3(1)* of the Convention since it does not stipulate a period of 11 consecutive hours at night during which it is prohibited for any young person under 18 years of age to work. The Committee noted, however, that a reform of the Labour Code was under way and that the comments made would be taken into consideration.

The Committee notes the Government's indication that the reform of the Labour Code has been approved by the Chamber of Deputies and is due to be adopted by the Senate. It also notes with *interest* that the draft reform amends section 18 of the Labour Code to the effect that young persons under 18 years of age may not work at night in industrial and commercial establishments for a period of at least 11 consecutive hours, including the interval between 10 p.m. and 7 a.m. ***The Committee expresses the firm hope that the draft reform of the Labour Code will be adopted in the near future and requests the Government to send a copy of it in its next report.***

## Colombia

### **Night Work of Young Persons (Industry) Convention, 1919 (No. 6)** (ratification: 1983)

The Committee notes the comments from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) dated 30 August 2011, and the comments from the General Confederation of Labour (CGT) dated 1 September 2011.

*Articles 2(1) and (2), and 3(1) of the Convention. Period during which night work is prohibited and exceptions from the age of 16 years.* In its previous comments the Committee noted that, under the terms of section 2(6.6) of Decision No. 04448 of 2 December 2005, night work between 8 p.m. and 6 a.m. is prohibited to children and young persons under 16 years.

The Committee notes the observation from the CTC and the CUT to the effect that the Convention is not applied in practice and many children work at night in the country. It also notes that, according to the CGT's allegations, child labour increased significantly between 2007 and 2009.

The Committee notes the adoption of Decision No. 01677 of 16 May 2008, section 3 of which lays down the conditions of work prohibited for children and young persons under the age of 18 years on account of the possible risks to their health and safety. It notes with *interest* that under section 3(6.6), work is prohibited for children and young persons under 18 years of age between 8 p.m. and 6 a.m. However, the Committee notes that pursuant to *Article 3(1)* of the Convention, the term "night" signifies a period of at least *11 consecutive hours*, including the interval between 10 p.m. and 5 a.m. In this regard, the Committee notes that the period provided for in section 3(6.6) of Decision No. 01677 is *ten consecutive hours*. In addition, the Committee notes that under section 4 of Decision No. 01677, young persons between 15 and 17 years of age who have obtained a technical training qualification from the National Apprenticeship Service (SENA) or institutes accredited for that purpose can be authorized to work in an activity for which they have been trained and may exercise freely this profession, art or occupation, on condition that the contractor respects the provisions of Decrees Nos 1295 of 1994 and 933 of 2003, Decisions Nos 1016 of 1989 and 2346 of 2007, and also Decision No. 584 of 2004 of the Andean Committee for Occupational Safety and Health Authorizations. ***The Committee requests the Government to take the necessary measures to ensure that the prohibition on night work for children and young persons under 18 years of age covers a period of at least 11 consecutive hours in conformity with Article 3(1) of the Convention. In addition, the Committee requests the Government to indicate whether, under section 4 of Decision No. 01677, young persons between 15 and 17 years of age may be authorized to work at night. If so, the Committee requests the Government to clarify whether such authorizations only apply in the exceptional cases provided for in Article 2(2) of the Convention.***

## Comoros

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)** (ratification: 1978)

The Committee notes the comments made by the Workers Confederation of Comoros (CTC) dated 31 August 2011, as well as of the Government's report.

*Articles 1(1) and 7 of the Convention. Scope of application and medical certificates of fitness for employment.* In its previous comments, the Committee noted the Government's indication that, in the context of the revision of the national labour legislation, all the necessary measures would be examined in order to bring the legislation into conformity with the provisions of the Convention.

The Committee takes note of the CTC's observation that the Government has still not honoured its commitments to bring its labour legislation into line with the Convention. The CTC also points out that non-industrial occupations are outside the scope of the labour inspectorate's supervision. In its report, the Government indicates that the bill revising the Labour Code will be submitted to the National Assembly for adoption. ***Noting that the Government has been referring to bringing its national legislation into line with the Convention for many years, the Committee expresses the firm hope that the bill revising the Labour Code will be adopted in the very near future and that its provisions will give effect to Articles 1(1) and 7 of the Convention. The Committee asks the Government to send information on any progress made in this respect.***

*Article 6. Physical and vocational rehabilitation of children and young persons determined unfit for work.* In its comments made under the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77), the Committee noted the Government's intention to take measures, within the framework of the revision of the Labour Code, to ensure that a text or statutory texts complying with the provisions of *Article 6* of the Convention were adopted. ***Noting that the bill to revise the Labour Code has still not been adopted, the Committee expresses the firm hope that, as part of the revision of the national legislation, the necessary measures will be taken with a view to adopting a statutory text that complies with the provisions of Article 6 of the Convention. The Committee requests the Government to provide information on any progress achieved in this respect.***

## Congo

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

*Article 1 of the Convention and Part V of the report form.* National policy and application of the Convention in practice. The Committee previously noted that, according to ILO statistics for 2000, more than 960,000 children between 10 and 14 years of age (510,000 boys and 450,000 girls) were involved in economic activity. The Committee therefore asked the Government to take steps to improve this situation, especially by the adoption of a national policy designed to ensure the effective abolition of child labour.

The Committee notes with *regret* that the Government's report still does not contain any information on the adoption of a national policy designed to ensure the effective abolition of child labour. It notes the Government's indication that there are no inspection reports which provide any information on the presumed or actual employment of children in enterprises in Congo during the reporting period. However, the Committee notes that UNICEF statistics for 2005–09 reveal that 25 per cent of Congolese children are involved in child labour. Moreover, the Committee notes that, according to the information on the website of the National Centre for Statistics and Economic Studies (CNSEE), a national household survey (ECOM2) was conducted from February to May 2011. ***Expressing its concern at the large number of children working below the minimum age in the country, and given the lack of a national policy designed to ensure the effective abolition of child labour, the Committee once again urges the Government to take the necessary steps to ensure the adoption and implementation of such a policy as soon as possible. It requests the Government to provide detailed information in its next report on the measures taken in this respect. The Committee also requests the Government to provide a copy of ECOM2.***

*Article 3(2). Determination of hazardous types of work.* In its previous comments the Committee noted that section 4 of Order No. 2224 of 24 October 1953, which establishes employment exemptions for young workers, determines the nature of the work and the categories of enterprises prohibited for young persons and sets the age limit of the prohibition, prohibits the employment of young persons under 18 years in certain types of hazardous work and includes a list of such types of work. The Committee drew the Government's attention to the provisions of Paragraph 10(2) of the Minimum Age Recommendation, 1973 (No. 146), which invites the Government to re-examine periodically and revise as necessary the list of the types of employment or work to which *Article 3* of the Convention applies, particularly in the light of advancing scientific and technological knowledge.

The Committee notes the Government's indication that it is aware of the need to re-examine periodically and revise as necessary the list of the types of employment or work to which *Article 3* of the Convention applies. ***Observing that Order No. 2224 was adopted more than 50 years ago, the Committee requests the Government to indicate whether it plans to take measures in the near future to revise the list of types of hazardous work established by Order No. 2224. It requests the Government to provide detailed information in this respect.***

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments the Committee noted that, under section 5 of Order No. 2224, the employment of young workers under the age of 16 years in certain hazardous types of work is prohibited. In addition, under the terms of section 7 of the Order, labour and social legislation inspectors may require young workers to undergo a medical examination in order to determine whether the work in which they are employed exceeds their capacities. When it has been proven that the young worker is physically unfit for the work in which he is employed, he must be transferred to a post corresponding to his physical capacities or made redundant without any blame being attached to him. The Committee noted that the condition laid down by *Article 3(3)* of the Convention to the effect that the health, safety and morals of young persons aged between 16 and 18 years authorized to carry out hazardous work shall be protected, is met by the abovementioned provisions. However, it reminded the Government that *Article 3(3)* of the Convention also requires that young persons aged between 16 and 18 years shall receive specific instruction or vocational training in the relevant branch of activity. The Committee therefore requested the Government to provide information on the measures taken or envisaged to comply with this requirement.

The Committee notes the Government's indication that young persons between 16 and 18 years of age are never permitted to perform hazardous work in enterprises. However, the Committee observes that section 5 of Order No. 2224 prohibits certain hazardous types of work for children under 16 years of age, which implies that such work is permitted for young persons over 16 years of age. ***The Committee therefore requests the Government to clarify whether Order No. 2224 is still in force. If so, it urges the Government to take the necessary steps to ensure that young persons between 16 and 18 years of age, who are permitted to perform hazardous work, receive specific instruction or vocational training in the relevant branch of activity.***

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

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

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

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children.* In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic

work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. ***The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children.* In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It noted that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

*Part V of the report form. Application of the Convention in practice.* The Committee noted that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of the Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

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

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

## Cuba

### ***Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79) (ratification: 1954)***

*Article 3(1) of the Convention. Period during which night work is prohibited.* In its previous comments the Committee noted that, even though section 15 of Decision No. 8/2005 of 1 March 2005 issuing the general regulations on labour relations prohibits night work for young persons under 18 years of age, there is no provision that specifies the period during which night work is prohibited.

The Committee notes the Government's indication that the prohibition of night work for children and young persons under 18 years of age applies to all types of night work and does not involve a set period of time. However, the Committee again reminds the Government that, under the terms of *Article 3(1)* of the Convention, young persons under 18 years of age must have a rest period at night of at least 12 consecutive hours, which shall include the interval between 10 p.m. and 6 a.m. ***The Committee requests the Government to take the necessary measures to bring the legislation into conformity with the Convention, by prohibiting night work for young persons under 18 years of age for a period of at least 12 consecutive hours, including the interval between 10 p.m. and 6 a.m. It requests the Government to keep it informed of any progress made in this respect.***

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1952)***

The Committee notes the Government's report. ***It requests the Government to refer to its comments on the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79).***

## Cyprus

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1965)***

*Articles 3(2) and 4(2) of the Convention. Exemptions from the prohibition on night work for persons of 16 and 18 years.* The Committee had previously noted that section 13(1) of the Protection of Young Persons at Work Law No. 48(1) of 2001 provides that work by young persons is prohibited between 11 p.m. and 7 a.m., irrespective of the nature of work. It had noted that subsection (2) of the same provision permits a young person to work between 11 p.m. and 7 a.m. for the purposes and under the conditions determined by regulation. Under the terms of section 2 of the Law, the term *young person* means any person of 15 years of age but under 18 years.

Moreover, the Committee had noted the Government's indication that regulations permitting night work by young persons were under preparation. The Government had acknowledged that the Convention allows work at night only for young persons over 16 years of age. In this regard, the Committee had noted the Government's statement that the Law

No. 48(1) of 2001 was under consideration for amendment and that it would make sure that this issue would be taken into account.

The Committee notes the Government's indication in its report that Law No. 48 (1) of 2001 is being amended and that the Regulations which provide for the conditions under which night work is allowed for young persons is pending before the House of Representatives. The Committee notes the Government's statement that according to the amending Law, section 13(2) will be applicable to young persons of 16 years of age but under 18 years. **Observing that the Government has been referring to the proposed regulation and amendment since 2006, the Committee expresses the firm hope that the Law amending section 13(2) of the Law No. 48(1) of 2001 and the Regulations prescribing conditions for night work by persons of 16 years of age will be adopted in the near future. It also requests the Government to supply a copy of the Law amending Law No. 48(1) of 2001 and its Regulations as soon as it has been adopted.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously observed that the national legislation only prohibited the sale and trafficking of children for the purpose of sexual exploitation, and not for the purpose of labour exploitation. However, the Committee noted the enactment of the Combating of Trafficking and Exploitation of Persons and the Protection of Victims Law of 2007 (Law No. 87(I)/2007), and requested the Government to provide a copy this legislation.

The Committee notes the copy of Law No. 87(I)/2007 submitted with the Government's report. It notes that section 6 prohibits recruiting, transporting, transferring, harbouring or receiving a child (defined in section 2 as all persons under the age of 18) with the intention of his/her exploitation. The Committee notes with *satisfaction* that section 2 of Law No. 87(I)/2007 defines "exploitation" as being the exploitation of labour or services of a person, including forced or compulsory labour or services, slavery or practices similar to slavery, servitude, the exploitation of the prostitution of others or other forms of sexual exploitation, including pornography and, in the case of children, the worst forms of child labour according to Convention No. 182.

*Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that the relevant national legislation (particularly the Children Law (Cap. 352)) did not protect girls aged 16 to 18 and boys under 18 from being used, procured or offered for prostitution. However, it noted the Government's indication that a reform of the Children Law was ongoing. The Government indicated that the new draft Children Law provides for severe penalties for persons found guilty of causing or encouraging seduction or the sexual exploitation of children (defined in the draft law as boys or girls under the age of 18 years).

The Committee notes the Government's statement that the Children Law is in the final stages of being adopted. **Observing that the Committee has been raising this issue since 2004, the Committee expresses the firm hope that the revised Children Law will be adopted in the very near future and that it will prohibit the use, procuring and offering of all boys and girls under the age of 18 for the purpose of prostitution. It requests the Government to provide a copy of the Children Law, once adopted.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee noted that the use, procuring or offering of a child for the production and trafficking of drugs was not expressly prohibited. However, it noted the Government's indication that the Anti-Drug Council was promoting a new bill unifying all the legislation related to the prohibition of the use, procuring or offering of a child for the production and trafficking of drugs.

The Committee notes the Government's statement that this legislation has not yet been adopted. In this regard, the Committee recalls that under *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 therefore requests the Government to take immediate and effective measures to ensure the adoption, in the near future, of legislation prohibiting the use, procuring or offering of a child for the production and trafficking of drugs. The Committee requests the Government to supply information on any progress made in this regard.**

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

## **Democratic Republic of the Congo**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict.* In its previous comments the Committee noted that section 187 of Act No. 09/001 of 10 January 2009 establishes a penalty of penal servitude of ten to 20 years for the enrolment or use of children under 18 years of age in the armed forces and groups and the police. The Committee noted that, according to the report of 9 July 2010 of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo (S/2010/369, paragraphs 17–41), 1,593 cases of recruitment of children were reported between

October 2008 and December 2009, including 1,235 in 2009. The report of the United Nations Secretary-General also indicated that 42 per cent of the total number of cases of recruitment reported have been attributed to the Armed Forces of the Democratic Republic of the Congo (FARDC). The Committee also noted with concern that, according to the Secretary-General's report, the number of incidents involving the killing and maiming of children had increased. In addition, a significant increase in the number of abductions of children was also observed over the period covered by the Secretary-General's report, mainly carried out by the Lords' Resistance Army (LRA) but in some cases by the FARDC. The Committee also observed that the Committee on the Rights of the Child (CRC), in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 67), expressed grave concern that the State, through its armed forces, bears direct responsibility for violations of the rights of the child and that it had failed to protect children and prevent such violations.

The Committee notes the Government's indication that children under 18 years of age are not recruited into the armed forces of the Democratic Republic of the Congo. Nevertheless, the Committee notes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict (A/65/820-S/2011/250, paragraph 27), many children continue to be recruited and remain associated with FARDC units, particularly within former units of the *Congrès national pour la défense du peuple* (CNDP) incorporated into the FARDC. The report also indicates that, of the 1,656 children in the armed forces or groups who escaped or were released in 2010, a large proportion had been recruited to the FARDC (21 per cent) (paragraph 37). Moreover, despite the drop in the number of cases of children recruited into armed forces and groups in 2010, the report points out that former CNDP elements continue to recruit or to threaten to recruit children under 18 years of age from schools in North Kivu (paragraph 85). The Committee also notes that no judicial action has been initiated against the suspected perpetrators of forced recruitment of children, some of whom remain in the command structure of the FARDC (paragraph 88).

Furthermore, physical and sexual violence committed against children by the FARDC, the Congolese National Police and various armed groups continued to be a source of serious concern in 2010. The Committee notes in particular that in 2010, of the 26 recorded cases of killing of children, 13 were attributed to the FARDC. In addition, seven cases of maiming of children and 67 cases of sexual violence against children are alleged to have been perpetrated by FARDC elements during the same period (paragraph 87).

The Committee observes that despite the adoption of Legislative Decree No. 066 of 9 June 2000, concerning the demobilization and reintegration of vulnerable groups present within the fighting forces, and of Act 09/001 of 10 January 2009, which prohibits and penalizes the enrolment and use of children under 18 years of age in armed forces and groups and the police (sections 71 and 187), children under 18 years of age continue to be recruited and forced to join the regular armed forces of the Democratic Republic of the Congo and armed groups. The Committee expresses **deep concern** at this situation, especially as the persistence of this worst form of child labour results in other violations of children's rights, such as murder and sexual violence. **The Committee therefore urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children in the ranks of the FARDC and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. With reference to Security Council resolution 1998 of 12 July 2011, which recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of any persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons in its next report.**

*Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines.* In its previous comments the Committee noted the statement by the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted that the United Nations Special Rapporteur, in her report of April 2003 on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2003/43, paragraph 59), noted that military units are recruiting children for forced labour, especially for the extraction of natural resources. 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 and it, therefore, asked the Government to supply information on the measures which would be taken by the labour inspectorate to prohibit hazardous work by children in mines.

The Committee notes the Government's indication that action to strengthen the capacities of the labour inspectorate is planned in the context of the formulation and implementation of the National Plan of Action (PAN) for the elimination of child labour by 2020. The report also indicates that the Government has launched consultations with a view to gathering statistics on the application, in practice, of legislation relating to the prohibition on hazardous work in mines for children under 18 years of age. However, the Committee notes the UNICEF statistics included in the Government's report, which indicate that nearly 50,000 children are working in mines in the Democratic Republic of the Congo, including 20,000 in the province of Katanga (south-east), 12,000 in Ituri (north-east) and some 11,800 in Kasai (centre). Moreover, the Committee observes that, according to the information in the 2011 report on trafficking in persons, armed groups and the

FARDC are recruiting men and children and subjecting them to forced labour for the extraction of minerals. According to the same document, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) report of January 2011 reports that a commander of one of the FARDC battalions makes use of the forced labour of children in mines in North Kivu. The Committee expresses its *deep concern* at the allegations that children under 18 years of age are used, especially by certain elements of FARDC, for the extraction of minerals in conditions similar to slavery and in hazardous conditions. ***The Committee therefore urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate the forced or hazardous labour of children under 18 years of age in mines. It requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed on them in practice. The Government is also requested to provide statistics on the application of the legislation in practice and also requests it to provide information on action to strengthen the capacities of the labour inspectorate planned in the context of the PAN.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration.*

1. *Child soldiers.* In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General of 9 July 2010, the number of children released in 2009 more than tripled in comparison with 2008, particularly in the province of North Kivu (S/2010/369, paragraphs 30 and 51–58). Between October 2008 and the end of 2009, a total of 3,180 children (3,004 boys and 176 girls) left the ranks of the armed forces and groups or fled and were admitted to reintegration programmes. However, the Committee noted with concern that on many occasions the FARDC denied access to the camps to child protection institutions seeking to verify the presence of children in FARDC units and that the commanders refused to release children. The Committee also observed that there were many obstacles to effective reintegration, such as the constant insecurity and the continuing presence of former recruiters in the same region. The Committee further noted that the CRC, in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 72), expressed concern at the fact that no provision has been made to assist several thousand child victims recruited or used in hostilities with rehabilitation and reintegration and that some of these children have been re-recruited for want of alternatives or assistance with demobilization. According to the report of the Secretary-General of 9 July 2010, girls associated with the armed forces and groups (around 15 per cent of the total number of children) rarely have access to reintegration programmes, with only 7 per cent receiving assistance through national disarmament, demobilization and reintegration programmes.

The Committee notes the information provided by the Government concerning the results achieved regarding the demobilization of child soldiers by the new structure of the Unit for the Implementation of the National Programme for Disarmament, Demobilization and Reintegration (UE-PNDDR). It observes that more than 30,000 children have been separated from the armed forces and groups since the launch of the programme in 2004, including nearly 3,000 in 2009 and 2010. Moreover, 6,704 children removed from the armed forces and groups (1,940 girls and 4,764 boys) received support in 2010. However, the Committee observes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict, only 1,656 children recruited to the armed forces or groups escaped or were released in 2010 (A/65/820-S/2011/250, paragraph 37). Of these, the vast majority fled and only a small minority were released by child protection institutions (paragraph 38). The Committee also notes with *regret* that, according to the aforementioned report, the Government has not been forthcoming in engaging with the United Nations on an action plan to end the recruitment and use of children by the FARDC (paragraph 27). The Committee further observes that, although more than 50 screening attempts were carried out by MONUSCO aimed at demobilizing children under 18 years of age who had been recruited to the FARDC, only five children were demobilized owing to the fact that FARDC troops were not made available for screening by MONUSCO. The Committee also notes that a large number of children released in 2010 stated that they had been recruited several times (paragraph 27) and that some 80 children who had been reunited with their families returned to the transit centres alone in North Kivu during November 2010 for fear of being re-recruited (paragraph 85). ***The Committee therefore urges the Government to intensify its efforts and take effective, time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration, giving special attention to the demobilization of girls. It expresses the firm hope that the Government will adopt a time-bound plan of action in the very near future, in collaboration with MONUSCO, to put a stop to the recruitment of children under 18 years of age into the regular armed forces and to ensure their demobilization and reintegration. The Committee also requests the Government to continue to provide information on the number of child soldiers removed from armed forces and groups and reintegrated through appropriate assistance with rehabilitation and social integration. It requests the Government to provide information on this matter in its next report.***

2. *Children working in mines.* The Committee previously noted that a number of projects for the prevention of child labour in mines and the reintegration of these children through education were being implemented, aimed at covering a total of 12,000 children, of whom 4,000 were to be covered by prevention measures and 8,000 were to be removed from labour with a view to their reintegration through vocational training.

The Committee notes the Government's indication that efforts are being made to remove children working in mines from this worst form of child labour. The Government also indicates in its report that more than 13,000 children have been removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the NGOs Save

the Children and Solidarity Centre. These children were then placed in formal and non-formal education structures and also in apprenticeship programmes. However, the report also indicates that, in view of the persistence of the problem, much work remains to be done. ***The Committee therefore requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. It requests the Government to provide information on the measures taken or contemplated in the context of the PAN and on the results achieved.***

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

## Dominica

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1983)**

*Article 2(1) and (3) of the Convention. Minimum age for admission to employment and age of completion of compulsory schooling.* The Committee previously requested the Government to prohibit the employment of persons under 15 years of age, in conformity with the minimum age for admission to employment specified by the Government upon ratification of the Convention.

In this regard, the Committee notes with *satisfaction* that the Education Act (No. 11) provides for a minimum age for admission to work of 16 years of age: this Act prohibits employing a child of school age during the school year (pursuant to section 46(1)) and defines compulsory school age as 5 to 16 years of age (pursuant to section 1). The Committee also notes that section 46 of the Education Act of 1997 establishes a penalty of a fine not exceeding \$2,000 for any person or corporation who employs a child of compulsory school age, as well as every director and officer of such a corporation who authorizes, permits or acquiesces in such contravention. Pursuant to section 45, any parent who neglects or refuses to cause a child of compulsory school age to attend school commits an offence and is liable to a fine not exceeding \$1,000. The Committee further notes that the Education Act of 1997 provides for the designation of school attendance counsellors to assist with the enforcement of compulsory attendance (section 38), and that these counsellors may enter premises where it is believed that a child of compulsory school age is employed in contravention of the Act (section 40).

*Article 2(2). Raising the initially specified age for admission to employment or work.* Noting that the Government initially specified a minimum age of 15 years upon ratification, the Committee observes that the Education Act of 1997 provides for a minimum age for admission to work of 16 years of age. ***In this regard, the Committee takes the opportunity to draw the Government's attention to the provisions of Article 2(2) of the Convention which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. This allows the age fixed by the national legislation to be harmonized with that provided for at the international level. The Committee would be grateful if the Government would consider sending a declaration of this nature to the Office.***

*Article 3(1). Minimum age for admission to hazardous work.* The Committee previously noted that, according to section 7(1) of the Employment of Women, Young Persons and Children Act, no young person (under 18) shall be employed or work during the night in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed. However, the Committee observes that there is no other provision which prohibits the employment of young persons in work which is likely to jeopardize their health, safety or morals. ***In this regard, the Committee requests the Government to take the necessary measures to ensure that the performance of hazardous work is prohibited for all persons under 18 years of age.***

*Article 3(2). Determination of types of hazardous work.* The Committee notes the Government's statement in its report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), in 2009 that the social partners will be consulted for the determination of the list of types of hazardous work. ***Recalling that, pursuant to Article 3(2) of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, the Committee requests the Government to provide information on any progress made with regard to the determination of the list of types of hazardous work to be prohibited for persons under 18 years.***

*Article 7(1). Light work. Minimum age for admission to light work.* Following its previous comments, the Committee notes that, while the Education Act of 1997 prohibits the employment of persons under 16 during the school year, section 46 (3) permits the employment of a student over 14 years of age during vacation periods of the school year. The Committee observes that this minimum age of 14 years for admission to light work activities is in conformity with *Article 7(1)*.

*Article 7(3). Determination of types of light work.* The Committee notes that while section 46(3) permits children from the age of 14 to be employed during school vacations (i.e. in light work), but observes that there does not appear to be a determination of the types of light work permitted for these children. In this regard, the Committee recalls that, pursuant to *Article 7(3)* of the Convention, the competent authority shall determine what is light work and shall prescribe the number of hours during which, and the conditions in which such employment or work may be undertaken. ***The***

**Committee therefore requests the Government to provide information on any measures taken or envisaged to determine the hours during which and the conditions in which light work may be undertaken by children above the age of 14 during vacations from school, pursuant to Article 7(3) of the Convention.**

*Article 9(3). Keeping of registers.* The Committee previously noted that section 8(1) of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists by the employer of all persons employed who are less than 16 years of age. In this regard, the Committee recalled that *Article 9(3)* of the Convention requires the keeping of such registers for all persons who are less than 18 years of age. **Noting an absence of information on this point in the Government's report, the Committee once again requests the Government to take the necessary measures to ensure that registers be kept and made available by the employer in respect of all children under 18 years of age. It requests the Government to provide information on any measures taken in this regard.**

*Part V of the report form. Application of the Convention in practice.* The Committee notes the Government's statement in its report submitted under Convention No. 182 in 2009 that measures will be taken to broaden the existing mandate of the national inspectorate in order to cover child labour issues, in consultation with the social partners. **The Committee requests the Government to provide information on the manner in which the Convention is applied in practice, including statistical data on the employment of children and young persons, extracts from the reports of inspections services and information on the number and nature of violations detected involving children and young persons.**

**The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. The Committee invites the Government to consider technical assistance from the ILO to bring its legislation into conformity with the Convention.**

## Dominican Republic

### **Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)**

The Committee notes that the Government's report contains no reply to its previous comment. It is therefore bound to repeat its previous observation which read as follows:

*Articles 2(1) and 3(1) of the Convention. Thorough medical supervision up to the age of 18 years.* In its previous comments, the Committee noted that section 248 of Act No. 16-92 of 31 May 1992, approving the Labour Code (hereinafter the Labour Code), provides that any minor under 16 years of age wishing to carry out any kind of work must undergo a thorough medical examination. It also noted that sections 52 and 53 of Regulation No. 258-93 of 12 October 1993 issuing regulations under the Labour Code (hereinafter, Regulation No. 258-93 of 12 October 1993), provide that working minors shall be under medical supervision until they reach the age of 16 years, as envisaged in section 17 of the Labour Code. The Committee requested the Government to provide information on the measures adopted to raise the age set out in the Labour Code and in Regulation No. 258-93 of 12 October 1993 from 16 to 18 years so that the above texts are brought into harmony with the provisions of the Convention.

With regard to the Labour Code, the Committee noted the information provided by the Government according to which a report by a consultant has concluded that the age established by the Labour Code should be raised. With reference to Regulation No. 258-93 of 12 October 1993, it noted the Government's indication that a resolution has already raised the age from 16 to 18 years. The Committee reminded the Government that, under the terms of *Articles 2(1) and 3(1)* of the Convention, children and young persons under 18 years of age may not be admitted to employment by an industrial enterprise unless they have been found to be fit for the work on which they are to be employed by a thorough medical examination. **The Committee once again requests the Government to provide information on the measures adopted or envisaged to bring the Labour Code and Regulation No. 258-93 of 12 October 1993 into conformity with the Convention and to raise from 16 to 18 years the age established for thorough medical supervision. The Committee also requests the Government to provide a copy of the resolution which is reported to have raised the age established for thorough medical supervision from 16 to 18 years.**

*Article 4(1). Medical examinations and re-examinations for fitness for employment until at least the age of 21 years.* The Committee noted previously that, under the terms of section 53 of Regulation No. 258-93 of 12 October 1993, the medical examination only applies to those under 16 years of age and has to be renewed annually or every three months where the work involves high risks for the health of the young person. The Committee recalled that, by virtue of *Article 4(1)* of the Convention, in occupations which involve high health risks for children or young persons, the medical examination and re-examination for fitness for employment shall be required until at least the age of 21 years. The Committee noted that the Government did not provide any information on this subject. **It therefore once again requests it to take the necessary measures to amend the legislation so as to provide that, where the work performed by young persons involves high health risks, medical supervision shall be required until at least the age of 21 years.**

*Article 4(2). Specification of the occupations in which a medical examination for fitness for employment shall be required until at least the age of 21 years.* The Committee noted that the Government did not provide any information on this point. **It therefore once again requests it to provide information on the measures adopted or envisaged to specify the occupations or categories of occupations in which a medical examination for fitness for employment shall be required until at least the age of 21 years, or to empower an appropriate authority to specify such occupations.**

*Article 6(2). Determination of the measures for vocational guidance and physical and vocational rehabilitation of children and young persons found to be unsuited to work.* Noting the absence of information in the Government's report on this point, the Committee reminded the Government that, under the terms of *Article 6(2)*, of the Convention, cooperation shall be established between the labour, health, educational and social services concerned, and effective liaison shall be maintained between the services. **It once again requests the Government to provide information on this subject.**

*Article 6(3). Work permits or medical certificates.* The Committee noted the model certificate of fitness for employment for minors provided by the Government. **It requests the Government to indicate whether this model is also used for children and young persons whose fitness for employment is not clearly determined and who have to either: (a) work for a limited period at the expiration of which the young worker will be required to undergo re-examination; or (b) work under special conditions of employment.**

*Article 7. Keeping the medical certificate available to labour inspectors.* In its previous comments, the Committee reminded the Government that, under the terms of this Article of the Convention, the employer is required to file and keep available to labour inspectors either the medical certificate for fitness for employment or the work permit or workbook. **Noting the absence of information in the Government's report, the Committee once again requests it to indicate the measures taken to give effect to this provision of the Convention.**

*Part V of the report form. Application of the Convention in practice.* **With reference to its previous comments, the Committee once again requests the Government to provide general information on the manner in which the Convention is applied in practice including, for instance, extracts from the reports of the inspection services and information concerning the number and nature of the infringements reported.**

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

## El Salvador

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1996)**

*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 42,770 children benefited from Phase I of the **Time-bound Programme (TBP)** between September 2001 and September 2006. Of these, 12,967 were removed from child labour and 29,803 were prevented from working. These children also benefited from various services, including formal and non-formal schooling and vocational training, and their parents had access to income-generating activities. Phase II of the **TBP** commenced in October 2006. The objective of the second Phase was to implement programmes of action to eliminate child labour, including its worst forms, for example in the sugar cane and fishing industries and hazardous types of work in markets. The Committee also noted the results of the survey conducted by the General Directorate of Statistics and Census in 2006 according to which 205,009 children aged between 5 and 17 years were engaged in work.

The Committee notes the information provided by the Government that Phase II of the **TBP** ended in December 2009. In total, 13,012 children and young persons benefited from the second Phase of the programme. Of the beneficiaries, 3,489 were removed from child labour and 9,523 were prevented from being engaged in work. The Committee also noted the adoption by the Government, in collaboration with ILO-IPEC, of a "roadmap" to free El Salvador from child labour and its worst forms. The roadmap constitutes a national strategic framework based on the achievement of the objective set out in *Decent work in the Americas: An agenda for the Hemisphere*, namely the elimination of the worst forms of child labour by 2015 and the eradication of child labour in all its forms by 2020.

The Committee notes the information provided by the Government that labour inspections carried out between 2009 and June 2010 resulted in the removal of 171 children from their work and the guarantee that they do not return to work through the implementation of a system of regular monitoring. It also notes the detailed results of the household survey of 2008 and 2009 conducted by the General Directorate of Statistics and Census, which were provided in the Government's report. According to the results obtained in 2008, a total of 190,525 children between the ages of 5 and 17 worked in the country, of whom 71.8 per cent were boys and 28.2 per cent were girls. According to the results of the 2009 survey, child labour fell by 0.9 per cent and now concerns a total of 188,884 children and young persons between 5 and 17 years of age. Children aged between 5 and 14 years represent 50 per cent of the total number of working children. The great majority of them work in rural areas, in agriculture, trade and domestic services, and are not paid.

The Committee welcomes the progress achieved and the efforts made by the Government for the abolition of child labour. Nevertheless, it observes that, even though the number of children and young persons working in the country has fallen in recent years, half of the children who work in the country are below the minimum age for admission to employment, namely 14 years. **The Committee encourages the Government to pursue its efforts to combat child labour and requests it to continue providing information on the measures adopted and the results achieved in the context of the implementation of the Decent Work Country Programme and the roadmap with a view to ensuring the progressive elimination of child labour. It also invites the Government to continue providing detailed information on the application of the Convention in practice including, for example, statistical data on the employment of children and young persons under the minimum age for admission to employment, disaggregated by sex and age group, as well as extracts from the reports of the inspection services.**

*Article 2(3). Compulsory schooling.* The Committee previously noted the detailed information provided by the Government on the programmes of action implemented by the Ministry of Education in the context of the Plan 2021. It noted that these programmes included the adoption of various measures to improve the quality of education and increase school attendance rates, particularly for marginalized children or those from very poor families in rural and urban areas. Moreover, measures were also taken to promote equality of opportunity in access to education, not only between the sexes, but also for those who require specialized education or who have a disability. It noted that, according to the Government, these programmes benefited over 1,857,246 students in 2007.

The Committee notes the Government's indication concerning the implementation of the Social Education Plan 2009–14. According to the Government, the Plan is intended to encourage the participation of children in primary and secondary education and addresses, among others, children engaged in work. In this respect, the Committee takes due note of the Government's indication that children engaged in work are exempt from enrolment fees when they participate in catch up courses. It also notes that the issue of child labour has been included in the national teaching programme for primary and secondary school with a view to raising the awareness of schoolchildren to this problem.

The Committee further notes that, in its periodic report submitted to the Committee on the Rights of the Child (CRC) (CRC/C/SLV/3–4, paragraph 240, 23 July 2009), the Government refers to the implementation of the Accelerated Elementary Education Programme, which caters to children living in marginal rural and urban areas. According to the information contained in the periodic report, 3,175 students from grades 2–6 of elementary education (8–12 years) are reported to have benefited from the programme in 2006.

The Committee notes that, according to the 2008 statistics of the UNESCO Institute for Statistics, the net school attendance rate in primary school (7–12 years) rose slightly over the past ten years to achieve 95 per cent for girls and 94 per cent for boys. Nevertheless, although the net school attendance rate also increased for secondary school (13–18 years), only 56 per cent of girls and 54 per cent of boys were enrolled in secondary education in 2008, despite the fact that the transition rate from primary to secondary education is 92 per cent. The Committee also notes that, according to the UNESCO 2010 *Education for All Global Monitoring Report*, entitled *Reaching the marginalized*, El Salvador is in an intermediate position in relation to the achievement of the objective of Education for All, particularly due to the low school survival rate in the country. It also notes that the CRC, in its concluding observations of 17 February 2010 (CRC/C/SLV/CO/3–4, paragraph 68), expressed concern at the low rate of school attendance of adolescents in secondary education, as well as the high level of school drop-outs.

While noting the increase in the net school attendance rates at the primary and secondary levels in recent years, and the programmes of action implemented by the Ministry of Education to raise school attendance rates, the Committee observes that the school enrolment rate at the secondary level is still low. ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee once again encourages the Government to renew its efforts to improve the education system in the country and requests it to continue taking measures with a view to raising the school attendance rate and reducing the drop-out rate, particularly in secondary education. It requests the Government to provide information in its next report on the progress achieved in this respect and on the results achieved in the context of Plan 2021 and the Social Education Plan 2009–14.***

*Article 6. Apprenticeship.* In its previous comments, the Committee noted the formulation of a preliminary draft of a Bill on apprenticeship by the National Labour Modernization Commission (CONAMOL), which is composed of Government bodies, employers' and workers' organizations, representatives of universities and NGOs. It noted that, under the terms of section 3 of the draft Bill, the age for entry into apprenticeship is 14 years and that the performance of hazardous types of work in the context of apprenticeship is prohibited. Furthermore, according to the information provided by the Government concerning the conditions of apprenticeship, apprentices will have to be paid and benefit from social security, and apprenticeship should not interfere with compulsory schooling.

The Committee notes the information provided by the Government in its report according to which the CONAMOL was abolished on 31 May 2009. It also notes that the draft Bill on apprenticeship was rejected by the legislative committee responsible for examining the Bill before its submission to the Legislative Assembly. Nevertheless, the Committee observes that an Act on the comprehensive protection of children and young persons was adopted on 26 March 2009. It notes with *satisfaction* that, under the terms of section 59 of the Act, the minimum age for admission to employment or work is set at 14 years, including for apprentices. The Act also provides that the hours of work of apprentices shall take into account the attendance of apprentices at school or in training centres and that the activities performed shall be compatible with the physical, psychological, moral and cultural development of young persons (section 62). Section 63 also provides that apprentices shall benefit from the social protection and social security system.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments, the Committee observed that the provisions of the national legislation did not prohibit the use, procuring or offering of a child under 18 years of age for illicit activities. In this respect, it noted that, in the context of the implementation of the National Plan for the Elimination of the Worst Forms of Child Labour (2006–09), the principal texts of the national legislation applicable to the worst forms of child labour would be revised so as to reinforce the protection of children in this field.

The Committee notes with *satisfaction* that, in accordance with Decree No. 459 of 20 October 2010 amending section 345 of the Penal Code, the procurement of minors for criminal purposes in groups, associations or organizations, or the use of minors as instruments to break the law, is punishable by a sentence of between 15 and 20 years imprisonment.

*Articles 3(a) and 7(1). Worst forms of child labour and penalties. Sale and trafficking of children for sexual exploitation.* In its previous comments, the Committee noted the indication by the Inter-Union Commission of El Salvador that increasing numbers of boys and girls are sexually exploited in El Salvador. It also noted the indication by

the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), that the trafficking of persons for sexual exploitation, particularly in forced prostitution rings involving children, is a serious problem in the country, with child victims being brought from Mexico, Guatemala and other countries in the region for prostitution. The ITUC also indicated that an internal trafficking network exists. The Committee further noted the amendments made to sections 169, 170 and 367-B of the Penal Code. It noted with interest the detailed information on the surveys conducted and the sanctions applied in relation to the sale and trafficking of children for commercial sexual exploitation between August 2006 and December 2007. The Committee noted that persons found guilty of the sale and trafficking of children for sexual exploitation were sentenced to terms of imprisonment ranging from 14 to 26 years.

The Committee notes the statistics provided in the Government's report on the investigations conducted and the convictions obtained in relation to the sale and trafficking of persons. It notes that, between 2008 and 30 April 2010, 21 cases of trafficking of persons were under investigation, six cases were examined by the courts and public hearings were held in three cases. However, the Committee observes that the Government does not provide statistics disaggregated according to whether the victims are adults or under 18 years of age. The Government, nevertheless, provides two examples in its report of cases of the sale and trafficking of minors, in relation to which those persons found to be guilty were convicted to sentences of four and 15 years imprisonment, respectively.

The Committee notes the statistics provided in the Government's written reply of 7 February 2009 to the list of issues raised by the United Nations Committee on the Rights of the Child (CRC) in relation to 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/SLV/Q/1/Add.1, pages 5–6). It observes that, between 2007 and 2009, 220 children and young persons who were victims of trafficking were intercepted at the frontiers of El Salvador, the great majority of whom were young women (213), of whom 190 were aged between 12 and 18 years. However, the Committee notes that the CRC, in its concluding observations of 17 February 2010 on the third and fourth periodic reports of El Salvador (CRC/C/SLV/CO/3-4, paragraph 82), expressed concern at the low level of prosecutions and convictions for trafficking-related crimes vis-à-vis the reported cases. ***The Committee requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age for sexual exploitation are carried out. In this respect, it requests the Government to provide information on the application of the provisions regarding this worst form of child labour, including statistics on the number of convictions and penal sanctions applied in cases of the sale and trafficking of persons under 18 years of age. To the extent possible, all information provided should be disaggregated by sex and age.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from such labour. Commercial sexual exploitation and trafficking of children for that purpose.* With reference to its previous comments, the Committee notes with ***interest*** the detailed information provided in the Government's report on the activities and results achieved in the context of the National Plan to Combat the Commercial Sexual Exploitation of Children (2006–09) and the Strategic Plan to Combat the Trafficking of Persons (2008–12). It notes in particular the awareness raising and information activities carried out among young persons and the population in general, the training programmes intended to strengthen the capacities of the police and security forces, the inter institutional coordination measures and the measures for the protection of victims. In this regard, the Committee notes that the Institute for the Development of Children and Young Persons (ISNA) is entrusted with the coordination of the Regional Centre for Sheltering Victims of Trafficking. With a view to the rehabilitation and social integration of victims, the Regional Centre offers the services of a legal officer, a psychologist, a social worker, three educators and a teacher. In addition, the capacity of the Centre has been increased from 15 to 30 persons. According to the statistics provided in the Government's report, 131 children and young persons under 18 years of age who were victims of trafficking received shelter in the Regional Centre between 2008 and September 2009. The Committee also notes that, according to the final ILO–IPEC report of March 2010 on the implementation of Phase II of the ***Time-bound Programme (TBP)***, over the total duration of the project (30 September 2006 – 31 December 2009), 400 children, including 234 girls and 166 boys, were prevented from being engaged in commercial sexual exploitation and benefited from educational services. However, the Committee observes that the CRC, in its concluding observations of 12 February 2010 on the application of 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/SLV/CO/1, paragraph 10), noted with concern that the time-frame for the implementation of the strategic plan against the commercial sexual exploitation of children had expired and had not yet been renewed. Furthermore, no specific budget has been allocated to carry out the plan, nor any monitoring or evaluation system established. ***Noting that the National Plan to Combat the Commercial Sexual Exploitation of Children ended in 2009, the Committee strongly encourages the Government to continue its efforts to protect persons under 18 years of age from commercial sexual exploitation and trafficking for that purpose. It requests the Government to provide information on the number of child victims removed from this situation and the number of those who have benefited from rehabilitation and social integration pursuant to the implementation of the National Plan to Combat the Commercial Sexual Exploitation of Children (2006–09) and the Strategic Plan to Combat the Trafficking of Persons (2008–12). It also requests the Government to provide information on the implementation of the National Plan to Combat the Commercial Sexual Exploitation of Children.***

*Clause (d). Children at special risk. Child domestic workers.* The Committee previously noted the indication by the Inter-Union Commission of El Salvador that ever-increasing numbers of boys and girls were becoming victims of hazardous working conditions. It also indicated that the practice of “handing over” boys and girls to families still exists in the country. These children are then used as domestic servants and work long hours without adequate remuneration and without attending school. It noted the rapid assessment study on domestic work done by children which was published by ILO-IPEC in February 2002, according to which 93.6 per cent of children working in domestic service are girls.

The Committee notes the Government’s indication that the Act for the comprehensive protection of children and young persons (LEPINA), adopted on 26 March 2009, provides for protection measures which apply, among others, to children working in domestic service. Section 64 of the LEPINA provides that only persons over 16 years of age may work in domestic service. However, the Committee notes that, according to the information contained in a report on the worst forms of child labour in El Salvador of 15 December 2010, available on the website of the United Nations High Commissioner for Refugees, over 16,000 children work in domestic service in the country, of whom 15 per cent are reported to have begun before the age of 15 years. It also observes that the CRC, in its concluding observations of 17 February 2010 on the third and fourth periodic reports of El Salvador (CRC/C/SLV/CO/3-4, paragraph 76), expressed concern that girls are often employed informally in domestic work under very difficult and degrading conditions. ***Considering that children working in domestic service are particularly exposed to the worst forms of child labour, the Committee requests the Government to intensify its efforts to protect these children from the worst forms of child labour, paying particular attention to girls. It requests the Government to take specific measures for the provision of the necessary and appropriate direct assistance for the removal of these children from hazardous forms of work and to ensure their rehabilitation and social integration. Finally, it requests the Government to provide detailed information on the measures adopted in this respect and the results achieved.***

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

## Ethiopia

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

*Article 1 of the Convention and Part V of the report form. National policy designed to ensure the effective abolition of child labour and practical application of the Convention.* In its previous comments, the Committee noted the data from the 2001 National Child Labour Survey indicating that 15.5 million children (84.5 per cent of the child population) were engaged in economic activities, and 12.6 million of these children (81.2 per cent) were under the age of 15. The Committee also noted the information in National Labour Force Survey of 2004–05 (NLFS) that 46.4 per cent of boys and 35 per cent of girls in rural areas, between the ages of 5 and 14, did not attend school and were engaged only in economic activity. The Committee further noted that the UN Committee on the Rights of the Child (CRC), in its concluding observations of 1 November 2006, expressed deep concern at the prevalence of child labour among young children including those as young as five (CRC/C/ETH/CO/3, paragraph 71). Nonetheless, the Committee noted that one of the six main components of the Government’s “National Plan of Action for Children 2003–10 and beyond” (NPA for Children) was to reduce child labour.

The Committee notes the information in the Government’s report that, pursuant to the NPA for Children, a draft “National Plan of Action for the Elimination of the Worst Forms of Child Labour 2010–14” (NPA on WFCL) was prepared. The Government indicates that procedures, protocols and guidelines were developed to ensure the practical applicability of the NPA on WFCL, and that this has been tested through a pilot project. The Government states that these two NPA’s provide a framework to give effect to the provisions of the Convention. The Committee also notes the Government’s indication that the celebration of both Children’s Day and the World Day against Child Labour served to raise awareness on child labour issues. The Committee further notes the Government’s statement that, as the number of children attending school (both in rural and urban areas) is increasing, the likelihood of children under 14 being engaged in economic activities is decreasing. The Government also states that it is implementing the Convention to the extent that its capacity permits. Lastly, the Committee notes the information in the ILO Decent Work Country Programme for Ethiopia (2009–12) that this Programme includes technical support for the drafting of sectoral child labour action plans as part of ongoing technical cooperation programmes, in addition to providing support to the Ministry of Labour and Social Affairs and social partners to develop a national child labour policy. ***While noting the constraints faced by the Government, the Committee urges the Government to strengthen its efforts to combat child labour through the effective implementation of the NPA on Children and the NPA on WFCL. In this regard, the Committee requests the Government to provide information on the concrete measures taken within the framework of these two NPA’s, to ensure that, in practice, children under the minimum age of 14 do not work. It requests the Government to provide information on the results achieved, particularly with regard to reducing the number of working children under the minimum age.***

*Article 2(1). Scope of application.* The Committee previously observed that the provisions of Labour Proclamation No. 377/2003 do not cover work performed outside of an employment relationship. It also noted the information from the NLFS that approximately 1.57 per cent of economically active children (approximately 139,404 children between the ages of 5 and 14) were self-employed. The Committee further noted the Government’s

acknowledgement that the labour legislation did not cover children who work on their own account, but that measures would be taken in this regard.

The Committee notes the Government's statement that the various social measures it has taken which target children are meant to contribute towards the reduction of children engaged in work on a self-employed basis. The Government indicates that, in addition to the NPA on Children, it is implementing an Orphan and Vulnerable Children Programme, a poverty reduction programme and that it is providing educational, health and sanitation services. The Committee also notes the Government's statement that it is committed to improving the lives of children, including those working on their own account, and that ILO support is important in this regard. While taking due note of this information, the Committee observes the information in the Decent Work Country Programme (2009–12) that the majority of working children work in agriculture and in various sectors of the urban informal economy. The Committee also notes the information from the NLFS, that only 2.14 per cent of working children are in formal labour relationships. In this regard, the Committee once again recalls that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether under a labour relationship or not, and whether it is remunerated or not. ***It therefore requests the Government to strengthen its efforts to ensure that children working on their own account, in agriculture and in the urban informal economy benefit from the protection of the Convention. It requests the Government to continue to provide information on the measures taken in this regard.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that the CRC, in its 1 November 2006 concluding observations, expressed serious concern that primary education in Ethiopia was neither free nor compulsory, and that net enrolment remained very low (CRC/C/ETH/CO/3, paragraph 63). The Committee also noted that, according to the NLFS, 36.3 per cent of children between the ages of 5 and 14 engaged only in economic activity and did not attend school. However, the Committee also noted the Government's indication that primary school drop-out rates had been reduced and that there had been an increase in enrolment rates at the primary and secondary levels.

The Committee notes the Government's indication that it has given priority to improving the education system, and has increased the funding to this sector from 16.7 per cent of its total budgetary allocation (in 2004–05) to 22.8 per cent (in 2008–09). The Government also indicates that it has significantly increased the number of schools at the primary and secondary levels between 2003 and 2009, in addition to reducing the primary pupil-to-teacher ratio. The Government further indicates that the net enrolment rate for primary education has increased from 68.5 per cent (in 2004–05) to 83.4 per cent (in 2007–08). Moreover, the Committee notes the information from UNESCO's *Education for All Global Monitoring Report* of 2011 that the total number of out-of-school children of primary school age has decreased significantly from 6,481,000 children in 1999 to 2,732,000 children in 2008. However, the Committee notes the Government's statement that, while primary education is free of charge, the age of completion of compulsory schooling will be determined by the level of development in the country.

While taking due note of the Government's efforts to strengthen the functioning of the education system, the Committee notes the Government's indication that while education is free at the primary level, it is not compulsory. In this regard, the Committee observes that there remain a significant number of children under the minimum age who are not attending, or who have dropped out of school. ***Recalling that compulsory schooling is one of the most effective means of combating child labour, the Committee encourages the Government to take the necessary measures, within the framework of its efforts to strengthen the education system, to provide for compulsory education up to the minimum age of admission to employment of 14 years. The Committee requests the Government to provide information on any developments in this regard.***

*Article 3. Hazardous work.* The Committee previously observed that the decree issued by the Minister of Labour and Social Affairs of 2 September 1997 concerning the prohibition of work for young workers, (and containing a list of types of prohibited hazardous work) did not apply to persons who carry out such activities in the course of professional education in vocational centres. It also noted that, while section 89(4) of Labour Proclamation No. 377/2003 prohibits young workers (persons between 14 and 18 years) from engaging in work which endangers their life or health, section 89(5) thereof specifies that this prohibition does not apply to young workers following courses in vocational schools. The Committee therefore observed that workers between the ages of 14 and 18 were not prohibited from engaging in hazardous work while they were following courses in vocational schools.

The Committee notes the Government's statement that it plans to consult with its social partners and other stakeholders to review the directive concerning the prohibition of work for young workers. In this regard, the Committee draws the Government's attention to *Article 3(1)* of the Convention, which states that the minimum age of admission to hazardous work shall not be less than 18 years. Additionally, the Committee reminds the Government that the exception outlined in *Article 3(3)* of the Convention provides that national laws or regulations may authorize hazardous work for young persons over the age of 16 (following consultation with the organizations of employers and workers concerned) provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore urges the Government to consider Article 3(1) and (3) of the Convention during its upcoming review of the directive concerning the prohibition of work for young persons. It requests the Government to take the necessary measures to ensure that the review of the directive results in a prohibition on young persons under 18 years of age who are following courses in vocational schools (or under 16 years under the specific conditions set forth in Article 3(3)) from carrying out hazardous work.***

## France

## New Caledonia

**Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)**

*Article 2(1) of the Convention. Medical examination for fitness for employment.* In its previous comments, the Committee noted that section 3(1) and (3), of Decision No. 266 of 17 April 1998, concerning a number of social measures, provided that children over 14 years of age who worked should undergo a medical examination with an occupational physician *before being hired or, at the latest, before the end of the trial period following hiring*. The Committee also noted that section 24(1) of Decision No. 50/CP of 10 May 1989 on occupational medicine provided that all employees should undergo a medical examination *before being hired or, at the latest, before the end of the trial period following hiring*. In its report, the Government indicated that all employees were required to undergo a medical examination before being hired. However, in order to maintain a certain flexibility, particularly because of constraints in respect of availability of the Occupational Inter-Enterprise Service (SMIT), established under the Social Protection Fund of New Caledonia (CAFAT), this examination may be carried out right up until the end of the trial period. In this regard, the Government indicated that, since the workers involved were young persons between 14 and 16 years of age who could only be employed during school holidays, the trial period could not exceed a period of one day per week, or, for a two-month contract, eight days. According to the Government, the shortness of this trial period, together with the labour inspectorate's verification that the working conditions of the young employee complied with the constraints imposed by the regulations in respect of the type of work he might perform, gives full effect to the medical examination requirement. The Committee requested the Government to provide information on the application of Decision No. 266 and Decision No. 50 to determine whether the possibility of carrying out the medical examination for fitness for employment at the latest before the end of the trial period following hiring, occurs frequently in practice.

The Committee notes the Government's indication that it does not have any information on the activity of the SMIT concerning the medical examination of young persons. **Consequently, the Committee requests the Government to take the necessary measures to ensure that children and young persons under 18 years of age shall not be admitted to employment by an industrial undertaking unless they have been found fit for the work by a thorough medical examination before being hired, in accordance with Article 2(1) of the Convention, and not after they have been hired as apparently authorized by the national legislation. It requests the Government to send information on the measures taken in this respect in its next report.**

**Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)**

*Article 2(1) of the Convention. Medical examination.* See under the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77).

*Article 7(2)(a). Children engaged either on their own account or on account of their parents.* In its previous comments, the Committee had noted that the national legislation included no specific provisions for the application of the system of medical examinations 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 any other occupation carried out in the streets or in a public place.

The Committee notes with *regret* that, according to the Government's report, no development has occurred or is envisaged in this area. The Committee reminds the Government once again that, pursuant to *Article 7(2)(a)* of the Convention, measures of identification should be adopted to ensure the application of system of medical examinations for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried out in the streets or in places to which the public have access (the person concerned must, for instance, be in possession of a document mentioning the medical examination). **Noting that it has been raising this issue for a number of years, the Committee urges the Government to take the necessary measures, as soon as possible, to determine the measures of identification to ensure 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 in the streets or in a public place, as well as on other methods of monitoring applied to ensure a strict application of the Convention, in accordance with Article 7(2) of the Convention.**

## Gabon

### **Minimum Age (Underground Work) Convention, 1965 (No. 123)** (ratification: 1968)

*Article 2(1) of the Convention. Minimum age.* With reference to its previous comments, the Committee notes that Gabon ratified the Minimum Age Convention, 1973 (No. 138), on 25 October 2010 and set a minimum age for admission to employment or work of 16 years, or an age that is lower than the one specified in the Convention for any types 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. The Committee however notes with *satisfaction* that, under the terms of section 177 of the Labour Code, as amended by Ordinance No. 018/PR/2010 of 25 February 2010, the types of work considered to be the worst forms of child labour, including work performed underground or in confined spaces, are prohibited for children and young persons under 18 years of age. The Committee accordingly draws the Government's attention to the fact that a formal declaration specifying the application of Article 3 of Convention No. 138 to underground work would result in the immediate denunciation of the present Convention. ***In view of the above, the Committee encourages the Government to envisage the possibility of communicating a declaration specifying that Article 3 of Convention No. 138 applies to underground work, thereby resulting in the denunciation of the present Convention.***

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

### **Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124) (ratification: 1968)**

*Article 2(1) of the Convention. Minimum age.* In its previous comments, the Committee noted that, under the terms of section 207 of the Labour Code, the initial medical examination prior to recruitment was only compulsory for children under 18 years of age and not, as envisaged by the Convention, for persons under 21 years of age.

The Committee notes the Government's indication in its report that it undertakes to take into account the requirement to make the initial medical examination prior to recruitment compulsory for workers under 21 years of age in the framework of the adoption of a draft Decree to update Order No. 3773 of 25 March 1954 on the organization and operation of medical services. It also notes that, under the terms of section 178 of the Labour Code, as amended by Ordinance No. 018/PR/2010 of 25 February 2010, labour inspectors may require a medical examination for fitness for employment of children and young persons up to the age of 18 years and up to the age of 21 years for types of work which involve high health risks. The Committee nevertheless observes that the medical examination prior to recruitment for young persons of 21 years of age is still not compulsory. ***The Committee therefore expresses the firm hope that the draft Decree will be adopted in the near future so as to give full effect to this provision of the Convention and requests the Government to provide information on any developments in this respect.***

*Article 3(2). X-ray film of the lungs.* The Committee has been emphasizing for a number of years that the national legislation in Gabon does not contain any provision requiring an X-ray film of the lungs on the occasion of the initial medical examination and it expressed the hope that the Government would envisage the inclusion in the national legislation of a provision to this effect.

The Committee notes the Government's indication that the draft Decree to update Order No. 3773 of 25 March 1954 on the organization and operation of medical services will take into account the requirement of an X-ray film of the lungs during the initial medical examination and also, if that is considered necessary from a medical point of view, during re-examinations. ***Observing that it has been raising this matter for many years, the Committee urges the Government to adopt the necessary measures to ensure that an X-ray film of the lungs is required during the initial medical examination of any person under 21 years of age with a view to their employment or work in underground mines, as well as, if considered necessary from the medical point of view, during subsequent re-examinations. In this respect, it expresses the firm hope that the draft Decree will be adopted in the near future and it requests the Government to continue providing information in this respect.***

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

## Guatemala

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1990)**

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the study entitled *Understanding child labour in Guatemala*, carried out in 2000 by the National Statistical Institute, around 507,000 boys and girls aged between 7 and 14 years were engaged in work in Guatemala. The agricultural sector was the branch of economic activity with the most child workers (62 per cent), followed by commerce (16.1 per cent), manufacturing (10.7 per cent), services (6.1 per cent) and construction (3.1 per cent). It noted that the Special Labour Inspectors Unit of the Ministry of Labour and Social Welfare formulated a project in 2006 with a view to monitoring the application of the provisions of the Labour Code and the Act on the comprehensive protection of children and young persons of 2003. It also noted that a public policy for the

full protection of children and young persons and an Action Plan on Children and Young Persons (2004–15) had been adopted.

The Committee notes the results of the study on living conditions in Guatemala in 2006 provided in the Government's report. According to the results of this survey, it is estimated that 528,000 children between the ages of 7 and 14 years were engaged in work in the country in 2006. In addition, of the 966,361 children and young persons between 5 and 17 years of age engaged in an economic activity, 7.7 per cent were between 5 and 9 years of age and 47 per cent between 10 and 14. Accordingly, nearly two-thirds of the children and young persons under 17 years of age who work in the country are between 5 and 14 years of age. Most of these children are indigenous boys from rural areas of the country. The economic sectors most affected by child labour are agriculture, stock-raising, hunting, forestry and fishing, the commercial sector and manufacturing. The great majority of children are unpaid (95 per cent of 5–9 year olds and 76.6 per cent of 10–14 year olds) and work more than 20 hours a week. Furthermore, nearly 20 per cent of children between the ages of 5 and 9 years who work and 30 per cent of those aged 10–14 do not go to school.

The Committee also notes the statistics provided in the Government's report concerning the cases of child labour detected by labour inspectors in 2009 and 2010. It observes that the labour inspection services identified three children under 14 years of age engaged in work during inspections during 2009, and none in 2010. Nevertheless, the Committee notes that, according to the information contained in a report on the worst forms of child labour in Guatemala of 15 December 2010, available on the website of the United Nations High Commissioner for Refugees, only eight of the 250 existing labour inspectors in the country have received training on child labour.

The Committee however notes that, according to the information provided in the Government's report, Guatemala has formulated, in collaboration with ILO–IPEC, a “roadmap” to ensure that Guatemala is a country free from child labour and its worst forms. The roadmap constitutes a strategic national framework based on the achievement of the objectives set out in *Decent work in the Americas: An agenda for the Hemisphere*, namely the elimination of the worst forms of child labour by 2015 and the eradication of child labour in all its forms by 2020. It also notes that, according to the information contained in the ILO–IPEC report of June 2010 on the project entitled “Elimination of Child Labour in Latin America (Phase III)”, the 2010–12 programme for the implementation of the roadmap has been prepared and is awaiting approval. The Committee also notes the establishment by the Government of Guatemala of the programme *Mi Familia Progresa* with a view to promoting education as a means of contributing to the eradication of child labour through the provision of cash benefits conditional upon the school attendance of children. The strategic document for the implementation of the roadmap envisages extending the coverage of this programme with a view to covering 800,000 children between the ages of 6 and 15 years by 2015.

The Committee takes due note of the measures adopted by the Government for the abolition of child labour. However, it observes that the United Nations Committee on the Rights of the Child, in its concluding observations of 25 October 2010 on the third and fourth periodic reports of Guatemala (CRC/C/GTM/CO/3–4, paragraph 19), regretted that the implementation of the various initiatives to address violations of children's rights is insufficient and suffers from a lack of adequate evaluation due to institutional weaknesses and the inadequate allocation of resources. ***Once again expressing concern at the number and situation of children under 14 years of age who work in Guatemala, the Committee urges the Government to intensify its efforts to ensure the progressive elimination of child labour. In this respect, it requests the Government to envisage the possibility of adopting all possible measures including adapting and strengthening the labour inspection services so as to ensure the protection set out in the Convention for children and young persons under 14 years of age. It also requests the Government to provide information on the measures adopted and the results achieved in the context of the implementation of the roadmap with a view to the abolition of child labour by 2020. Finally, the Committee requests the Government to continue providing information on the application of the Convention in practice including, for instance, statistics on the employment of children and young persons disaggregated by sex and age, extracts from the reports of the inspection services and information on the number and nature of the violations reported and the penalties imposed.***

*Article 3(1). Age of admission to hazardous work.* In its previous comments, the Committee noted that section 148(a) of the Labour Code prohibits work by *minors* in unhealthy and dangerous workplaces. However, it observed that the Labour Code does not define the term *minor* and that it is therefore impossible to determine the minimum age from which a minor may be admitted to perform hazardous work. In this respect, the Government indicated that the Tripartite Subcommission on Judicial Reforms will examine the Office's proposals during the course of the work of reforming the Labour Code. The Committee also noted that section 32 of Government Agreement No. 112-2006 of 7 March 2005 issuing Regulations on the protection of children and young persons at work prohibits work by children and young persons under 18 years of age in various types of hazardous work.

The Committee notes the Government's indication that the draft reform of the Labour Code has not yet been adopted. However, it notes with *interest* that section 4 of the draft reform of the Labour Code (Initiative No. 4205), available on the Internet site of the Congress of the Republic of Guatemala envisages the revision of section 148(a) so as to prohibit the engagement of young persons under 18 years of age in various types of hazardous work. ***The Committee expresses the firm hope that the draft reform of the Labour Code will be adopted in the very near future so that the national legislation is in conformity with the Convention on this point. It requests the Government to continue providing information on the progress achieved in this regard.***

*Article 6. Apprenticeship. Age of admission to apprenticeship.* The Committee noted previously that section 171 of the Labour Code does not establish a minimum age for admission to apprenticeship. It also noted that, by virtue of section 150 of the Labour Code, the General Labour Inspectorate can issue written authorization allowing daily work by minors under 14 years of age. This authorization must state that the minor will be working as an apprentice. The Committee also pointed out that a reading of section 24 of the Regulations on the protection of children and young persons at work and section 2 of Decree No. 27-2003 issuing the Act on the comprehensive protection of children and young persons suggests that the age of admission to apprenticeship is 13 years. For its part, the Government indicated that the Special Labour Inspectors Unit provides the basis for the application of *Article 6* of the Convention by providing that no minor under 14 years of age may be a party to an apprenticeship contract. The Committee noted the Government's indication that the Tripartite Committee on International Labour Affairs had started a review of the national labour legislation and that the issue of the minimum age for admission to apprenticeship would be brought to its attention.

The Committee notes the Government's indication that no progress relating to the reform of the national labour legislation on the issue of the age of admission to apprenticeship has been reported. ***The Committee therefore urges the Government to take the necessary measures to harmonize the provisions of the national legislation with Article 6 of the Convention so as to establish a minimum age for admission to apprenticeship of 14 years. It requests the Government to continue providing information on the progress achieved in this respect in its next report.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* In its previous comments, the Committee noted that the national legislation does not prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances. It noted that the Congress of the Republic was examining a Bill to reform the Penal Code.

The Committee notes with *satisfaction* that under the terms of section 40 of Decree No. 9-2009 issuing the Act against sexual violence, exploitation and trafficking of persons, which contains amendments to section 194 of the Penal Code, any person who produces, manufactures or prepares pornography using persons under 18 years of age shall be liable to a sentence of six to ten years of imprisonment.

*Articles 3(a) and 7(1). Sale and trafficking of children for commercial sexual exploitation and the penalties applied.* The Committee noted previously that the Committee on the Rights of the Child (CRC), in its concluding observations on the Government'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 of July 2007 (CRC/C/OPSC/GTM/CO/1, paragraphs 8, 12 and 22), expressed concern at the increasing incidence of the commercial sexual exploitation of children and the high number of victims in the country, estimated at 15,000. The CRC also noted reports that child victims are penalized and institutionalized for long periods until decisions are made on their case. The Committee noted that the Trafficking of Persons Unit had conducted a number of investigations relating to commercial sexual exploitation. It also noted that an initiative for the adoption of a law against violence, exploitation and trafficking for the purposes of sexual exploitation was submitted to the Congress of the Republic in August 2008. It further noted that one person was reported to have been convicted for the trafficking of children and that 16 cases were under investigation.

The Committee takes due note of the adoption of Decree No. 9-2009 issuing the Act against sexual violence, exploitation and trafficking of persons. It notes that section 47 of Decree No. 9-2009 amends section 202 of the Penal Code and introduces section 202ter. Under this new provision, the crime of the trafficking of persons is punishable by a sentence of eight to 18 years of imprisonment. Furthermore, under the terms of section 202quater of the Penal Code, as amended by section 48 of Decree No. 9-2009, any person who offers or promises an economic benefit arising out of activities related to the trafficking of persons is liable to a sentence of six to eight years of imprisonment. The sentence is increased by two-thirds if the victim is under 14 years of age and is doubled if the victim is under 10 years of age. The Committee notes the statistics provided in the Government's report relating to the application in practice of these new provisions. It observes that 17 complaints were lodged in 2009 under section 202ter, of which 16 related to girls, and one complaint under section 202quater. However, according to the information provided in the Government's report, no sanctions appear to have been applied for the crime of trafficking of children between 2008 and 2009. In this respect, the Committee observes that the CRC, in its concluding observations of 25 October 2010 on the third and fourth periodic reports of Guatemala (CRC/C/GTM/CO/3-4, paragraph 94), expressed concern that there have been no convictions for sexual exploitation since the adoption of the Act against sexual violence, exploitation and trafficking of persons, and at the tolerance of the competent authorities in relation to trafficking. The CRC also expressed concern once again at the increasing incidence of the sale and sexual exploitation of children (CRC/C/GTM/CO/3-4, paragraph 30). The Committee also notes that, according to a report on the trafficking of persons of 14 June 2010, available on the website of the United Nations High Commissioner for Refugees, the presumed complicity and corruption of officials in activities related to the trafficking of persons is an obstacle to the application of the relevant provisions of the national legislation.

While observing that there are various provisions prohibiting the commercial sexual exploitation and trafficking of children, the Committee expresses *concern* at the information bearing witness to the persistence of the problem of the trafficking of children for their commercial sexual exploitation and at the allegations of the complicity between officials

entrusted with the enforcement of the law and persons engaging in the trafficking of persons. *The Committee therefore urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are conducted against persons who engage in the sale and trafficking of children under 18 years of age for commercial sexual exploitation and of officials who are complicit in such acts, and that sufficiently effective and dissuasive sanctions are applied in practice. It requests the Government to provide information on the number of investigations, prosecutions and convictions under sections 202ter and 202quater of the Penal Code, as amended by Decree No. 9-2009 issuing the Act against sexual violence, exploitation and trafficking in persons.*

*Article 6. Programmes of action. National Plan of Action to Combat the Commercial Sexual Exploitation of Children.* In its previous comments, the Committee noted that the National Plan of Action to Combat the Commercial Sexual Exploitation of Children was being revised. It requested the Government to provide information on the programmes of action developed as part of the implementation of the National Plan.

The Committee notes that the Government has not provided information on this matter. However, the Committee observes that, in the Government's third and fourth periodic reports submitted to the CRC on 23 November 2009 (CRC/C/GTM/3-4, paragraphs 255–256), the Government indicated that the National Plan of Action to Combat the Commercial Sexual Exploitation of Children had been adopted as official policy by the Secretariat of Social Welfare, but that the Secretariat had not been able to implement the Plan and, in view of the inadequacy of the budget allocated, it was only able to implement programmes for the children of female sex workers in the area around the airport. *The Committee therefore urges the Government to adopt immediate and effective measures to ensure the implementation of the National Plan of Action to Combat the Commercial Sexual Exploitation of Children. It requests the Government to provide information on this subject in its next report.*

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of labour and ensuring their rehabilitation and social integration.* 1. *Commercial sexual exploitation and trafficking for that purpose.* In its previous comments, the Committee noted that Guatemala is participating in an ILO–IPEC regional project “Stop the Exploitation: Contribution to the Prevention and Elimination of Commercial Sexual Exploitation of Children in Central America, Panama and the Dominican Republic”. The Committee also took due note of the adoption in 2007 of a public policy to combat the trafficking of persons and ensure the full protection of victims and a National Plan of Strategic Action (2007–17), with the objectives of the immediate and full protection of victims, namely medical and psychological care and reintegration into the family and society.

The Committee notes that the ILO–IPEC regional project on the prevention and elimination of the commercial sexual exploitation of children ended in April 2009. It observes that, according to the ILO–IPEC report of the project of July 2009, for the total duration of the project (November 2005–April 2009), 375 children benefited from services or were reintegrated into the formal or informal school system in Guatemala. Of this number, 187 children, a majority of whom were girls, were removed from commercial sexual exploitation or trafficking, and 188 children were prevented from being engaged in these worst forms of child labour.

However, the Committee notes that the Government's report does not contain information on the measures adopted in the context of the implementation of the public policy to combat trafficking in persons and ensure the full protection of victims and on the National Plan of Strategic Action (2007–17). It also observes that the CRC, in its concluding observations of 25 October 2010 on the third and fourth periodic reports of Guatemala (CRC/C/GTM/CO/3-4, paragraph 94) noted with concern that the competent authorities did not provide specialized or appropriate care for victims of trafficking and sexual exploitation and that the Government did not provide appropriate support to organizations working in this field. *Noting that the ILO–IPEC regional project on the prevention and elimination of the commercial sexual exploitation of children has come to an end, the Committee urges the Government to adopt time-bound measures to: (a) prevent children from becoming victims of commercial sexual exploitation or trafficking for that purpose; and (b) provide the necessary and appropriate direct assistance to remove the child victims from these worst forms of child labour. It also once again, requests the Government to provide information on the measures adopted or envisaged as part of the implementation of the public policy to combat trafficking of persons and provide full protection for victims, and on the National Plan of Strategic Action (2007–17), with a view to ensuring the rehabilitation and social integration of the child victims removed from these worst forms of child labour.*

2. *Tourist activities.* The Committee previously noted that the Guatemalan Institute of Tourism (INGUAT) had undertaken to promote at the national level a process of training and awareness raising for the tourist industry for the years 2007–10 with a view to preventing the formation of trafficking networks, particularly for commercial sexual exploitation, and identifying their activities. It also notes the enactment of the Global Code of Ethics for Tourism in the country, as well the envisaged formulation in 2008 of the Plan of Action for the Implementation of the Global Code of Ethics for Tourism with a view to the protection of children against commercial sexual exploitation.

The Committee takes due note of the awareness-raising activities carried out by INGUAT in 2009 and 2010 for children and young persons, actors in the tourist industry, the police and the Tourism Security Unit (USETUR) on the subject of the commercial sexual exploitation of children and young persons.

*Article 8. International cooperation. Trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted that, in the context of the implementation of the public policy and National Plan of Action for Childhood (2004–15), the Government planned to adopt measures in collaboration with neighbouring countries with a view to bringing an end to the sale and trafficking of girls, boys and young persons for the purposes of sexual exploitation. It noted that a National Protocol for the repatriation of boys, girls and young persons who are victims of trafficking was adopted in 2007, as well as a document on regional initiatives for the special protection of returning boys, girls and young persons who have been victims of trafficking, the purpose of which is to promote cooperation between member countries of the Regional Conference on Migration. However, it observed that the CRC, in its concluding observations of July 2007 (CRC/C/OPSC/GTM/CO/1, paragraph 29), while recognizing the conclusion of memorandums of understanding with neighbouring countries of Guatemala, expressed concern at the fact that undocumented foreign children, including victims of trafficking, are subject to deportation and must leave the country within 72 hours.

The Committee notes the Government's indication that a new Inter-institutional Protocol for the repatriation of victims of trafficking was adopted in December 2009. It observes that the Protocol is not yet implemented in practice. The Committee notes that, according to the information contained in the technical progress report of June 2010 on the ILO–IPEC project entitled “Elimination of Child Labour in Latin America (Phase III)”, the Protocol was drawn up with the support of ILO–IPEC and reviewed by the various cooperation agencies, including the International Organization for Migration. ***The Committee requests the Government to provide information on the implementation of the Inter-institutional Protocol for the repatriation of victims of trafficking. It once again requests the Government to provide information on the measures taken to ensure the rehabilitation and social integration of child victims removed from trafficking for commercial sexual exploitation in their country of origin.***

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

## Haiti

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2007)**

The Committee notes 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.* In its observations made under the Forced Labour Convention, 1930 (No. 29), the Committee noted that the Act of 2003 concerning the prohibition and elimination of all forms of abuse, violence, ill-treatment or inhuman treatment against children [Act of 2003] cited, among the situations involving ill-treatment, inhuman treatment or exploitation, the sale and trafficking of children and also the offering, procuring, transfer, accommodation, reception or use of children for sexual exploitation, prostitution or pornography. It also noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 18 March 2003, expressed deep concern at the number of cases of trafficking of children from Haiti to the Dominican Republic (CRC/C/15/Add.202, paragraph 60). The Committee also noted the September 2006 report on the fact-finding mission of the General Secretariat of the Organization of American States (OAS) relating to the trafficking of persons in Haiti, this trend stemming from the deterioration of the socio-economic and political situation in recent years, which has prevented an effective response to the primary needs of the population and paved the way for an increase in all forms of human exploitation and illicit economic activities.

The Committee noted that, even though section 2(1) of the Act of 2003 prohibits abuse and violence with regard to children and also such exploitation as the sale and trafficking of children, this law does not establish penalties for violations of its provisions. However, it noted with interest the Government's information concerning the preparation and adoption of preliminary draft legislation concerning the trafficking of persons. It observes that, under this bill, the procuring, enlistment, transfer, transportation, accommodation or reception of a child for the purposes of exploitation are considered as trafficking and constitute a violation of the law. Under section 5, the term “child” means any person under 18 years of age. Moreover, section 13 of the bill states that the trafficking of children constitutes an aggravating circumstance liable to incur the maximum penalty established by the Act (section 14), namely nine years' imprisonment. However, the Committee observed that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 10 February 2009, expressed concern at the fact that, despite the alarmingly high number of women victims of trafficking in Haiti, specific legislation criminalizing trafficking is still in draft form and has not yet been submitted to Parliament (CEDAW/C/HTI/CO/7, paragraph 26). The CEDAW also observed that this situation may result in insufficient investigations into cases of trafficking in women and girls and, consequently, lead to impunity for perpetrators.

The Committee also noted that, according to the report of the United Nations Special Rapporteur on contemporary forms of slavery, its causes and consequences (A/HRC/12/21/Add.1, paragraph 19, 4 September 2009) [report of the Special Rapporteur], a new trend has been observed in recent years with regard to the employment of children as domestic workers (designated by the Creole term *restavek*), namely the emergence of persons who recruit children from rural areas to work as domestic servants in urban families and outside the home in markets. The Special Rapporteur noted that this new trend has caused many stakeholders to describe the phenomenon as trafficking since parents are now handing their children over to strangers, whereas previously they entrusted the children to relatives. Moreover, the Committee observes that, according to a UNICEF press release of 15 October 2010, the number of child victims of trafficking has increased since the earthquake of January 2010, traffickers having taken advantage of the resulting chaos to prey on children who were lost or separated from their parents. ***The Committee therefore expresses the hope that the bill on the trafficking of children will be adopted as a matter of urgency and requests the Government to send information on all new developments in this respect. It also requests the Government to take immediate and effective steps to ensure thorough investigations and robust prosecutions of the perpetrators of the sale and trafficking of children under 18 years of age are carried out.***

*Clauses (a) and (d). Forced or compulsory labour and hazardous work Child domestic labour.* In its observations under Convention No. 29, the Committee has been commenting for many years on the situation of hundreds of thousands of

*restavek* children who are often exploited under conditions that qualify as forced labour. It noted that in practice many of these children, some of them only 4 or 5 years old, are the victims of exploitation, are obliged to work long hours without pay, face all kinds of discrimination and bullying, receive poor lodging and food and are often subjected to physical, psychological and sexual abuse. In addition, very few of them attend school. The Committee also noted the repeal of Chapter IX of Title V of the Labour Code, relating to children in service, by the Act of 2003. It noted that the prohibition established by section 2(1) of the Act of 2003 covers the exploitation of children, including servitude, forced or compulsory labour, forced service and also work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. It further noted that the repealed provisions include section 341 of the Labour Code, which allowed a child aged 12 or over to be entrusted to a family for employment in domestic work.

The Committee observed, however, that section 3 of the Act of 2003 states that a child may be entrusted to a host family in the context of a relationship of assistance and solidarity. It notes that the Special Rapporteur expressed deep concern in her report at the vagueness of the concept of assistance and solidarity and considered that the provisions of the Act of 2003 allow the practice of *restavek* to be perpetuated.

According to the report of the Special Rapporteur, the number of *restavek* children is between 150,000 and 500,000 (paragraph 17), and this represents about one in ten children in Haiti (paragraph 23). As a result of interviews with *restavek* children, the Special Rapporteur ascertained that all of them were given heavy workloads by their host families, which was often incompatible with their full physical and mental development (paragraph 25). Moreover, the Special Rapporteur was told that these children are often ill-treated and subjected to physical, psychological and sexual abuse (paragraph 35). Representatives of the Government and civil society pointed out that cases of children being beaten and burned were routinely reported (paragraph 37). The Committee noted that, in view of these findings, the Special Rapporteur described the *restavek* system as a contemporary form of slavery. The Committee expressed its deep concern at the exploitation of the domestic work of children under 18 years of age performed under conditions similar to slavery or under hazardous conditions. It reminded the Government that, under Article 3(a) and (d) of the Convention, work done by, or the employment of, children under 18 years of age under conditions similar to slavery or under hazardous conditions belongs to the worst forms of child labour and, under the terms of Article 1, must be eliminated as a matter of urgency. **The Committee requests the Government to take immediate and effective measures to ensure, in law and in practice, that children under 18 years of age may not be employed as domestic servants under conditions equivalent to slavery or under hazardous conditions, taking account of the special situation of girls. It requests the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions of persons who subject children under 18 years of age to forced or hazardous domestic labour are carried out and to ensure the imposition in practice of sufficiently effective and dissuasive penalties.**

*Article 6. Programme of action for the elimination of the worst forms of child labour.* The Committee noted the Government's indication that a national protection plan was validated in 2006. It noted that the plan targets ten categories of vulnerable children who need protection, including child domestic workers and child victims of trafficking. The Government also indicated that, further to the ratification of the Convention, the Ministry of Social Affairs and Labour (MAST) has considered it necessary to review the national protection plan and include thematic time-bound programmes of action in it. **The Committee requests the Government to supply information on the time-bound measures taken as part of the thematic programmes of action and the national protection plan for the child victims of trafficking and child domestic workers. It also requests the Government to send a copy of the national plan.**

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Sale and trafficking.* The Committee noted that, according to the February 2009 UNODC Global Report on Trafficking in Persons, no system exists for providing the victims of trafficking with care or assistance, nor are there any reception centres for accommodating the victims of trafficking. It also noted that the CEDAW, in its concluding observations of 10 February 2009 (CEDAW/C/HTI/CO/7, paragraph 26), expressed concern at the lack of reception centres for women and girls who are the victims of trafficking. **The Committee requests the Government to take effective measures to provide the necessary and appropriate direct assistance for the removal of children from sale and trafficking and for their rehabilitation and social integration. It requests the Government to provide information on the measures taken towards this end.**

*Clause (d). Identifying and reaching out to children at special risk. Restavek children.* In its observations of 2009 made under Convention No. 29, the Committee noted the existence of programmes for the rehabilitation of *restavek* children established by the Social Welfare and Research Institute (IBESR) in cooperation with various international and non-governmental organizations. It noted that these programmes focus on reintegration in the family setting in order to promote the social and psychological development of the children concerned.

The Committee observed that the Government's report does not contain any information in this respect. It noted that the CRC, in its concluding observations, expressed deep concern at the situation of *restavek* children placed in domestic service and recommended that the Government take urgent steps to ensure that *restavek* children are provided with services offering physical and psychological rehabilitation and social reintegration (CRC/C/15/Add.202, 18 March 2003, paragraphs 56–57). **The Committee requests the Government to take the necessary steps to ensure that *restavek* children are provided with services offering physical and psychological rehabilitation and social reintegration as part of rehabilitation programmes designed for them. It requests the Government to supply information on the specific results achieved in terms of the number of children who have benefited from these measures.**

*Article 8. International cooperation. Sale and trafficking of children.* In its observations of 2009 made under Convention No. 29, the Committee noted that the MAST, in cooperation with the Ministry of Foreign Affairs, is studying the problem of the exploitation of persons in sugar cane plantations in the Dominican Republic and the involvement of children in begging in the same country, and is due to conduct bilateral negotiations with a view to resolving the situation. It also observed that the CEDAW, in its concluding observations of 10 February 2009 (CEDAW/C/HTI/CO/7, paragraph 27), encouraged the Government "to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice".

The Committee noted that the Government's report does not contain any information in this regard. **It requests the Government to supply information on the progress of negotiations aimed at the adoption of a bilateral agreement with the Dominican Republic.**

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

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

## Honduras

### **Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1960)**

*Article 4 of the Convention. Medical examination until the age of 21 years.* In its previous comments the Committee noted that there were no provisions in the national legislation requiring young persons between the ages of 18 and 21 years who are authorized to carry out unhealthy or hazardous work to undergo regular medical examination for fitness for employment.

The Committee notes the information provided by the Government in its report under the Minimum Age Convention, 1973 (No. 138), that a draft of a revised Labour Code is in the process of adoption. ***Observing that Honduras ratified the Convention over 50 years ago, the Committee urges the Government to take the necessary measures, including in the context of the Labour Code reform, to ensure that the national legislation sets out a requirement that young persons between 18 and 21 years of age in occupations that involve high health risks undergo medical examination and regular re-examinations for employment.***

*Article 7(2) and Part V of the report form. Ensuring the application of the system of medical examination for fitness for employment to children engaged either on their own account or on account of their parents, and application of the Convention in practice.* The Committee previously noted that section 126 of the Code of Childhood and Adolescence requires employers to keep a register of all minors employed. It noted, however, that neither the abovementioned Code nor the Labour Code make any provision for measures of identification to ensure 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 in places to which the public has access. The Government stated that child labour had been incorporated in the duties of the General Labour Inspectorate for the purpose of applying this provision of the Convention and that it had examined the possibility of extending application of the national legislation to the informal sector.

The Committee notes the information supplied by the Government to the effect that the national legislation prohibits work by children and young persons under 18 years of age in itinerant trading or any other occupation carried on in the street or in places to which the public has access. The Committee notes with *interest* in this connection that Agreement No. STSS-074-2008 of 7 April 2008, pursuant to which section 8 of the Child Labour Regulations of 10 October 2001 has been amended and an extensive list of hazardous types of work prohibited for persons under 18 years of age has been adopted, bans minors under 18 years of age from itinerant trading (section 8-A(5)(e)) and non-itinerant trading in bars, taverns, billiards rooms and discotheques (section 8-B(6)(a)). The Committee takes due note of the information provided by the Government concerning the measures taken and the results obtained in the context of implementing the Action Plan for the Elimination of Child Labour to ensure that effect is given to the Convention in practice. It notes in particular that the labour inspectorate pays regular visits – eight inspections a month on average – to enterprises employing children. The Committee nevertheless notes that the Government provides no information on measures taken by the labour inspectorate to monitor 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. ***The Committee therefore requests the Government to provide information in its next report allowing it to ascertain how the system of medical examination for fitness for employment is applied to children and young persons working on their own account or on account of their parents, such as extracts of labour inspection reports and statistics of the number of infringements reported.***

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1980)**

The Committee notes the Government's report, and the additional information provided by the Honduran National Business Council (COHEP), dated 4 October 2010.

*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 Commission for the Gradual and Progressive Elimination of Child Labour (CNEGPTTE) developed a second National Plan of Action for 2008–2015 in Honduras (Plan of Action for the Elimination of Child Labour). The Committee also noted that, according to the 2006 statistics contained in a CNEGPTTE document on the second Plan of Action for the Elimination of Child Labour, 299,916 girls, boys and young persons aged between 5 and 17 years were economically active. Of these, 21.51 per cent were girls and 78.49 per cent were boys. Furthermore, 72 per cent of children engaged in work lived in rural areas, and 28 per cent in urban areas. Children worked principally in agriculture, forestry, fishing and domestic work (56.2 per cent); businesses, hotels and restaurants (24.4 per cent); manufacturing (8.2 per cent); construction (3 per cent); and transport, shops and distribution (1 per cent).

The Committee notes with *interest* the information provided in the Government's report on the measures taken to combat child labour. It observes that the Secretariat of Labour and Social Security launched an initiative in 2010 with a view to the establishment of a platform of indicators on the basis of which the implementation of the objectives of the Plan of Action for the Elimination of Child Labour in Honduras could be evaluated. It notes that this Plan of Action has three objectives: (i) preventing school drop-outs; (ii) removing children from hazardous work and the worst forms of child labour; and (iii) ensuring the implementation of the provisions of the national legislation on child labour. For this purpose,

the Committee notes that the Plan of Action is articulated around seven components, including: (i) family income, with the aim of promoting access to social protection services and improving the income of the families of children who are at risk; (ii) education, with the objective of promoting access to and retention in the education system or in non-formal education services; and (iii) research with the aim of broadening the necessary knowledge base to address the problem of child labour.

The Committee takes due note of the information provided in the Government's report on the measures adopted and the results achieved in the context of the implementation of the Plan of Action for the Elimination of Child Labour. It observes that the Secretariat of Labour organizes training daily on rights and duties at work in relation to children and young persons and their legal representatives, and that, between January 2009 and April 2010, these workshops were attended by 2,528 participants. The Committee also notes that the labour inspectorate carries out regular inspections of enterprises which employ children at the average rate of eight inspections a month. The Committee further notes the Government's indication that Honduras has made significant progress towards the formulation of a roadmap to ensure that it is a country free of child labour and its worst forms, the strategic national framework based on the achievement of the objectives set out *Decent Work in the Americas: An agenda for the Hemisphere*, namely the elimination of the worst forms of child labour by 2015 and the eradication of child labour in all its forms by 2020.

The Committee notes the indication in the Government's report that a "child labour" module has now been integrated into household surveys. It notes the results of the 2010 household survey carried out by the National Institute of Statistics (INE), which are accessible on its website. According to the survey, 14.3 per cent of children and young persons between the ages of 5 and 17 years are engaged in an economic activity in the country, the great majority of whom live in rural areas (75.3 per cent). The Committee also notes that, according to UNICEF 2009 statistics, 16 per cent of children between the ages of 5 and 14 years work in the country. ***While noting the Government's efforts, the Committee must express its concern at the large number of children who work and who are below the minimum age for admission to employment or work, and it urges the Government to intensify its efforts to ensure the progressive elimination of child labour. In this respect, it requests the Government to continue providing information on the results achieved through the implementation of the National Plan of Action for the Gradual and Progressive Elimination of Child Labour in Honduras (2008–15) and to provide information on the measures that are adopted following the formulation of the roadmap for the abolition of child labour by 2020. The Committee also requests the Government to continue providing information on the manner in which the Convention is applied in practice, based in particular on statistics on the employment of children under 14 years of age, extracts from the reports of the inspection services and information on the number and nature of the violations reported and the sanctions imposed.***

*Article 2(1) and (4). Scope of application.* The Committee previously noted that, under the terms of section 32(2) of the Labour Code, the authorities responsible for supervising work by persons under 14 years of age may permit them to work if they consider it indispensable in order to provide for their subsistence or that of their parents or brothers and sisters, and provided that it does not prevent them from following compulsory schooling. Furthermore, under the terms of section 2(1), agricultural and stock-raising undertakings that do not permanently employ more than ten workers are excluded from the scope of the Labour Code. It also noted that the Regulations on child labour of 2001, in accordance with sections 4–6, only apply to contractual labour relations. The Government indicated in this respect that a draft revision of the Labour Code had been prepared which contained provisions to bring the national labour legislation into conformity with the international Conventions ratified by Honduras, and therefore to harmonize the provisions of the Labour Code and the Regulations on child labour of 2001 with the Code for Children and Young Persons of 1996. The draft text would also allow the application of the provisions on the minimum age for admission to employment to all children, whether they are engaged under an employment contract or work on their own account. The Committee observed that the majority of children under 14 years of age work in agriculture, forestry, hunting and fishing.

The Committee notes with *regret* that the Government's report does not contain information on the situation regarding the legislative process for the adoption of the draft revision of the Labour Code. The Committee recalls that, under the terms of *Article 2(1)* of the Convention, *no one under the age specified shall be admitted to employment or work in any occupation, subject to the exemptions set out Articles 4–8 of the Convention.* It also recalls that the Convention applies to all branches of economic activity and covers all types of employment or work, whether or not they are performed within the framework of an employment relationship or a labour contract, and whether or not the employment or work is paid. ***Observing that Honduras ratified the Convention over 30 years ago and that the question of the revision of the Labour Code has been raised for a number of years, the Committee urges the Government to take the necessary measures to ensure that no young person under 14 years of age is permitted to work and to ensure that the protection afforded by the Convention also applies to children who work in agricultural and stock-raising undertakings which do not permanently employ more than ten workers and to those who work on their own account. It once again requests the Government to provide information on any progress achieved in this respect.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, although the net school enrolment rate at the primary level was relatively good, the net school attendance rate at secondary school remained low. It noted that, according to the information contained in the report of January 2008 on the ILO–IPEC project entitled "Eliminating Child Labour in Latin America (Phase III)", the objectives of the Education for All Plan in 2015 will not be achieved. It nevertheless noted that a preliminary draft of the General Education Act, which is to replace

the Consolidated Act of 1966, has been submitted to the Directorate of Education. The new legislation would, among other provisions, establish that school is compulsory and free of charge for ten years, namely one year of pre-school and nine years of primary education. The Committee also noted that education is one of the components of the implementation of the National Plan of Action for the Elimination of Child Labour in Honduras through the specific objective of promoting access to education and ensuring school attendance.

The Committee notes that the Government's report does not provide any information on progress in relation to the envisaged reform of the Consolidated Act of 1966. The Committee observes that, according to UNICEF statistics for 2009, the net school attendance rate for primary education is relatively good, at 80 per cent for girls and 76 per cent for boys, but remains fairly low at the secondary level with only 36 per cent of girls and 29 per cent of boys attending this level of education. It also notes that, according to the UNESCO Education for All Global Monitoring Report 2011, entitled "The hidden crisis: Armed conflict and education", although the school enrolment rate in secondary education has increased generally in the countries of Latin America and the Caribbean over recent years, the school enrolment rate at the secondary level in Honduras remains relatively low. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee once again firmly requests the Government to intensify its efforts to improve the operation of the education system with a view to increasing school attendance rates among children under 14 years of age in compulsory basic education, and requests it to provide information on the measures adopted in this respect, particularly in the context of the National Plan of Action for the Gradual and Progressive Elimination of Child Labour in Honduras (2008–15). The Committee also expresses the firm hope that the preliminary draft General Education Act will be adopted in the near future and that it will contain provisions guaranteeing compulsory schooling up to the age of 14. It requests the Government to provide a copy of the Act once it has been adopted.***

*Article 3(3). Hazardous work from the age of 16 years.* With reference to its previous comments, the Committee notes the Government's indication that, under the terms of section 122(3) of the Code for Children and Young Persons of 1996, young persons may be authorized to perform hazardous types of work from the age of 16 years provided that certain conditions are respected, namely that the young person has completed her or his technical education at the Technical Vocational Training Institute or a specialized technical institute covered by the Secretariat for Public Education. The Secretariat for Labour is also under the obligation to ascertain that the work assigned can be performed without prejudicing the health of the young person.

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

The Committee notes the Government's report and the information provided by the Honduran National Business Council (COHEP), dated 4 October 2010.

*Articles 3(a) and (b) and 7(1) of the Convention. Sale and trafficking of children for commercial sexual exploitation, use of children for prostitution and for the production of pornography or pornographic performances, and penalties applied.* In its previous comments, the Committee noted with satisfaction the adoption of Decree No. 234-2005 of 28 September 2005, reforming the Penal Code. It noted that the new provisions of the Code prohibit: the procuring of and international and internal trafficking of persons for commercial exploitation; the use of young persons under 18 years of age in public and private exhibitions or performances of a sexual nature and in the production of pornography; and the promotion of the country as a tourist destination for sexual activities. It however noted that, in its concluding observations of February 2007 on the Government's third periodic report (CRC/C/HND/CO/3, paragraph 78), the Committee on the Rights of the Child (CRC) expressed concern that the commercial sexual exploitation of children is a common phenomenon in Honduras.

The Committee notes the information provided in the COHEP communication on the denunciations received by the Office of the Public Prosecutor between 2005 and 2009 concerning the economic exploitation of minors, child pornography and the procuring and trafficking of persons. It notes that most of the denunciations concerned the trafficking of persons between 2005 and 2007, and the procuring of persons for sexual exploitation in 2009. The Committee also notes the information provided in the Government's report concerning the number of crimes relating to the commercial sexual exploitation of minors reported in 2009. It observes that 28 cases of procuring of persons, 13 cases of trafficking of persons and 12 cases of child pornography were registered. The Committee further notes that, according to the information contained in a report on trafficking of persons in Honduras of 14 June 2010, available on the website of the United Nations High Commissioner for Refugees, the authorities in Honduras have initiated prosecutions in 26 cases concerning the trafficking of persons or the commercial sexual exploitation of children, which have resulted in five convictions with sentences ranging between six and ten years of imprisonment. However, the report indicates that no investigations have been conducted and no prosecutions initiated concerning confirmed allegations of corruption relating to the trafficking of persons, even though certain local officials in the immigration services are reported to have been suspected of complicity in the trafficking of persons.

While noting that the national legislation prohibits the trafficking of children for commercial sexual exploitation and the use of children for prostitution and for the production of pornography and for pornographic performances, the Committee observes that the information on the number of prosecutions and convictions for these crimes is not sufficient. Furthermore, it expresses **concern** at the allegations of corruption and complicity between those engaged in trafficking and law enforcers, and at the fact that no investigations have been conducted of these cases. ***The Committee therefore***

**urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out against persons engaged in the sale and trafficking of persons under 18 years of age for the purposes of commercial sexual exploitation or who use persons under 18 years of age for prostitution, the production of pornography or for pornographic performances, as well as of officials who are accomplices in such acts, and that sufficiently effective and dissuasive sanctions are applied in practice. It requests the Government to provide detailed information on the number of investigations conducted, prosecutions and convictions under Decree No. 234-2005 of 28 September 2005 amending the Penal Code.**

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Commercial sexual exploitation and trafficking for that purpose.* Further to its previous comments, the Committee notes the National Plan of Action to Combat the Commercial Sexual Exploitation of Girls, Boys and Young Persons (2006–11) (National Plan of Action to Combat Commercial Sexual Exploitation) attached to the COHEP communication. It notes that, according to the communication, the National Plan of Action is built around various action components, including a component on prevention, one on the protection of victims and another on reintegration. The National Plan of Action accordingly envisages the establishment of procedures for the identification, referral and provision of assistance to children and young persons who are victims of trafficking, as well as the development of models, programmes and projects for comprehensive assistance to children and young persons who are victims of commercial sexual exploitation.

The Committee also takes note of the information contained in the report of June 2009 of the ILO–IPEC subregional project on the commercial sexual exploitation of children. It notes that, according to this information, the Government adopted a Protocol in 2008 for comprehensive assistance to children and young persons who are victims of commercial sexual exploitation. In addition, a manual for the prevention of commercial sexual exploitation in the tourism sector was prepared and integrated into courses on tourism at the various universities. The report adds that 303 girls and boys benefited from the ILO–IPEC subregional project between November 2005 and April 2009. Of that number, 184 children, the great majority of whom were girls, were removed from commercial sexual exploitation and trafficking, and 101 girls and 18 boys were prevented from being engaged in these worst forms of child labour. The Committee observes that the ILO–IPEC subregional project was completed in April 2009. **Noting that the ILO–IPEC subregional project on the commercial sexual exploitation of children has been completed, the Committee strongly encourages the Government to pursue its efforts and requests it to provide detailed information in its next report on the measures adopted in the context of the Protocol of 2008 for comprehensive assistance to children and young persons who have been victims of commercial sexual exploitation. It also requests the Government to provide information on the results achieved through the implementation of the National Plan of Action to Combat the Commercial Sexual Exploitation of Girls, Boys and Young Persons in Honduras (2006–11), with an indication of the number of children who have, in practice, been removed from trafficking and commercial sexual exploitation, and who have benefited from social integration measures.**

*Clause (d). Children at special risk. 1. Street children.* The Committee previously noted that, in its concluding observations of February 2007 (CRC/C/HND/CO/3, paragraph 74), the CRC, while noting the adoption of the National Plan of Action for the Social Integration of Children and Women dependant on the street, expressed concern at the high number of street children and at the lack of information in this respect.

The Committee notes the information provided in the Government’s report concerning the implementation of a project entitled “*Mano Amiga*”, targeting young persons living in the crematoria of Tegucigalpa and San Pedro Sula. It notes that 31,400 people between the ages of 14 and 30 benefited from assistance in the context of this programme. **The Committee requests the Government to continue its efforts to protect street children from the worst forms of child labour. It requests the Government to provide information on the number of children removed from the streets and who benefited from rehabilitation and social integration measures, particularly within the framework of the “Mano Amiga” project.**

*2. Indigenous children.* In its previous comments, the Committee noted that, in its concluding observations in February 2007 (CRC/C/HND/CO/3, paragraph 21), the CRC expressed concern at the lack of information concerning the most vulnerable groups, including indigenous children. The Committee noted with interest that a programme of action, with the objective of contributing to the prevention and removal of indigenous girls, boys and young persons from child labour, benefited 300 people between October 2007 and February 2008. The Committee also notes that, according to information available to ILO–IPEC, a study has been conducted in the country on indigenous children.

The Committee notes that, according to the information contained in the ILO–IPEC report of June 2010 on the project “Eliminating Child Labour in Latin America (Phase III)”, a programme of action was launched in May 2010 to prevent and eliminate work by indigenous children of the Lenca ethnic group in domestic service and in the agricultural sector. **Observing that the children of indigenous peoples are often victims of exploitation, which takes on very diverse forms, and are a population at risk of being engaged in the worst forms of child labour, the Committee requests the Government to intensify its efforts to protect these children from the worst forms of child labour. It requests the Government to provide information on the results achieved in this respect, particularly within the framework of the above programme of action.**

*Clause (e). Special situation of girls. Child domestic workers.* The Committee previously noted that, according to the 2006 statistics contained in a document of the National Committee for the Gradual and Progressive Elimination of Child Labour (CNEGPTTE) on the second National Plan of Action for the Gradual and Progressive Elimination of Child Labour in Honduras (2008–15), a large number of children, particularly girls, are engaged in domestic work. It emphasized the fact that children engaged in domestic work, particularly young girls, are often victims of exploitation, which takes on very diverse forms, and that it is difficult to supervise their conditions of employment. The Committee, therefore, requested the Government to take effective measures in that respect.

The Committee notes with *regret* that the Government's report does not contain information on this subject. ***Considering that children engaged in domestic work are particularly exposed to the worst forms of child labour, the Committee urges the Government to take immediate and effective measures for the protection of children engaged in domestic work against the worst forms of child labour, taking into account the special situation of girls. It requests the Government to provide information in its next report on the measures adopted and the results achieved in this respect, with an indication of the number of child domestic workers who have, in practice, been removed from the worst forms of child labour and the specific rehabilitation and social integration measures adopted for these children.***

*Article 8. International and regional cooperation. Commercial sexual exploitation and trafficking for that purpose.* In its previous comments, the Committee noted that the ILO–IPEC subregional project on the commercial sexual exploitation of children envisaged the strengthening of horizontal collaboration between countries participating in the project. It considered that cooperation between law enforcement agencies, particularly the judicial authorities and police forces, is indispensable to prevent and eliminate commercial sexual exploitation, and particularly the sale and trafficking of children for that purpose, through the collection and exchange of information and through assistance in the detection and prosecution of the individuals involved, and the repatriation of victims.

The Committee notes the reference by the COHEP, in its communication, to the adoption in 2006 of a Protocol on the repatriation of girls, boys and young persons who have been victims of trafficking. It notes that one of the objectives of the Protocol is to determine repatriation procedures for child victims of trafficking to Honduras or to other countries. ***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 adopted to promote cooperation with neighbouring countries and strengthen security measures at common borders with a view to combating the trafficking and commercial sexual exploitation of children. It also requests the Government to provide detailed information on the implementation of the Protocol on the repatriation of girls, boys and young persons who have been victims of trafficking, with an indication of the number of children repatriated to their countries of origin.***

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

## India

### ***Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90) (ratification: 1950)***

*Articles 2(1) and 3(1) of the Convention. Period during which night work is prohibited for persons under 18 years.* In the comments it has been making for many years, the Committee has pointed out that section 70(1A) of the Factories Act, 1948 as amended in 1987, prohibits the night work of adolescents under 17 years of age between 7 p.m. and 6 a.m., that is for a period of 11 consecutive hours, which is inconsistent with *Article 2(1)* of the Convention.

The Committee notes the Government's statement that in India, night work generally refers to working hours between 7 p.m. and 6 a.m. It further states that the proposed amendment to section 70(1A) of the Factories Act is still under the consideration of the Government. The Committee notes that according to section 71(b) of the Factories Act, no child (who has not completed 15 years) shall be employed or permitted to work in any factory during the night. For the purposes of this section "night" shall mean a period of at least 12 consecutive hours including the interval between 10 p.m. and 6 a.m. It further notes section 70(2) of the Factories Act which states that an adolescent (person who has completed 15 years but not yet completed 18 years) who has not been granted a certificate of fitness to work as an adult shall be deemed to be a child for all the purposes of this Act. The Committee therefore observes that the period of night work of 12 consecutive hours is prohibited only to children under 15 years of age and does not cover adolescents under 18 years of age. The Committee recalls that *Article 2(1)* of the Convention, which defines the term "night" as a period of at least 12 consecutive hours read in conjunction with *Article 3(1)* of the Convention applies to both children and adolescents under the age of 18 years, irrespective of whether they hold a certificate of fitness to work as an adult or not. ***Noting with regret that, despite the request which it has repeatedly made for several years, no measures have been taken to give effect to the Convention on this point, the Committee urges the Government to take the necessary measures without delay to ensure that the Factories Act is amended in line with Articles 2(1) and 3(1) of the Convention.***

*Articles 3(2), 4(2) and 5. Exceptions to night work in case of apprenticeships or vocational training, in case of emergencies, and where the public interest demands it.* The Committee had in its previous comments noted that according to section 70(1A) of the Factories Act, the state governments may vary the prescribed time limits and authorize exceptions in case of emergency where the national interest so demands. The Committee notes the Government's

statement that no provision in the Factories Act provides for exceptions to night work for the purpose of apprenticeship or vocational training. It also notes the Government's indication that as per section 5 of the Factories Act, in case of a public emergency the state government may exempt any factory or class or description of factories from all or any of the provisions of this Act, except section 67 on the prohibition of employment of children under 14 years. The Government further states that no such exemption was granted in any of the states so far.

## Kenya

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

*Article 1 of the Convention and Part V of the report form.* National policy and application of the Convention in practice. In its previous comments, the Committee had urged the Government to redouble its efforts to ensure the progressive abolition of child labour.

The Committee notes that according to the ILO–IPEC TACKLE project report, four action programmes have been implemented in Kenya under this project which resulted in the withdrawal of about 1,050 children from child labour who were enrolled back in schools or placed in skills training through apprenticeship, in addition to 351 children who have been prevented from dropping out of school and from entering into child labour. It also notes from the ILO–IPEC TACKLE project report that following the implementation of the Kenya Education Sector Programme (KESSP), the net enrolment rates at the primary level increased from 83.2 per cent in 2005 to 92.5 per cent in 2008. However, about 20 per cent of all primary school children do not complete the primary school cycle. The Committee further notes from the ILO–IPEC TACKLE project report that according to the 2009 National Census, nearly four million children of school-going age are out of school, which implies that the number of children in or at risk of child labour could be higher than the 756,000 reported in the 2008 Child Labour Analytical Report. The Committee expresses its *concern* at the high number of children who are not attending any school and are involved or are at risk of being involved in child labour. **The Committee therefore urges the Government to strengthen its efforts to improve the situation of child labour in the country and requests it to provide information on the measures taken in this regard. It also requests the Government to provide information on the practical application of the Convention, including, data on the number of children under the minimum age who are engaged in child labour, as well as extracts from the reports of inspection services and information on the number and nature of violations detected involving children and young persons.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee had previously noted that, under section 7(2) of the Children's Act, every child shall be entitled to free basic education which shall be compulsory. It had also noted the Government's statement that in order to address the gap between the minimum age for admission to employment (16 years) and the age of completion of compulsory schooling (14 years), the Government had waived the tuition fees for the first two years in secondary schooling. It had further noted the Government's indication that it has not envisaged adopting any legislation fixing the age of completion of compulsory education. In this regard, the Committee had noted the information provided by the Government representative of Kenya to the Conference Committee on the Application of Standards in June 2006 concerning the application of Convention No. 138, that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. Recalling that this Convention had been ratified by Kenya more than 25 years ago, the Conference Committee had urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly.

The Committee notes the Government's statement that it will endeavour to encourage dialogue among stakeholders with a view to setting the age of completion of compulsory schooling at 16 years. The Committee notes with *regret* that, despite the request which it has repeatedly made since 2002, no measures have yet been taken to give effect to the Convention. **The Committee therefore urges the Government to take the necessary measures, without delay, to extend compulsory schooling up to 16 years which is the minimum age for employment in Kenya. The Committee requests the Government to provide information in its next report on any progress made in this regard.**

*Article 3(2). Determination of hazardous work.* The Committee had previously noted the Government's statement that the list of types of hazardous work that had been approved by the stakeholders was undergoing the process of approval by the National Labour Board and thereafter adoption by the minister.

The Committee notes the Government's statement that the list of types of hazardous work prohibited to children under 18 years has been approved by the National Labour Board and is currently awaiting to be published in the *Gazette* by the Ministry of Labour. The Committee notes that the draft document entitled "Determining the Hazardous Child Labour in Kenya: July 2008" prepared by the Ministry of Labour and Human Resources Development in consultation with the Central Organization of Trade Unions and the Federation of Kenya Employers, contains a comprehensive list of 18 types of hazardous occupations/sectors including: work in domestic households; transport; internal conflicts; mining and stone crushing; sand harvesting; miraa picking; herding of animals; brick making; agriculture; work in industrial undertakings; carpet/basket weaving; building construction; tannery; deep-lake and sea fishing; glass factory; matches and fireworks factory; urban informal sector; and scavenging with each sector further providing a list of various activities that are prohibited to children. **Noting with regret that the Government has been referring to the adoption of this draft regulation on the list of types of hazardous work since 2005, the Committee urges the Government to take the**

*necessary measures to ensure that this regulation is adopted in the very near future. It requests the Government to supply a copy thereof once it has been adopted.*

*Article 3(3). Admission to hazardous work as from 16 years of age.* The Committee had previously noted the Government's indication that the competent Minister had issued regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work referred to in section 10(4) of the Children's Act. It had also noted the Government's statement that the Children's Act was being reviewed and that a copy thereof would be sent after adoption by the Parliament.

The Committee notes the Government's statement that the regulations under section 10(4) of the Children's Act are adopted, and the copy will be provided. ***Observing with regret that the Government has been stating since 2005 that this regulation under section 10(4) of the Children Act has been issued by the Minister, the Committee strongly urges the Government to supply a copy thereof along with its next report.***

*Article 6. Apprenticeship.* The Committee had previously noted that according to section 58(1) of the Employment Act of 2007, no person shall employ a child of between 13 and 16 years of age, other than one serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act, in an industrial undertaking to attend to machinery. Similarly, section 57 of the Employment Act exempts children between the ages of 13 and 16 years who are subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship. The Committee had observed that, according to the Employment Act of 2007, children between 13 and 16 years of age are allowed to take part in apprenticeship programmes subject to the provisions of the Industrial Training Act. The Committee had once again noted the Government's indication that the Industrial Training Act was being amended to bring the legislation into conformity with the Convention.

The Committee notes the Government's statement that it is envisaged that during the amendment of the Industrial Training Act, consideration will be given to bring the legislation in conformity to the Convention. ***Recalling that Article 6 of the Convention authorizes work to be carried out in enterprises within the context of an apprenticeship programme by persons aged at least 14 years, the Committee requests the Government to take the necessary measures, without delay, to ensure that children under the age of 14 years are not permitted to undergo an apprenticeship programme. In this regard, the Committee once again expresses the firm hope that the amendments to Industrial Training Act will be adopted in the near future thereby bringing it into conformity with the Convention. It requests the Government to provide information on any progress made in this regard.***

*Article 7(3). Determination of light work.* The Committee had previously noted that, according to section 56(3) of the Employment Act, the minister may make rules prescribing light work in which a child of 13 years may be employed and the terms and conditions of that employment. It had noted the Government's statement that the rules and regulations which stipulate the types of light work activities permitted to children under 13 years, and which prescribe the hours and conditions of such employment has not yet been completed.

The Committee notes the information in the Government's report that this regulation has not yet been adopted. ***The Committee therefore once again expresses the firm hope that the regulations determining the light work activities that may be undertaken by children of 13 years of age and the number of hours during which and the conditions in which, such work may be undertaken, will be adopted in the near future. It requests the Government to provide information on any progress made in this regard.***

*Article 8. Artistic performances.* The Committee had previously noted section 17 of the Children's Act, which provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. It had also noted that the national legislation does not provide for permits to be granted to children participating in cultural artistic performances. The Committee once again notes the Government's information that consultations will be made with the social partners with regard to the granting of individual permits for artistic performances. The Committee notes with ***regret*** that despite its reiterated comments for many years, no measures have yet been taken by the Government to this effect. ***The Committee therefore requests the Government to take the necessary measures to ensure that approval for young persons of below 16 years of age to take part in artistic activities is granted in individual cases, and that permits so granted shall prescribe the number and hours during which, and the conditions in which, such employment or work is allowed. The Committee requests the Government to supply information on any progress made in this regard.***

## Kuwait

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

In its previous comments, the Committee noted that a draft Labour Law amending Act No. 38 of 1964 on labour in the private sector (Act No. 38 of 1964) was being discussed by the national authorities. The Committee observed that the Government had been referring to the enactment of the draft Labour Law for a number of years, and expressed the firm hope that it would be adopted in the near future.

The Committee notes with ***satisfaction*** that Act No. 6 of 2010 (Labour Code of 2010) has been adopted and promulgated in the *Official Gazette* No. 963.

*Article 2(1) of the Convention. Scope of application. Street children and other self-employed children.* The Committee previously noted that, according to the information in the summary record for the 1,301st meeting of the Committee on the Rights of the Child (CRC) on 24 January 2008, a member of the CRC noted that the number of street children and refugee children had recently increased significantly in Kuwait (CRC/C/SR.1301, paragraph 9). The Committee requested the Government to supply information on the measures taken or envisaged to ensure the application of the Convention to all types of work outside of an employment relationship.

The Committee notes that section 2 of the Labour Code of 2010 provides that its provisions apply to all workers in the private sector. It once again reminds the Government that the Convention applies to all branches of economic activity and that it covers every kind of employment or work, including work performed by children and young persons performed on their own account. ***The Committee once again urges the Government to take the necessary measures to ensure the application of the Convention to all types of work performed outside an employment relationship, such as street children and other self-employed children. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 3(1). Minimum age for admission to employment or work.* The Committee previously noted that under the terms of section 18 of Act No. 38 of 1964, the minimum age for admission to employment or work was 14 years, although the minimum age specified by the Government at the time of ratifying the Convention was 15 years. It 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 notes with **satisfaction** that section 19 of the Labour Code of 2010 provides that it is prohibited to employ persons who are below the age of 15 years.

*Article 3(2). Determination of hazardous work.* The Committee notes that, according to section 20(a) of the Labour Code of 2010, young persons aged from 15 to 18 years shall not be employed in industries or professions that are, by a resolution of the Minister of Labour, classified as hazardous or harmful to their health. In this regard, the Committee recalls that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee requests the Government to provide information on the progress made by the Minister of Labour in elaborating a resolution, after consultation with the organizations of employers and workers concerned, providing for a list of the industries and professions classified as hazardous or harmful to the health of children. It firmly hopes that this list, determining the types of hazardous work prohibited for children under 18 years of age, will be adopted without delay, in conformity with Article 3(2) of the Convention.***

*Article 9(3). Registers of employment.* The Committee previously noted that, pursuant to section 3 of Ministerial Decree No. 148 of 2004 regulating the employment of young persons between 14–18 years of age, the employer of these young persons shall keep an up-to-date record of the names, ages and date of employment, as well as the type of work, of his/her employees. It requested the Government to provide a copy of the model register used by employers.

The Committee notes the Government's information that there is no obligatory model register of employment in Kuwait, but that section 3 of Ministerial Decree No. 25 of 1975 on the employment of young persons provides that employers who hire young persons must keep a register of their names, ages and dates of employment, as well as of the types of work they are assigned.

*Part V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee notes the Government's information that, with regard to national employment, labour inspections have not revealed the existence of contraventions concerning the employment of children and young persons. ***The Committee requests the Government to continue to provide information on the practical application of the Convention. It also requests the Government to provide statistical information on the practical application of the provisions of the Labour Code of 2010 relating to the employment of children and young persons, including, where relevant, those below the minimum age specified (15 years), extracts from the reports of inspection services and information on the number and nature of violations detected involving children and young persons.***

## Kyrgyzstan

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2004)**

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 that section 124(1) of the Criminal Code prohibits the trafficking of persons, and section 124(2) specifies that trafficking in persons under 18 is an aggravated offence. However, the Committee noted the Government's indication to the Committee on the Rights of the Child (CRC) in May 2006 that women and children are trafficked to Turkey, China and the United Arab Emirates for sexual exploitation, and that Kyrgyz citizens have been sold in Kazakhstan to work in tobacco (CRC/C/OPSC/KGZ/1, page 10). In light of this, the Committee requested the

Government to take immediate and effective measures to apply section 124 of the Criminal Code and to provide statistical information on the practical application of this provision.

The Committee noted the information in the UNODC Global Report on Trafficking in Persons that state authorities recorded six child victims of trafficking in 2005, and nine such victims in 2006. The Committee also noted the information in the 2008 report on human trafficking in Kyrgyzstan, available on the website of the Office of the High Commissioner for Refugees (www.unhcr.org) (Trafficking Report) that indicates that the Government conducted 33 investigations relating to trafficking in 2007, and 92 such investigations in 2008. This report indicates that, in 2008, the Government prosecuted eight persons for this offence, of which six were convicted. However, this report also indicates that four out of the six offenders received suspended sentences, with two receiving sentences of 3–8 years' imprisonment. The Committee also noted that the CRC, in its concluding observations in relation to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC OP-SC) of 2 February 2007, expressed concern that, in a number of cases, investigations and prosecutions had not been initiated (CRC/C/OPSC/KGZ/CO/1, paragraph 17), and that complicity by government officials with traffickers, and corruption, was impeding the effectiveness of prevention measures (paragraph 25). The CRC also expressed regret at the lack of statistical data, and the lack of research on the prevalence of national and cross-border trafficking and the sale of children (paragraph 9).

The Committee expressed its deep concern at allegations of complicity of low-level government officials with human traffickers, and at the lack of complete data on the prevalence of child trafficking in Kyrgyzstan. ***The Committee therefore requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for the purpose of labour or sexual exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. The Committee also urges the Government to take the necessary measures to ensure that sufficient data on the sale and trafficking of persons under the age of 18 is made available. In this regard, the Committee once again requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of section 124 of the Criminal Code. To the extent possible, all information provided should be disaggregated by sex and age.***

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that section 157(1) of the Criminal Code makes it an offence for a person to involve a minor in prostitution. Sections 260 and 261 of the Criminal Code make the enticement into prostitution an offence. Noting the Government's indication that the number of street children and children in risk groups forced into prostitution was rising, it requested the Government to provide information on the practical application of these provisions of the Criminal Code.

The Committee noted the information in the 2008 report on the worst forms of child labour in Kyrgyzstan (WFCL Report), available on the Office of the High Commissioner for Refugees website, that child commercial sexual exploitation continues to be a problem due in part to the lack of legal regulation and oversight. This report indicates that children from rural areas (primarily girls) are trafficked from rural areas to Bishkek and Osh for commercial sexual exploitation. The Committee also notes that the CRC, in its concluding observations in relation to the OP-SC, expressed concern that in a number of cases of child prostitution, investigations and prosecutions had not been initiated (CRC/C/OPSC/KGZ/CO/1, paragraph 17). The CRC also expressed deep concern that child victims are often stigmatized and socially marginalized and may be held responsible, tried and placed in detention (CRC/C/OPSC/KGZ/CO/1, paragraph 21).

The Committee expressed concern that child prostitution continues in part due to the lack of legal oversight, and that children who are the victims of commercial sexual exploitation risk being regarded as criminals. ***It therefore requests the Government to take the necessary measures to ensure that children who are used, procured or offered for commercial sexual exploitation are treated as victims rather than offenders. The Committee also requests the Government to provide information on the practical application of the provisions of the Criminal Code relating to child prostitution, in particular by supplying statistics on the number and nature of violations reported, investigations, prosecutions, convictions and sanctions applied. Lastly, the Committee once again requests the Government to indicate whether the national legislation contains provisions criminalizing the client who uses children under 18 years of age for prostitution.***

*Clause (d). Hazardous work. Children working in agriculture.* The Committee previously noted that the Government had approved a detailed list of occupations or works prohibited for persons under 18 years, and had adopted regulatory instruments at the sectoral level prohibiting this group from being engaged in work related to the use and storage of pesticides. The Committee also noted that that section 294 of the Labour Code prohibits the employment of persons under the age of 18 years in work with harmful and dangerous conditions, including in the manufacture of tobacco.

Nonetheless, the Committee noted the indication in the WFCL Report that the use of hazardous child labour in the agricultural sector is widespread, particularly in tobacco, rice and cotton fields, and that these children face dangerous working conditions. The Committee also noted the indication in the WFCL Report that, in rural areas, regulations prohibiting children from engaging in such work are not strictly enforced. In this regard, the Committee noted the statement in the report of the International Confederation of Free Trade Unions (now the International Trade Union Confederation) for the World Trade Organization General Council on the trade policies of Kyrgyzstan of 9 and 11 October 2006, entitled "Internationally recognized core labour standards in Kyrgyzstan" that some schools require children to participate in the tobacco harvest, and that the income from this goes directly to the schools, not the children or their families. This report also indicates that, in some cases, classes are cancelled and children are sent to the fields to pick cotton. Lastly, the Committee noted that the CRC, in its concluding observations of 3 November 2004, expressed concern regarding the use of children as workers by State institutions, and in particular by State educational establishments (CRC/C/15/Add.244, paragraph 59). ***The Committee expresses its serious concern at the situation of school children who are required to engage in agricultural work in the cotton and tobacco sectors, often under hazardous conditions, and requests the Government to take the necessary measures, as a matter of urgency, to ensure that persons under 18 years of age are protected against this worst form of child labour, including through the enforcement of regulations prohibiting children's involvement in hazardous agricultural work.***

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* 1. *Trafficking in children.* The Committee previously noted that governmental departments, international agencies and the local media, in collaboration with the International Organization for Migration (IOM), conducted a high-profile awareness campaign on violence against women and trafficking in women and girls and its prevention. The Committee also took note of the Sezim Psychological Crisis Centre in Bishkek, which provided rehabilitation and reintegration services to victims of trafficking, including 30 children.

The Committee noted the information on the IOM website that its collaboration with the Government continues through the IOM programme entitled “Combating Trafficking in Persons in Central Asia: Prevention, Protection and Capacity Building”, which includes awareness raising and assistance for victims. The Committee also noted the information in the Trafficking Report that, while the Government provides no direct funding for shelters or medical assistance to victims, it provides space for three NGO-run shelters, and has improved its process for the repatriation of Kyrgyz nationals who are victims of trafficking. The Trafficking Report also indicates that the Government and NGOs identified 331 trafficking victims in 2007, and 161 victims in 2008. This report further indicates that 117 victims of trafficking received NGO assistance in 2008, 20 of whom were referred to these services by the Government. **Observing the disparity between the number of trafficking victims identified, and the number of victims receiving assistance, the Committee requests the Government to strengthen its efforts to provide the necessary and appropriate direct assistance for the removal of child victims of trafficking, and for their rehabilitation and social integration. It requests the Government to provide information on concrete measures taken in this regard, and to supply information on the results achieved, including the number of victims of trafficking under the age of 18 who have participated in the repatriation process, and the number of children receiving rehabilitative assistance, shelter and other services.**

2. *Children engaged in hazardous work in agriculture.* The Committee noted the estimation in the ILO-IPEC Technical Progress Report for the project entitled “Health and rehabilitation of working children in tobacco, rice and cotton fields in Osh and Jalalabat regions” of August 2006 (Agriculture TPR 2006), that child labour in the agricultural sector is quite common in Kyrgyzstan, and that, in the oblast of Jalalabat alone, it is estimated that 125,000 children are involved in agricultural production each year. The Agriculture TPR 2006 indicates that many of these children face work-related risks including injuries resulting from the use of heavy equipment, lack of clean drinking water in the fields, exposure to toxic pesticides, insects and rodents bites, and hazards related to tobacco production (skin irritation and intoxication). However, the Committee noted the statement in the Agriculture TPR 2006 that there is an understanding at the governmental level for the need to develop a comprehensive programme for the elimination of the worst forms of child labour in the agricultural sector. The Committee also noted that various initiatives are being implemented to address this issue, such as the “Elimination of child labour in tobacco growing industry in Kyrgyzstan” project for 2010–12, implemented by the Agricultural Workers’ Union and supported by the ECLT Foundation (within the framework of the PROACT-CAR Phase II) and meetings organized by the ILO Bureau for Employers’ Activities on the role of employers in the elimination of child labour in agriculture in Kyrgyzstan.

Nonetheless, the Committee noted the information in the WFCL Report indicating that, during the cotton and tobacco harvesting season, children in southern Kyrgyzstan frequently miss school to work in the fields, often under hazardous conditions. **Therefore, the Committee requests the Government to redouble its efforts to remove and rehabilitate children engaged in hazardous agricultural work, particularly in the cotton, tobacco and rice-growing sectors. The Committee requests the Government to provide information on concrete measures taken in this regard, and the results achieved, including information on the number of children removed and rehabilitated.**

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

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

## Lebanon

### Minimum Age Convention, 1973 (No. 138) (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 2(1) of the Convention. Scope of application.* The Committee previously noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee reminded the Government that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. It requested the Government to provide information on the manner in which children who are not bound by an employment relationship are covered by the protection provided for in the Convention. The Committee noted the information in the Government’s report that Chapter 2, section 15, of the draft amendments to the Labour Code, prepared by a tripartite committee, provides for rules governing “the employment or work of young persons”. The Committee noted the Government’s statement that the principles in this amendment therefore include all young persons, and not solely those bound by an employment relationship. **The Committee requests the Government to take the necessary measures to ensure the adoption in the near future of the draft amendments to the Labour Code relating to self-employed children or children in the informal economy, and to provide a copy, once adopted.**

*Article 2(2). Minimum age for admission to employment or work.* In its previous comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before they complete 13 years of age (*i.e. beginning of 14 years*). The Committee also noted the Government’s information that it intended to amend the Labour Code, to prohibit the employment or work of young persons before they complete 14 years (*i.e. beginning of 15 years*). The Committee noted the information in the Government’s report that section 19 of the draft amendment to the Labour Code prohibits the employment or work of persons under the age of 15 years. Noting that the Government specified a minimum age of 14 years at the time of ratification, the Committee drew the Government’s attention to the fact that *Article 2(2)* of the Convention establishes the possibility for a State which decides to raise the initially specified minimum age for admission to employment or work to notify the Director-General of the International Labour Office by means of a further declaration. This enables the age fixed by the national legislation to be aligned to that provided for at international level. **The Committee requests the Government to provide information on any progress made in the adoption of the draft amendments to the Labour Code.**

*Article 2(3). Compulsory education.* The Committee previously noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 2002 (CRC/C/15/Add.169), while noting that basic education was free and compulsory until the age of 12, expressed concern about its implementation in practice. It noted the Government’s indication that Act No. 686/1998 relating to free and compulsory education in the primary phase has not so far been applied, due to the economic conditions of the country and the insufficient educational facilities. The Committee also noted that, according to the 2004 ILO-IPEC survey that in Lebanon, 18.9 per cent of children drop out of school at the elementary level (6–11 years), 22.8 per cent

at the intermediate level (12–15 years) and 10.6 per cent at the secondary level. According to this survey, dropping out of school was a major contributing factor to the early participation of boys and girls in the labour market.

The Committee noted the information in the Government's report that 250 children (in three schools), who were at risk of dropping out, were assisted and given additional lessons through a programme entitled "Strengthening courses in basic subjects". The Committee also noted the information in the November 2008 report of the Minister of Education and of Higher Education submitted to UNESCO for the 48th International Conference on Education entitled "The Development of Education in Lebanon", that the Government intends to raise the age at which compulsory education ends, from the current 12 years to 15 years of age. The Committee further noted that the CRC, in its concluding observations of 8 June 2006 expressed concern that in primary education, parents are still charged for some costs of education despite the legal guarantee of free education, and that dropout rates have increased at this level while enrolment in secondary education declined (CRC/C/LBN/CO/3, paragraph 63).

The Committee was of the view that compulsory education is one of the most effective means of combating child labour and it is important to emphasize the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If compulsory schooling comes to an end before the young persons are legally entitled to work, there may be a period of enforced idleness. However, if young persons are legally entitled to work before the end of completion of compulsory schooling, children from poor families might be tempted to drop out of education and work in order to earn money (see ILO: *Minimum Age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 67th Session, Geneva, 1981, paragraph 140). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee reminded the Government that pursuant to *Article 2(3)* of the Convention the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. **Therefore, the Committee urges the Government to intensify its efforts to provide for compulsory education up until the minimum age for admission to work (which is currently 14 years, and will be 15 years with the adoption of the draft amendments to the Labour Code). The Committee requests the Government to provide information on any new developments on this point.**

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* The Committee previously noted that section 1 of Decree No. 700 of 1999 prohibits the employment of young persons before they complete 17 years of age (*i.e. beginning of 18 years*). The Committee also noted that Decree No. 700 of 1999 provides for a detailed list of the types of hazardous work in which it is prohibited to employ young persons. The Committee further noted the information in the Government's report that the National Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour which, in accordance with *Article 3(1) and (2)* of the Convention, prohibits the employment of children under 18 years in work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

The Committee noted that section 20 of the draft amendments to the Labour Code prohibits the employment or labour of children before they reach 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also noted that the "Draft Decree on the prohibition of employing children before they complete 18 years of age in work which is likely to jeopardize their health, safety or morals" (Draft Decree Prohibiting Hazardous Work), was issued by Advisory Opinion No. 239 of the State Council on 26 May 2009 and will be promulgated following approval by the Council of Ministers. The Committee noted the Government's statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled "Worst Forms of Child Labour – under 18 years old in Lebanon". The Committee further noted that section one of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700 of 1999, and that section two contains a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons' access to education and training. **The Committee urges the Government to take the necessary measures to ensure the adoption by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work (as issued by Advisory Opinion No. 239 of the State Council on 26 May 2009).**

*Article 3(3). Authorization to undertake hazardous work from 16 years.* The Committee previously noted that section 23(1) of the Labour Code prohibits the employment of young persons under 15 years of age in industrial projects and activities which are physically demanding or detrimental to their health, as set out in Annexes 1 and 2. The Committee observed that section 23(1) of the Labour Code was not in conformity with *Article 3(3)* of the Convention, to the extent that it appeared to allow young persons from 15 to 16 years to perform hazardous work. The Committee noted the information in the Government's report that the draft amendment to the Labour Code includes the principles specified in *Article 3(3)* of the Convention.

The Committee noted the information in the Government's report that, by virtue of an order of the Ministry of Labour, section 20(3) of the draft amendments to the Labour Code authorizes employment or work in hazardous types of employment as of 16 years of age, under certain conditions. The Committee also noted that section 3 of the Draft Decree Prohibiting Hazardous Work contains a list of activities which may be authorized as of 16 years of age, on the condition that the health, safety and morals of young persons are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee observed that this list prohibits the employment of children under 16 years in work with chemical hazards, physical hazards, intellectual or social hazards, safety hazards (such as heights), some types of agricultural work, work in slaughterhouses, work in construction, work in transport, work in horse races, work in restaurants or hotels, or work in factories with more than 20 employees. **The Committee expresses the firm hope that section 3 of the Draft Decree Prohibiting Hazardous Work, concerning the authorization of some types of hazardous work for persons between the ages of 16 and 18, will be adopted shortly and requests the Government to provide information on any developments in this regard.**

*Article 4. Exclusion from the application of the Convention of limited categories of employment or work.* In its previous comments, the Committee noted the Government's indication that section 7 of the Labour Code excludes from its application, and consequently from the scope of application of the Convention, the following categories of work: (a) workers in households in Beirut; (b) agricultural undertakings which are unrelated to trade and industry and which shall have their own legislation; (c) undertakings which only employ family members under the management of the father, mother or guardian; and (d) Government departments and municipal bodies with respect to daily and temporary workers not covered by the regulations governing officials. The Committee also noted the Government's reference to the draft amendments to the Labour Code which would regulate the first three of the abovementioned four excluded categories, by a decree issued by the Council of Ministers.

The Committee noted that section 2(2) of the Draft Decree Prohibiting Hazardous Work, submitted with the Government's report, prohibits, for persons under the age of 18, work with psychological hazards, including domestic work and work where the young person sleeps outside of the home. The Committee also noted that section 3(2) of the Draft Decree Prohibiting Hazardous

Work, concerning work prohibited for children under the age of 16, prohibits the employment of a young person in agricultural work (including family undertakings) which requires a tractor, work involving sharp equipment, work involving high ladders or trees or the mixing or dispersal of pesticides and fertilizers and the picking or handling of poisonous plants (including tobacco). The Committee observed that, by virtue of these provisions in the Draft Decree Prohibiting Hazardous Work, effect is given to the Convention with regard to the previously excluded categories of employment. ***The Committee expresses the firm hope that the provisions of the Draft Decree Prohibiting Hazardous Work relating to domestic workers and children employed in agricultural work (including family undertakings) will be adopted shortly and requests the Government to provide information on any developments in this regard.***

***Article 6. Vocational training and apprenticeship.*** The Committee previously noted the information in the Government's report that section 16 of the draft amendment to the Labour Code provides for the definition of "training contract" and states that the minimum age to receive vocational training under a contract is 14 years, provided that conditions to safeguard the health, safety or morals of the young persons in question are respected. The Committee noted the Government's statement that amendments are still ongoing to the proposed draft amendments. ***It requests the Government to provide information on any progress made in adopting section 16 of the draft amendments to the Labour Code, fixing a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention.***

***Article 7. Light work.*** Following its previous comments, the Committee noted the information in the Government's report that section 19 of the draft amendments to the Labour Code provides that employment or work of young persons in light work may be authorized when they complete 13 years of age (except in different types of industrial work in which the employment or work of young persons under the age of 15 years old is not authorized), on the condition that such employment or work, by its nature or the circumstance in which it is carried out, does not jeopardize their development, health, safety or morals. Section 19 further states that this work should not weaken their capacity to benefit from instruction received, nor should it impact on their participation in vocational orientation and training approved by the competent authority. The Committee also noted the Government's statement that light work activities shall be determined by virtue of an Order promulgated by the Ministry of Labour. The Committee further noted that the Ministry of Labour set up a committee, pursuant to Memorandum 58/1 of 20 June 2009, which in consultation with employers' and workers' organizations, shall formulate this statute, among other labour standards. In addition, the Committee noted the Government's indication that the Ministry of Labour, in coordination with ILO-IPEC, is preparing a study on the classification of occupations undertaken by working children, within the framework of the ILO-IPEC programme "Supporting the national strategy for the elimination of child labour in Lebanon, third phase", so as to formulate this statute on light work. ***The Committee requests the Government to take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, in conformity with Article 7 of the Convention, following the adoption of the draft amendments to the Labour Code.***

The Committee noted the Government's statement that the draft amendments to the Labour Code have reached an advanced stage and will be referred to the competent authority for its adoption in the shortest delay. The Committee also noted the Government's statement that some amendments are still ongoing to the draft amendments, to achieve additional conformity between its provisions and the provisions of Arab and international labour Conventions. ***Considering that the Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted in the near future. Furthermore, the Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee's comments on discrepancies between national legislation and the Convention and invites it to consider technical assistance from the ILO.***

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

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

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

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

***Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar to slavery. Trafficking.*** The Committee previously noted that the relevant Lebanese legislation does not specifically prohibit the trafficking of women and children. The Committee noted that the cooperation project, the "Anti-trafficking project", had been agreed upon by the United Nations Office on Drugs and Crime (UNODC) and the Ministry of Justice (MoJ) to ensure the conformity of national legislation with the Protocol against the Smuggling of Migrants by Land, Sea and Air and with the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. According to the project document annexed to the Government's report, the existing Lebanese legislation was reviewed to identify gaps and formulate specific recommendations regarding necessary amendments and adoption of specific anti-trafficking legislation. The Committee noted that this legal review was sent to the MoJ for comments and clearance.

The Committee noted the information in the Government's report that the amendments to the Labour Code, prepared by a tripartite committee (which was set up by virtue of Order No. 210/1 of 20 December 2000), include provisions relating to the sale and trafficking of children. The Committee noted the information in the Government's report that section 33(a) of these amendments penalizes any person who participates, encourages or facilitates all forms of slavery or practices similar to slavery, such as the sale and trafficking of children. The Committee observed that it has drawn the Government's attention to the lack of legislation prohibiting the sale and trafficking of children since 2005. ***The Committee therefore urges the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code relating to the prohibition of the sale and trafficking of all persons under the age of 18, as a matter of urgency.***

***Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs.*** The Committee previously noted the Government's information that section 33(b) of the draft amendments to the Labour Code specifies that any person who participates, encourages, facilitates or incites anyone to use, procure or offer a child or young person for the production of pornography or for pornographic performances is liable to punishment under the Penal Code, in addition to the penalties imposed by the Labour Code. Furthermore, the Committee noted the Government's information that section 33(c) of the draft amendments to the Labour Code provides that any person who participates, encourages, facilitates or incites another to use, procure or offer a child or young person for illicit activities, especially for the production and trafficking of drugs, commits a penal crime under the Penal Code.

The Committee noted the Government's statement that the amendments to the Labour Code are in their last stages and they shall be referred to the competent authorities for adoption within the shortest delay. However, the Committee also noted the Government's statement in its report submitted under Convention No. 138 that further revision to the draft amendment to the Labour Code are still necessary. ***The Committee requests the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities.***

*Clause (d). Hazardous work.* The Committee previously noted the Government's information that Decree No. 700/1999 prohibits the employment of young persons before they complete 17 years of age (i.e. beginning of 18 years) in dangerous activities enumerated according to their nature. The Committee also noted the Government's indication that the National Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour to amend Decree No. 700 of 1999 and supplement section 23(1) of the Labour Code.

The Committee noted that section 20 of the draft amendments to the Labour Code prohibits the employment of children under 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also noted that the "Draft Decree on the prohibition of employing children before they complete 18 years old in work which is likely to jeopardize their health, safety or morals" (Draft Decree Prohibiting Hazardous Work), was approved by Advisory Opinion No. 239 of the *shura* on 26 May 2009, and will be promulgated following approval by the Council of Ministers. The Committee further noted the Government's statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled "Worst Forms of Child Labour under 18 years old in Lebanon".

The Committee noted that section 1 of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700/1999, and that section 2 provides a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons' access to education and training. ***The Committee requests the Government to take the necessary measures to ensure the adoption by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work for children under 18 as a matter of urgency and requests it to provide information on developments in this regard.***

***Considering that the Government has referred to these draft amendments to the Labour Code for a number of years and, given that Article 1 of the Convention obliges member States to take "immediate" measures to prohibit the worst forms of child labour, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted as a matter of urgency. Furthermore, the Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee's comments on discrepancies between national legislation and the Convention and invites it to consider technical assistance from the ILO.***

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

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

## Lesotho

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted that the Programme Advisory Committee on Child Labour had endorsed the Action Plan for the Elimination of Child Labour (APEC) in 2008. The Government indicated that the APEC had been submitted to Cabinet for approval. The Committee also noted that the Children's Protection and Welfare Bill had yet to be adopted, and had urged the Government to take measures in this regard.

The Committee notes with ***satisfaction*** that the Children's Protection and Welfare Act was adopted on 8 June 2011. However, the Committee also notes the Government's indication that the APEC has not yet been submitted to Cabinet. The Government indicates that a review of the APEC is necessary to ensure that the recommendations are still relevant and that a tripartite stakeholder workshop will be convened by September 2011 in this regard. ***Observing that the APEC has been awaiting Cabinet approval since 2008, the Committee urges the Government to strengthen its efforts to ensure the appropriate review, adoption and implementation of the APEC in the near future.***

*Article 2(1). Scope of application. Self-employment and domestic work.* In its previous comments, the Committee noted that the provisions of the Labour Code excluded self-employment from its application. However, the Committee subsequently noted that the draft revision of the Labour Code contained a provision to apply the Labour Code's sections on the minimum age and related issues to self-employed children and children working in the domestic sector. While the Government indicated that efforts were being made towards the adoption of the draft revision, the Committee observed that the Government had been referring to the impending adoption of the draft revision to the Labour Code since 2006.

The Committee notes the Government's indication that, pursuant to tripartite discussion at the National Advisory Committee on Labour, separate regulations will be promulgated on domestic work, and that this sector will not be regulated through the revised Labour Code. Moreover, the Committee notes that the revised Labour Code has been given to the Government's legal draftsmen in preparation for submission to Parliament. In this regard, the Committee notes the Government's indication that the law does not currently provide for inspections to be carried out in the informal economy, hindering the detection of child labour. ***Therefore, the Committee urges the Government to take the necessary measures to ensure that the revised Labour Code provides the protection guaranteed in the Convention to children working on a self-employed basis and in the informal economy, and to ensure the adoption of the revised Code without delay. In addition, the Committee requests the Government to take the necessary measures to ensure that the regulations developed on domestic work are consistent with the Convention with regard to the minimum age for admission to work, hazardous work and light work.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that primary education is not compulsory and that many children do not have adequate access to education. Additionally, the Committee noted the information from UNESCO's *Education for All: Global Monitoring Report* of 2010 that there were approximately 101,000 out-of-school children between the ages of 6 and 12. However, the Committee noted that a Bill introducing free and compulsory education (and including sanctions for parents if they did not send their children to school) was before Parliament. Recalling that compulsory education is one of the most effective means of combating child labour, the Committee requested the Government to take the necessary measures to ensure the adoption of the Bill.

The Committee notes with *interest* that the Education Act was adopted in 2010. The Committee notes that, pursuant to the Education Act, primary school is free and compulsory. However, the Committee observes that primary school is generally completed at the age of 13 years in Lesotho. Nonetheless, the Government indicates that the issue of linking the age of completion of compulsory schooling with the age of admission to work will be discussed with the Ministry of Education and Training. In this regard, the Committee once again draws the Government's attention to the importance of linking the age of admission to employment to the age limit for compulsory education; if compulsory schooling comes to an end before young persons are legally entitled to work, there may be a period of enforced inactivity or the early or premature entry into employment or work. ***The Committee encourages the Government to pursue its efforts to ensure compulsory education up to the minimum age of employment (of 15 years), and urges the Government to collaborate with the Ministry of Education and Training in this regard. The Committee also requests the Government to provide a copy of the Education Act, with its next report.***

*Article 3(2). Determination of hazardous work.* The Committee previously urged the Government to take the necessary measures to ensure the elaboration and adoption of a list of hazardous types of work prohibited for persons under 18 in the very near future, in accordance with *Article 3(2)* of the Convention.

The Committee notes with *satisfaction* that section 230(2) of the Children's Protection and Welfare Act specifies the types of hazardous work prohibited to persons under 18. This section states that the types of prohibited hazardous work include: mining and quarrying; portage of heavy loads; work in manufacturing industries where chemicals are produced or used; work in places where dangerous machines are used; work in places such as bars, hotels and places of entertainment; herding animals at cattle posts; and the production and trafficking of tobacco. The Committee also notes that section 230(4) of the Children's Protection and Welfare Act states that a person who contravenes this prohibition commits an offence and is liable to a fine not exceeding 20,000 maloti (LSL) (approximately US\$2,150) or to a period of imprisonment not exceeding twenty months. Subsequent convictions will be punished with a minimum period of two years' imprisonment.

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously noted the Government's indication that, during the revision of the Labour Code, due consideration would be given to bringing the Labour Code into line with the requirements of *Article 6* of the Convention. However, the Government also indicated that there was no regularized system of vocational and technical education, that no consultations had been held on this matter and that there was no minimum age for admission to apprenticeships.

The Committee notes the Government's statement that this matter will be taken up with the Ministry of Education and Training. In this regard, the Committee once again reminds the Government that pursuant to *Article 6* of the Convention, the minimum age for admission to work in undertakings in the context of vocational training or an apprenticeship programme is 14 years. ***It therefore urges the Government to take the necessary measures, within the context of the draft revision of the Labour Code, to ensure that no child under 14 years of age is permitted to undertake an apprenticeship in an enterprise, in conformity with Article 6 of the Convention.***

*Article 7. Light work.* The Committee previously noted that section 124(2) of the Labour Code permits the employment of children between the ages of 13 and 15 for light work in technical schools and similar institutions, provided that the work has been approved by the Department of Education. Subsequently, the Committee noted the Government's indication that the draft revision of the Labour Code includes a provision (proposed section 124(6)) which defines light work as work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance in, or the child's capacity to benefit from, school.

The Committee notes the Government's statement that the proposed section 124(6) of the revised Labour Code will only permit the performance of light work in technical schools and similar institutions. However, observing the significant number of children under the minimum age who are, in practice, engaged in economic activity (36 per cent of children aged 13 years and 38 per cent of children aged 14 years according to the most recent Multiple Indicator Cluster Survey), the Committee encourages the Government to consider regulating light work *outside* of technical schools to ensure that these children benefit from the protection of the Convention. If the Government decides to permit light work for children between the ages of 13 and 15 outside of technical schools, the Committee draws the Government's attention to *Article 7(3)* of the Convention, which states that the competent authority shall determine what is light work and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. ***The Committee requests the Government to provide information on any developments with regard to the regulation of light work activities, particularly with regard to providing legal protection to children between the ages of 13 and 15 who are, in practice, engaged in light work outside of technical schools.***

*Parts III and V of the report form. Labour inspectorate and application of the Convention in practice.* The Committee previously noted that, according to the 2004 Lesotho Child Labour Survey, 23 per cent of the children in Lesotho are child labourers. The survey also indicated that children mainly work in agricultural activities followed by those who work as domestic workers. The Government indicated that the office of the Labour Commissioner carries out inspections in all commercial enterprises but not in the informal economy and private residences, which is where most child labour occurs.

The Committee notes the Government's indication that it is making efforts to conduct a new child labour survey, and that consultations were held with ILO-IPEC in June 2011 regarding technical assistance for this purpose. The Committee also notes the Government's statement that it is facing considerable capacity constraints which makes it difficult to extend inspection services to the informal economy, and that this is exacerbated by the lack of a legal basis to perform inspections in the informal economy. The Government indicates that inspection reports therefore only relate to commercial and industrial undertakings, and do not contain information on the number and nature of violations related to child labour. ***Noting the Government's indication under Article 2(1) that the adoption of the revised Labour Code is imminent, thereby providing the legal basis for carrying out inspections in the informal economy, the Committee urges the Government to strengthen the capacity and expand the reach of the labour inspectorate to areas in which children work, particularly the informal economy. Furthermore, the Committee urges the Government to pursue its efforts to undertake a child labour survey, and to provide any up-to-date statistical information obtained in this regard.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously urged the Government to take immediate measures to ensure the adoption of legislation prohibiting the sale and trafficking of children.

The Committee notes with *satisfaction* that the Anti-Trafficking in Persons Act was enacted into law on 11 January 2011, and that section 5(1) and (2) of this Act prohibits the trafficking of children. Section 5(2) of this Act provides for a maximum penalty of life imprisonment or a fine of up to 2,000,000 Lesotho maloti (LSL) for this offence (approximately US\$253,453). In addition, the Committee notes that section 2 of the Anti-Trafficking in Persons Act defines a child as a person who is under 18 years of age and defines trafficking to include the recruitment, transportation, transfer, harbouring, sale, supply or receipt of persons, within and across the borders of Lesotho by means of the use of threat, force or other means of coercion, abduction, kidnapping, fraud or deception, the abuse of power, law or legal process or a position of vulnerability or debt bondage or the giving or receiving of payment to obtain the consent of a person having control over another person, for the purpose of exploitation. Moreover, the Committee notes with *interest* that the Children's Protection and Welfare Act was adopted on 31 March 2011 and that section 67 thereof prohibits the trafficking of children (defined as all person under the age of 18, pursuant to section 3 of the Act).

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* In its previous comments, the Committee noted that street children were used by adults in illegal activities, such as housebreaking and petty theft. It also noted the Government's indication that there is no legislation that specifically prohibits the use, procuring or offering of a child under the age of 18 for illicit activities. However, it noted that the section 129A(3)(c) of the draft revision of the Labour Code prohibited the worst forms of child labour, including the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.

The Committee notes that section 18 of the Children's Protection and Welfare Act states that a child has the right to be protected from, inter alia, being involved in the production, trafficking or distribution of drugs. However, the Committee observes that this provision does not appear to explicitly prohibit the use, procuring or offering of a child for other illicit activities, nor does it provide for penalties for adults who engage in this practice. Regarding the draft revision of the Labour Code, the Committee notes the Government's statement that the Code is currently being prepared for presentation to Parliament and that it hopes that the draft revision of the Labour Code will be adopted early next year. ***Observing that the Government has been referring to the impending adoption of the draft revision of the Labour Code since 2006, the Committee urges the Government to take the necessary measures to ensure its adoption in the near future, to prohibit the use, procuring or offering of a child under 18 for illicit activities.***

*Clause (d). Hazardous work. Child domestic work.* The Committee previously noted that, according to the 2004 Lesotho Child Labour Survey, girls performing domestic work face verbal, physical and, in some cases, sexual abuse from their employers, and that these children generally do not attend school. This survey also indicated that 17.4 per cent of all working children were paid domestic workers. The Committee further noted the Government's reference to the provision inserted in the draft revision of the Labour Code which provides for the protection of children engaged in domestic work. In addition, the Committee noted the information in the joint document produced by ILO-IPEC and the Ministry of Employment and Labour in 2006 entitled "Implementation Plan of the Programme towards the elimination of the worst forms of child labour in Lesotho" that girls as young as 12 years work as domestic workers, and that these children often work long exhausting days for low pay.

The Committee notes the Government's statement in its report submitted under the Minimum Age Convention, 1973 (No. 138), that, pursuant to tripartite discussions at the National Advisory Committee on Labour, separate regulations will be promulgated on domestic work, instead of regulating domestic work through the Labour Code. The Committee also

notes the Government's statement in its report to the Committee on the Elimination of Discrimination Against Women of 26 August 2010 that domestic work is an unregulated sector and the rights of these workers are open to abuse (CEDAW/C/LSO/1-4, paragraph 68). *The Committee accordingly urges the Government to take immediate and effective measures to ensure that child domestic workers are protected from hazardous work. In this regard, it requests the Government to take measures to ensure that the regulations promulgated on domestic work prohibit hazardous work in this sector to all children under 18 years of age. It further requests the Government to provide a copy of these regulations, once adopted.*

*Article 4(1). Determination of hazardous work.* The Committee previously requested the Government to take measures to ensure the elaboration and adoption of a list of hazardous types of work prohibited for persons under 18 years.

The Committee notes with *satisfaction* that section 230(1) of the Children's Protection and Welfare Act states that no child below 18 years shall be employed in any form of hazardous work, and section 230(2) specifies that hazardous work includes mining and quarrying; portering of heavy loads; work in manufacturing industries where chemicals are produced or used; work in places where dangerous machines are used; work in places such as bars, hotels and places of entertainment; herding animals at cattle posts; and the production and trafficking of tobacco. The Committee also notes that section 230(4) of the Children's Protection and Welfare Act states that a person who contravenes this prohibition commits an offence and is liable to a fine not exceeding LSL20,000 (approximately US\$2,150) or to a period of imprisonment not exceeding 20 months.

*Part V of the report form. Application of the Convention in practice.* The Committee noted the comments of the Commissioner of Labour of 2 March 2008 indicating that child labour continues to be a problem in Lesotho, particularly with regard to under-age domestic workers and herders. The Committee also noted the information in the joint document produced by ILO-IPEC and the Ministry of Employment and Labour of 2006 indicating that the trafficking of children, commercial sexual exploitation, the use of children by adults in illegal activities and hazardous street work are all present in Lesotho. The Committee requested the Government to provide information on the nature, extent and trends of the worst forms of child labour.

The Committee notes the information in the Government's report that a child labour survey needs to be carried out in order to determine the nature, extent and trends of child labour in Lesotho, as the last such survey was carried out in 2004. The Government indicates that meetings were held with ILO-IPEC in June 2011 regarding technical assistance for this purpose. *The Committee strongly encourages the Government to pursue its efforts to undertake a survey on child labour and its worst forms, to ensure that up-to-date statistical information on this subject is made available. It also requests the Government to provide, along with its next report, information on the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed with regard to the worst forms of child labour. To the extent possible, all information provided should be disaggregated by sex and age.*

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

## Madagascar

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

The Committee takes note of the communication from the General Confederation of Workers' Unions of Madagascar (CGSTM) of 26 August 2011, as well as of the Government's report.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee had noted that, according to the National Survey on Child Labour (ENTE) of 2007, conducted by the National Bureau of Statistics in conjunction with ILO-IPEC/SIMPOC, in Madagascar more than one child out of four between 15 and 17 years of age (28 per cent) is economically active, that is 1,870,000 children. The participation rate in economic activity increases with age; while 12–15 per cent of children between 5 and 9 years of age are economically active, the rate rises to more than 30 per cent in the 10–14 years age group, and to 55 per cent in the case of children between 15 and 17 years. The problem is more acute in rural areas, where 31 per cent of children engage in some form of economic activity as opposed to 19 per cent in urban areas. Most economically-active children are found in agriculture and fishing and in most cases (two out of three) they work as home helpers. In the 5–14 years age group, 22 per cent engage regularly in an economic activity and 70 per cent attend school. The Committee had noted the adoption of the National Plan of Action against Child Labour in Madagascar (PNA), and the six action plans covering the rural sector, mining and quarrying, manufacturing, domestic service, catering and trade, and miscellaneous activities.

The Committee notes the allegations by the CGSTM that many underage children from rural areas are sent by their parents to large towns to work in the domestic sector. These children have to perform housekeeping activities that might be exhausting and sometimes have no clearly defined leave periods or working hours. Furthermore, these children have not necessarily completed their compulsory schooling.

The Committee notes that, according to the Government, the first phase of the PNA lasted two years and ended in 2009. The Government indicates that 2,098 children (of which 1,000 girls) received a formal education and 345 children (of which 182 girls) received a non-formal education. The current PNA is in its extension phase, i.e. it is extending actions

instigated during the first phase in terms of staffing, beneficiaries and coverage. A policy plan for the second phase of the PNA has been drafted, which includes the following objectives: improving legal frameworks and making them effective; strengthening the efficiency of institutions, the capacity of stakeholders and the supervisory system; improving education and vocational training; and stepping up mobilization and awareness-raising campaigns. The Government also points out that before the end of 2011, certain activities will be undertaken to support the implementation and extension of the PNA strategies, especially the strengthening of regional structures, by setting up the Regional Committee for Combating Child Labour (CRLTE) in the Sava region in the north of the country; by adopting new legal texts on child labour; and by updating data banks on child labour. While taking note of the measures taken by the Government to combat child labour, the Committee feels bound to express its *concern* at the considerable number of children under the minimum age obliged to work, as well as at the conditions under which these children are exploited. ***The Committee strongly encourages the Government to step up its efforts to combat child labour and asks it to continue communicating information on the implementation of the PNA, as well as on the results obtained in terms of the gradual abolition of child labour.***

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee had noted that, according to a document published by the UNESCO International Bureau of Education, the age of completion of compulsory schooling was lower than the minimum age for admission to employment or work. Indeed, the Committee had pointed out that, according to this document, the official age for access to primary education was 6 years and the levels of compulsory schooling 5 years, thus making the age of completion of compulsory schooling 11 years. The Committee had noted the Government's indication that it was fully aware of the importance of compulsory schooling as a means of combating child labour. The Government had stated that several meetings had been held on this subject in order to give the matter of national education the place it deserved, but work remained to be done, in particular because of the political crisis currently affecting the country.

The Committee notes the CGSTM's allegation that the Government has not made any changes to solve the problem of the difference between the age of the end of compulsory schooling (11 years) and the minimum age of admission to employment (15 years).

The Committee notes that, according to the Government, the gap between the age of completion of compulsory schooling and the minimum age of admission to employment or work was conceived in a spirit of family solidarity and that this system of education is better suited to the Malagasy family. However, the Committee expresses once again its opinion that compulsory schooling constitutes one of the most effective means of combating child labour and emphasizes the necessity to link the age of admission to employment or work and the age of completion of compulsory schooling. In cases where these two ages do not coincide, various problems can arise. If schooling ends before young persons are legally authorized to work, a period of enforced inactivity may occur or the young person may enter employment or work at too early an age. ***The Committee expresses the firm hope that the Government will take measures to ensure that the age of completion of compulsory schooling coincides with the age of admission to employment or work in Madagascar, in accordance with Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). It requests the Government to provide information on progress made in this regard.***

*Article 6. Vocational training and apprenticeship.* In its previous comments, the Committee had noted the Government's indication that a decree determining the conditions of work with respect to vocational training and apprenticeships would be examined by the National Labour Council (CNT), which is a tripartite body. It had also noted that, according to the Government, the Ministry of Employment and Vocational Training was preparing various regulations on vocational training which were to be examined in 2006. The Committee had further noted that the Ministry of Employment and Vocational Training was planning to submit to Parliament a bill on the National Employment Policy, in which further vocational training and apprenticeships were a priority objective. The Committee had noted the Government's statement that the abovementioned draft texts were before the CNT.

The Committee notes that, according to the Government, the draft texts on vocational training and apprenticeships were examined by the CNT but that, as a result of the political crisis and the closure of many enterprises, the CNT is not yet in a position to take any final decisions, and a number of its members want to re-examine the issue once the crisis is over. ***The Committee strongly encourages the Government to redouble its efforts and take the necessary measures to ensure that the bills on apprenticeship and vocational training are adopted at the earliest possible date. It again asks the Government to provide a copy of these texts once they have been adopted.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee takes note of the communication from the General Confederation of Workers' Unions of Madagascar (CGSTM) of 26 August 2011, as well as of the Government's report.

*Article 7(2) of the Convention. Effective and time-bound measures. Clause (d). Children at special risk. Street children.* In its previous comments, the Committee had noted the Government's information that the Ministry of Labour and Social Legislation was continuing its programme of school attendance and training for street children in the context of the Public Investment for Social Action Programme (PIP). It had noted that the action of the PIP had been extended to the regional level, under the direction of the labour and social legislation services in each region, and that the "Manjary Soa" Centre, financed by the PIP, supported child victims of labour, in particular its worst forms, and offered them remedial teaching or vocational training.

The Committee notes the CGSTM's allegation that the number of street children has increased over the past two years. The CGSTM also indicates that the action taken by the Government to help them is still minimal.

The Committee notes that, according to the Government, the Ministry of Labour and Social Legislation is continuing to run programmes to reintegrate street children and those involved in the worst forms of child labour into school and occupations. The Government states that the programmes financed in the context of the PIP aim at withdrawing 40 children per year from the worst forms of child labour, i.e. 120 children over a three-year period. According to the Government, 105 children were supported by the programme during the 2009–11 period, of which 60 were reintegrated into the school system and 45 took up vocational training. **While noting the measures taken by the Government, the Committee must express its concern that the number of street children has allegedly increased recently, and therefore requests the Government to redouble its efforts to ensure that children living in the streets are protected from the worst forms of child labour, and rehabilitated and socially integrated. It requests the Government to continue providing information on the results obtained.**

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee had noted that, according to the National Survey on Child Labour (ENTE) of 2007, conducted by the National Statistical Institute in collaboration with the ILO–IPEC–SIMPOC, more than one in four Malagasy children aged between 5 and 17 years (28 per cent) is economically active, which amounts to 1,870,000 children in absolute terms. The rate of children aged 15–17 years who are involved in economic activity is 55 per cent, which can partly be explained by the fact that school is no longer compulsory for this age group. Furthermore, the majority of economically active children (82 per cent) are engaged in harmful work. In total, almost 1,534,000 children are involved in this type of work. Among children aged 15 years or more, approximately one in two economically active children (49 per cent) – 328,000 children – is engaged in harmful work, i.e. the worst forms of child labour. The ENTE also indicates that 23 per cent of economically active children in Madagascar aged 5 to 17 years – 438,000 children – are engaged in a dangerous activity. The sectors of agriculture, animal husbandry and fishing monopolize most of where harmful child labour is found, both in the rural sector and the urban sector (88 and 72 per cent, respectively). As opposed to the rural sector, child labour in the urban sector is characterized by the prevalence of domestic work (11 per cent) and of commerce and catering (10 per cent). Girls often work as domestic workers (17 per cent of girls aged 15 to 17 years, as opposed to 9 per cent of boys from the same age group), or perform activities in the sector of commerce and catering (respectively, 5 and 7 per cent of girls aged 10 to 14 years and 15 to 17 years).

The Committee notes the CGSTM's allegations that the political and economic crisis in Madagascar has resulted in even more under age children entering labour and employment. As regards the worst forms of child labour, the most affected sectors are mines, agriculture and manufacturing. The CGSTM states that children working in the mines (*Llakaka*) and in stone quarries do so under precarious and sometimes dangerous conditions. Furthermore, the worst forms of child labour exist in the informal sector and rural areas, which the labour administration services do not manage to cover.

The Committee notes that, according to the Government, the second phase of the National Action Plan to Combat Child Labour in Madagascar (PNA) is geared, inter alia, towards improving legal frameworks, stepping up awareness-raising campaigns, harnessing funds for extending actions against child labour and its worst forms and updating databases on child labour as and when there is a need as the campaign advances. **While noting the measures taken by the Government to combat the worst forms of child labour within the framework of the PNA, the Committee must express its concern at the situation and number of children under 18 years of age forced to undertake dangerous work, and urges the Government to redouble its efforts to eliminate these worst forms of child labour. It asks the Government to continue providing information on any progress made in this respect and on results achieved. Furthermore, the Committee asks the Government to continue providing information on the worst forms of child labour, and particularly studies and inquiries on this subject; information on the nature, extent and trends of these forms of child labour; the number of children covered by the measures giving effect to the Convention; the number and nature of violations reported; and the investigations, proceedings, sentences and penal sanctions. To the extent possible, all this information should be disaggregated by age and sex.**

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

## Malawi

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1999)**

*Article 1 of the Convention and Part V of the report form. National policy and practical application of the Convention.* In its previous comments, the Committee noted that, while many measures were being implemented by the Government to combat child labour through the ILO–IPEC project “Support to the National Action Plan to Combat Child Labour in Malawi”, the Government was moving slowly in the final adoption of the national policy and National Action Programme (NAP), even though these had been adopted at ministerial level. The Committee also noted that the Malawi Multiple Indicator Cluster Survey of 2006 indicates that approximately 33.6 per cent of all persons between the ages of 5 and 14 (1.4 million children) are involved in economic activity in Malawi.

The Committee takes due note of the Government's information that its National Child Labour Policy was finalized and that it has launched the NAP on Child Labour for Malawi (2010–16), in which the responsibilities of all stakeholders in the fight against child labour are well articulated. The priorities of the NAP include developing and improving the policy and legislative framework; building the capacity of the education sector; creating awareness and bridging the information gap on child labour; and building the institutional and technical capacity of service providers. Considering that the last comprehensive survey on child labour in Malawi was undertaken in 2002 and that no follow-up survey was done, it is also envisaged to conduct a national child labour survey and regularly update national child labour statistics in order to determine their trends and prevalence. ***Expressing its concern at the considerable number of children under 14 who are engaged in economic activity in Malawi, the Committee once again urges the Government to redouble its efforts to ensure the progressive abolition of child labour and the enforcement of the relevant legislation in the country. The Committee also requests the Government to supply information on the implementation of the NAP on Child Labour, and on the results achieved in terms of the progressive abolition of child labour. Lastly, the Committee requests the Government to provide a copy of the results of the national child labour survey when they are available.***

*Article 2(1). Scope of application.* In its previous comments, the Committee noted that the Employment Act is applicable only where there is an employment contract or labour relationship and does not cover self-employment. The Committee therefore drew the Government's attention to possibilities for providing self-employed children the protection of the Convention, including the elaboration of legislation specifically to ensure children's rights or by strengthening the labour inspectorate in sectors where children are often self-employed, such as the commercial agricultural sector. Indeed, the Committee had noted that the Committee on the Rights of the Child, in its concluding observations of 27 March 2009, expressed concern that many children between 15 and 17 are engaged in work that is considered as hazardous, especially in the tobacco and tea estate sector (which continues to be a major source of child labour) (CRC/C/MWI/CO/2, paragraph 66). In this regard, the Committee had noted that the Tenancy Labour Bill, a Bill which establishes a minimum age for employment in the tobacco sector and provides for frequent inspections of tobacco estates, had been finalized technically and was awaiting Cabinet approval (prior to submission to Parliament). Nonetheless, the Government had indicated that it has a considerable backlog of legislation to deal with.

The Committee observes that, within the framework of the NAP on Child Labour in Malawi, it is envisaged to vigorously promote the Tenancy Labour Bill for enactment. In this regard, the Government indicates that the forthcoming parliamentary sitting will likely discuss the Bill and adopt it, at which point a copy of the Tenancy Labour Act will be forwarded to the Committee. ***The Committee once again expresses its concern that the Tenancy Labour Bill has yet to be adopted and urges the Government to take the necessary measures to ensure the adoption of the Bill at the next parliamentary sitting. It expresses the firm hope that, in adopting the Tenancy Labour Bill, the labour inspection component concerning children working in the commercial agricultural sector on their own account will be strengthened, and requests the Government to provide information on the progress made in this regard along with its next report.***

*Article 3(1). Minimum age for admission to hazardous work.* In its previous comments, the Committee noted a discrepancy between article 23 of the Constitution, which provides for protection from dangerous work for children below the age of 16 years, and section 22(1) of the Employment Act, which, in accordance with the Convention, lays down a minimum age of 18 years for work that is likely to be harmful to their health, safety, education, morals or development, or prejudicial to their attendance in school. This issue was discussed at a tripartite meeting in 2005, where it was agreed by all social partners that there was a need to harmonize the provisions of the national laws. Subsequently, this issue was presented to the Malawi Law Commission for consideration, and the Commission recommended that the age stipulated under article 23 of the Constitution be raised to 18 years of age.

The Committee notes that the Government provides no information on that point in its report. Yet, according to the NAP on Child Labour, inconsistencies among various pieces of legislation relating to children, including the Constitution, remain an issue. ***Observing that the discrepancy between section 22(1) of the Employment Act and article 23 of the Constitution has been under discussion since 2005, the Committee once again urges the Government to take the necessary measures, within the framework of the NAP on Child Labour or otherwise, to ensure that the recommended amendment to article 23 of the Constitution is adopted in the very near future, in conformity with Article 3(1) of the Convention.***

*Article 3(2). Determination of types of hazardous work.* Following its previous comments, the Committee notes the Government's information that a List of Hazardous Work for children has been finalized and that it is currently being processed for gazetting. ***Observing that the Government has been referring to the List of Hazardous Work since 2006, the Committee once again urges the Government to take the necessary measures to ensure that the draft list of types of hazardous work is adopted without delay. It requests the Government to provide a copy of this list as soon as it is adopted.***

*Article 9(3). Keeping of registers by employers.* The Committee previously noted that section 23 of the Employment Act stipulates that every employer is required to maintain a register of persons aged below 18 years employed by, or working for, him/her. However, the Committee also noted the indication of the Malawi Trade Unions Congress (MCTU) that some estates did not have registers, particularly in commercial agriculture. The Committee noted the Government's indication that labour inspectors have demanded labour registers when inspecting any workplace and,

where no such register exists, the owner is advised to purchase one which is available at the government press or any bookshop. The Government also indicated that the applicable parliamentary Act still did not have a model register, that the registers available at the government press are general and that employers use different formats. Nonetheless, the Government indicated that following discussions with the social partners, it was resolved to develop standard templates for various legislative prescriptions, including a model for a labour register. The Committee noted the Government's information that the draft model register would be finalized before the end of the year, and that this draft will be submitted to the Tripartite Labour Advisory Council for adoption.

The Government indicates that the modern register of employment will be in conformity with *Article 9(3)* of the Convention and will be submitted to the Committee as soon as it is produced. In this regard, the Committee once again reminds the Government that, pursuant to *Article 9(3)* of the Convention, the registers kept by employers shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom they employ, or who work for them, and who are less than 18 years of age. **Observing that the Government has been referring to the model register of employment since 2006, the Committee urges the Government to take the necessary measures to ensure its elaboration and adoption without delay. It once again requests the Government to supply a copy of the model register as soon as it is adopted.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)**

*Articles 3 and 7 of the Convention. Worst forms of child labour and penalties. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted that, although various penal provisions relate to the offences of abduction and trafficking, these provisions are not comprehensive. However, the Committee noted that the Child Care, Protection and Justice Bill, which was adopted on 28 June 2010, contains a definition of child trafficking and imposes a penalty of life imprisonment for convicted traffickers, and expressed the firm hope that the adopted version of the Child Care, Protection and Justice Bill prohibits the sale and trafficking (both internal and cross-border) of all persons under 18 years of age for the purposes of labour and sexual exploitation.

The Committee notes that section 179(1) of the Child Care, Protection and Justice Act provides that a person who takes part in any transaction involving child trafficking is liable to life imprisonment. According to section 179(2), child trafficking means the recruitment, transaction, transfer, harbouring or receipt of a child for the purposes of exploitation. The Committee observes, however, that according to section 2(d) of the same Act, a "child" means a person below the age of 16 years. The Committee reminds the Government that by virtue of *Article 3(a)* of the Convention, Member States are required to prohibit the sale and trafficking of all children under 18 years of age. **The Committee accordingly urges the Government to take immediate measures to ensure that the Child Care, Protection and Justice Act is amended to extend the prohibition of sale and trafficking to cover all children under the age of 18, as a matter of urgency. The Committee also requests the Government to provide information on the application in practice of this Act, including in particular, statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penal sanctions imposed.**

*Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* In its previous comments, the Committee observed that the use, procuring or offering of young persons under 18 years of age for prostitution, for the production of pornography or for pornographic performances existed in Malawi and that national legislation did not appear to prohibit these worst forms of child labour. The Committee noted the Government's statement in its report to the Committee on the Rights of the Child (CRC) of 17 July 2008, that, while there are no data available on the number of children involved in sexual exploitation, including prostitution and pornography, these are recognized problems in the country (CRC/C/MWI/2, paragraph 323). However, the Committee noted the Government's indication that it endeavoured to include such a prohibition in the ongoing review of labour laws, including the Employment (Amendment) Bill, which was going through a final round of examination prior to submission to the Ministry of Justice.

The Committee notes that the Government's report contains no new information on the adoption of the Employment (Amendment) Bill. It notes, however, the Government's statement that the Child Care, Protection and Justice Act prohibits the procuring or offering of boys and girls under the age of 16 years for the purpose of prostitution, for the production of pornography or for pornographic performances. In this regard, the Committee observes that section 84(1)(d) only provides that a social welfare officer who has reasonable grounds to believe that a child is being used for the purposes of prostitution or immoral practices may remove and temporarily place the child in a place of safety.

The Committee reminds the Government that *Article 3(b)* of the Convention requires Member States to prohibit the use, procuring or offering of a child under 18 years for prostitution, for the production of pornography or for pornographic performances. The Committee once again expresses its **deep concern** at the continued lack of regulation to prohibit the commercial sexual exploitation of children, and once again draws the Government's attention to its obligation under *Article 1* to take **immediate** measures to prohibit the worst forms of child labour. **The Committee accordingly urges the Government to take the necessary measures, as a matter of urgency, to ensure the adoption of national legislation prohibiting the use, procuring or offering of both boys and girls under 18 years of age, for the purpose of prostitution, for the production of pornography or for pornographic performances, and to include sufficiently effective and**

*dissuasive sanctions in this legislation. It requests the Government to provide information on the progress made in this regard.*

*Article 4(1). Determination of types of hazardous work.* Following its previous comments, the Committee notes the Government's information that a list of hazardous work for children is in the process of being finalized. ***Observing that the Government has been referring to the List of Hazardous Work since 2006, the Committee urges the Government to take the necessary measures to ensure that the draft list of types of hazardous work is adopted as a matter of urgency. It requests the Government to provide a copy of this list as soon as it is adopted.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and providing assistance for the removal of children from these types of work and for their rehabilitation and social integration. Children engaged in hazardous work in commercial agriculture, particularly tobacco estates.* In its previous comments, the Committee noted that, according to the summary outline for the ILO-IPEC Action Programme of 2007, entitled "Mzimba Project on Elimination of Child Labour", there were 734,845 child labourers working in the agricultural sector in Malawi, out of which 288,341 were working in hazardous occupations. It also noted that the CRC, in its concluding observations of 27 March 2009, expressed concern that many children between 15–17 are engaged in work that is considered as hazardous, especially in the tobacco and tea estate sector, which continues to be a major source of child labour (CRC/C/MWI/CO/2, paragraph 66). The Committee noted that ILO-IPEC was implementing several action programmes in the tobacco sector, which sought to withdraw children from hazardous work and reintegrate these children into formal and non-formal educational programmes, as well as to raise awareness about child labour in agriculture.

The Committee notes the Government's information that labour inspections have been undertaken in the tobacco sector, to help withdraw children from this sector, to rehabilitate and then to send them back to school. It further notes that, within the framework of the National Action Plan (NAP) on Child Labour, it is envisaged to improve awareness of child labour at all levels; prevent and withdraw children from such labour; and provide these children with educational opportunities. In this regard, the NAP on Child Labour indicates that the agricultural sector, including tobacco plantations and family farms, constitutes one of its sectoral priorities, as it accounts for 53 per cent of child labour in the country. ***The Committee urges the Government to strengthen its efforts to protect children from hazardous work in the tobacco sector through measures taken within the framework of the NAP on Child Labour. In this regard, it requests the Government to provide concrete information on the number of children who have been thus prevented or withdrawn from engaging in this type of hazardous work, and then rehabilitated and socially integrated.***

*Clause (e). Special situation of girls.* The Committee previously noted that, according to the Malawi child labour survey of 2002, all the child victims of commercial sexual exploitation were girls. Half of these girls had lost both of their parents, while 65 per cent of them did not attend school past the second year. The Committee also noted that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 5 February 2010, expressed concern at the extent to which women and girls are involved in sexual exploitation, including prostitution, and the limited statistical data regarding these issues (CEDAW/C/MWI/CO/6, paragraph 24). It therefore requested the Government to provide information on the measures taken to protect girls under the age of 18 from commercial sexual exploitation.

The Committee notes with *regret* that the Government provides no information on this point in its report. ***It therefore urges the Government to strengthen its efforts to prevent girls under the age of 18 from becoming victims of commercial sexual exploitation, and to remove and rehabilitate victims of this worst form of child labour, within the framework of the NAP on Child Labour or otherwise. It once again requests the Government to provide information on the concrete measures taken in this regard, as well as information on the impact of these measures. To the extent possible, all information provided should be disaggregated by age and sex.***

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

## Malaysia

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1997)***

The Committee notes the Government's report dated 14 September 2011, as well as the communication of the International Trade Union Confederation (ITUC) dated 31 August 2011.

*Article 2(1) of the Convention. Minimum age for admission to employment or work.* The Committee previously noted that, at the time of ratifying the Convention, the Government had declared 15 years as the minimum age for admission to employment. However, the Committee noted that Children and Young Persons (Employment) Act of 1966 (CYP Act) provided that no "child" (defined as a person under 14 years of age, pursuant to section 1(A)) shall be engaged in any employment. In this regard, the Committee noted that, according to a Government representative of Malaysia at the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference in June 2009, a tripartite technical committee was established, to, among other things, review the CYP Act and give consideration to raising the minimum age for admission to employment or work from 14 to 15 years. The Committee urged the

Government to take the necessary measures to ensure that the tripartite technical committee raised the minimum age for admission to employment or work to 15 years, and that the relevant amendments were adopted as soon as possible.

The Committee notes the statement in the communication of the ITUC that no one under the minimum age specified by the Government upon ratification (of 15 years) should be admitted to employment or work in any occupation.

The Committee notes that the Children and Young Persons (Employment) (Amendment) Act of 2010 (CYP Amendment Act) was adopted and has been in force since 1 March 2011. The Committee notes with *satisfaction* that the CYP Amendment Act amends the CYP Act to define a “child” as a person under 15 years of age, thereby raising the minimum age for admission to employment or work (pursuant to section 2(1) of the CYP Act) from 14 years to 15 years of age.

*Article 3(1) and (2). Minimum age for admission to and determination of hazardous work.* In its previous comments, the Committee noted that the relevant legislation did not contain any provisions prohibiting young people under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals. However, the Committee noted the Government’s indication that it would make the necessary recommendations to the tripartite technical committee so as to ensure that no one under the age of 18 years is authorized to perform hazardous work and that those hazardous types of work are determined in national legislation. Noting the conclusions of the Conference Committee on the Application of Standards, the Committee strongly urged the Government to take the necessary measures to ensure that the tripartite technical committee seriously considered prohibiting hazardous work or employment to persons under 18 years of age, in accordance with *Article 3(1)* of the Convention, and to ensure that the determination of these types of hazardous work.

The Committee notes the statement in the ITUC’s communication that several provisions of the CYP Act are inconsistent with Convention No. 138, including that it does not specify a minimum age for admission to hazardous work.

The Committee notes with *satisfaction* that, pursuant to the CYP Amendment Act, the term “young person” is defined as a person between 15 and 18 years of age (pursuant to section 1A), and that pursuant to section 2(1) of the CYP Act, no child or young person (i.e. all persons under 18 years) shall be required or permitted to engage in any hazardous employment. The Committee also notes that section 2(5) of the CYP Act has been amended to state that no child or young person may be engaged in work underground, or in any employment contrary to the provisions of the Factories and Machinery Act, the Occupational Safety and Health Act of 1994 or the Electricity Supply Act of 1990. Moreover, the Committee notes that the CYP Act has been amended to include section 2(6), which states that for the purpose of section 2, “hazardous work” means any work that has been classified as hazardous based on the risk assessment conducted by a competent authority on safety and health as determined by the Minister. ***The Committee requests the Government to provide information on the measures taken, pursuant to section 2(6) of the CYP Act (as amended), to determine the types of work which constitute hazardous work prohibited to persons under the age of 18, following consultations with the organizations of employers and workers concerned.***

*Article 7(1). Minimum age for admission to light work.* The Committee previously noted that section 2(2)(a) of the CYP Act allows children to be employed in light work which is adequate to their capacity, in any undertaking carried on by their family, but observed that no minimum age for admission to light work had been specified. The Committee urged the Government to take the necessary measures to ensure that the CYP Act was reviewed and amended to provide a minimum age of 13 years for light work.

The Committee notes the Government’s statement that there is no minimum age of 13 years for light work specified in the CYP Act (as amended), but that the general protection of such persons is stipulated in the Child Act 2001. However, the Committee observes that the Child Act 2001 does not appear to contain provisions relating to the minimum age for admission to light work, and instead provides for the general protection of children under 18 years of age. In this regard, the Committee once again recalls that *Article 7(1)* of the Convention, provides for the possibility of admitting young persons to light work activities only from the age of 13 years. ***The Committee therefore requests the Government to take measures to establish a minimum age of 13 years of age for admission to light work, in conformity with Article 7(1) of the Convention. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 7(3). Determination of types of light work.* The Committee previously shared the concern expressed by the Committee on the Rights of the Child (CRC), in its concluding observations of 25 June 2007, that the provisions of the CYP Act concerning light work permit, among other things, employment involving light work without detailing the acceptable conditions of performing such work (CRC/C/MYS/CO/1, paragraph 90). However, the Committee noted that the Government representative at the Conference Committee on the Application of Standards explained that, within the framework of the revision of the CYP Act, the tripartite technical committee would consider whether the competent authority could authorize the performance of light work, which would include a definition of light work and a limitation of working time. The Committee urged the Government to take the necessary measures to ensure that the CYP Act was reviewed and amended to determine the types of light work, including the number of hours during which, and the conditions in which, such employment or work may be undertaken.

The Committee notes with *interest* that pursuant to section 3 of the CYP Amendment Act, the term “light work” is defined in section 1A of the CYP Act as any work performed by a worker: (a) while sitting, with moderate movement of

the arm, leg and trunk; or (b) while standing, with mostly moderate movement of the arm. The Committee also notes that pursuant to section 5 of the CYP Act, no person under 15 shall work between 8 p.m. and 7 a.m. Section 5(c) of the CYP Act (as amended) further states that if a child is attending school, the time in school and work combined shall not exceed seven hours. Moreover, section 5(b) of this Act states that no child may work for more than three consecutive hours without a period of rest of at least 30 minutes, and may not work on any day without having had 14 consecutive hours of rest.

*Parts III and V of the report form. Application of the Convention in practice.* The Committee previously noted that the CRC, in its concluding observations of 25 June 2007, expressed concern that the enforcement of Convention No. 138 remained weak (CRC/C/MYS/CO/1, paragraph 90). It also noted that the CRC expressed its regret at the lack of a national data collection system and at the insufficient data on working children. However, the Committee noted the indication of the Government representative at the Conference Committee on the Application of Standards that the Malaysia peninsula alone has 300 labour inspectors, with every labour inspector carrying out between 25 and 30 inspections per month. The Government representative also indicated that, out of 30,084 complaints received on various labour issues, none of these cases related to child labour. Nonetheless, the Committee noted that the Worker members at the Conference Committee on the Application of Standards indicated that issues remained, particularly with regard to children working on oil palm plantations, in the agricultural sector, and also with regard to children working in towns and cities.

The Committee notes the statement in the report of the ITUC, for the World Trade Organization General Council on the Trade Policies of Malaysia of 18 and 20 January 2010, entitled *Internationally recognized core labour standards in Malaysia* that child labour in Malaysia can be found primarily in rural areas in agriculture, where children often work along with their parents without receiving a salary. In urban areas, children work in restaurants, shops and small manufacturing units usually owned by family members. The ITUC further indicates in this report that the Government does not collect statistical data on child labour.

The Committee notes the Government's statement that the Labour Department (under the Ministry of Human Resources) is taking the necessary measures to ensure that data on working children is collected. The Government indicates that it would like to consider engaging the technical assistance of the ILO to facilitate this data collection. Moreover, referring to its comments made under the Labour Inspection Convention, 1947 (No. 81), in 2010, the Committee notes the Government's indication in its report submitted under Convention No. 81 that labour departments have been engaged in consultations with the police and the Immigration Department in respect of the employment of child workers, including on awareness raising among employers on child labour and the related legislation. ***The Committee encourages the Government to pursue its efforts to ensure that up-to-date statistical data on the economic activities of children and young persons is collected and made available, including the number of children working under the minimum age of 15, and to provide this information in its next report. In addition, the Committee requests the Government to continue its efforts to strengthen the capacity and expand the reach of the labour inspectorate to better monitor children carrying out economic activities in the agricultural sector. It requests the Government to provide information on measures taken in this regard.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

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

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* In its previous comments, the Committee had noted that section 17(1) and (2) of the Child Act of 2001 only refers indirectly to the use, procuring or offering of a child for the production of pornography or for pornographic performances and that there appear to be no specific provisions that explicitly prohibit and punish such acts committed by persons other than the child's parents, guardian or extended family. The Committee noted the Government's information that the provisions of the Child Act need to be read together with other acts and regulations such as the Penal Code (Act 574), in which section 377E prohibits any person from inciting a child under the age of 14 years to any act of gross indecency with him or another person. The Committee observed that section 377E only extends this prohibition to the case of children who are under 14 years of age. The Committee noted the Government's information that the Ministry of Women, Family and Community Development (MWFCDD) is currently in the process of amending the Child Act, in the course of which the Government indicates that the issue of the use, procuring or offering of a child for the production of pornography or for pornographic performances will be given due consideration. ***The Committee requests the Government to take immediate and effective measures to ensure that, in the framework of the amendments to the Child Act, legislation is adopted to prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, in accordance with Article 3(b) of the Convention, as a matter of urgency. It requests the Government to provide information on the progress made in this regard in its next report.***

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee had previously noted that section 32 of the Child Act of 2001 punishes anyone who causes or procures or allows any person under 18 years of age to be on any street, premises or place for the purposes of "carrying out illegal hawking, illegal lotteries or gambling, or other illegal activities detrimental to the health or welfare of the child". However, the Committee had noted that there seem to be no specific provisions which explicitly prohibit the use, procuring or offering of a child for the production and trafficking of drugs. The Committee noted the Government's information that the "other illegal activities detrimental to the health or welfare of the child" of section 32 of the Child Act include the use, procuring and offering of a child for illicit activities, including the production and trafficking of drugs. ***As the Committee needs further information to assess whether section 32 of the Child Act can be applied effectively to prohibit the use, procuring or offering of a child for the***

**production and trafficking of drugs, it requests the Government to provide information on the effect given to this provision in practice, including statistics on the number of persons prosecuted and found guilty under section 32 of the Child Act of using, procuring or offering a child under 18 years for illicit activities, in particular for the production and trafficking of drugs.**

*Clause (d) and Article 4(1). Hazardous work and determination of hazardous work.* In its previous comments, the Committee had noted that the relevant legislation does not contain any provisions prohibiting young people under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals. It had noted the Government's referral to two prohibitions provided for in the CYP Act for children and young people: (i) managing or being in close proximity to machinery; and (ii) working underground. The Committee had observed that section 2(5) of the CYP Act provides that no child or young person shall be, or required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act, 1967, or the Electricity Act, 1949, or in any employment requiring them to work underground. It had noted, however, that section 1A(1) of the CYP Act defines a "child" as being any person who has not completed their fourteenth year of age, and a "young person" as being any person who has not completed their sixteenth year of age. The Committee had reminded the Government that, by virtue of *Article 3(d)* of the Convention, hazardous work constitutes one of the worst forms of child labour and consequently shall be prohibited for children under 18 years of age. It had also recalled that *Article 4(1)* of the Convention states that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190).

The Committee noted that, according to a Government representative of Malaysia at the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference of June 2009, the Government would set up a tripartite technical committee composed of employers' organizations, workers' organizations, government agencies and other relevant agencies. Referring to conclusions made by the Conference Committee on the Application of Standards, the Committee noted that the Government indicated that it would make the necessary recommendations to the tripartite technical committee so as to ensure that no one under the age of 18 years is authorized to perform hazardous work and that those hazardous types of work are determined in national legislation. The Committee also noted the Government's information in its report that a proposal to include new provisions in the CYP Act to specify and determine the types of hazardous work and to prohibit the employment or work of persons under 18 years of age in these types of work is currently being reviewed by the Department of Labour. **The Committee strongly urges the Government to take effective and immediate measures to ensure that the tripartite technical committee seriously considers the prohibition of the employment or work of persons under 18 years of age, in accordance with Article 3(d) of the Convention. Moreover, it firmly hopes that the determination of types of hazardous work to be prohibited to persons below 18 years of age will be reviewed and adopted by the Department of Labour after consultation with the organizations of employers and workers concerned, in accordance with Article 4(1) of the Convention. It urges the Government to take the necessary measures to ensure that the relevant legislation is adopted as a matter of urgency and requests it to provide information on the progress made in this regard in its next report.**

*Article 5 and Article 7(1). Monitoring mechanisms and effective enforcement of the Convention. Labour inspectorate.* The Committee had previously noted the concern expressed by the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, that the enforcement of ILO Convention No. 182 remains weak. The Committee noted that the Government representative at the Conference Committee on the Application of Standards indicated that the Malaysia peninsula alone has 300 labour inspectors and every labour inspector carries out between 25 and 30 inspections per month. In 2008, the Department of Labour, under the Ministry of Human Resources, received a total of 30,084 complaints on various labour issues. The Government representative explained that all complaints and cases were scrutinized and that no cases relating to child labour occurred. However, the Committee noted that the Worker members at the Conference Committee on the Application of Standards indicated that, while many rights were respected in Malaysia, many issues remained, particularly with regard to children working in the palm oil plantations, in the agricultural sector, but also those working in towns and cities. The Worker members further noted that, according to the National Commission for the Protection of Children in Indonesia, cases of forced labour of migrant workers and their children on plantations in Sabah involve an estimated 72,000 children. In light of the indication of the Government representative at the Conference Committee on the Application of Standards that Malaysia has one of the most effective labour inspectorates in the region, the Committee is of the view that Malaysia is in a position to ensure the effective enforcement of legislation giving effect to the Convention. **The Committee strongly urges the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. It requests the Government to provide information on the progress made in this regard and to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied with regard to children engaged in the worst forms of child labour, particularly children working in the palm oil plantations, in the agricultural sector, and in the urban economy.**

*Article 6. Programmes of action.* Referring to its previous comments, the Committee noted the Government's information that the National Policy on Children and its Plan of Action (NPAC) has been approved by the Government on 29 July 2009. The Government indicated that the NPAC will focus on children's survival, protection, development and social participation. A Technical Committee, chaired by the MWFC, will be established in order to coordinate and monitor the implementation of the NPAC. The Government further indicates that, although the NPAC is still in its infancy, its policy and plans are set to have considerable impact on the elimination of the worst forms of child labour by promoting and facilitating children's rights. **The Committee requests the Government to supply information on the implementation of the NPAC and on the results achieved with regard to the elimination of the worst forms of child labour in Malaysia.**

*Article 7(2). Effective and time-bound measures. Clause (a). Prevention of the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee had previously noted that, in its concluding observations of 25 June 2007, the Committee on the Rights of the Child expressed regret that, according to estimates, 200,000 children of primary-school age are not attending school. The Committee on the Rights of the Child had also expressed concern at the regional disparities in the dropout rates and that many children, in particular boys, drop out from secondary education (CRC/C/MYS/CO/1, paragraph 73).

The Committee noted the Government's information that it is committed to ensure adherence to compulsory primary education and that basic education is free at both the primary and secondary levels. The Government indicated that several factors explain the majority of dropout cases in Government and Government-assisted schools, which are mainly related to the students' backgrounds and include poverty, attitudes toward education and students' health. Lack of infrastructural amenities, such as poor methods of transportation, also make it difficult for students to attend school, thus contributing to the dropout rates. The Committee noted that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, Malaysia has formulated an Education Development Master Plan (EDMP)

of 2006–10, which outlines Malaysia's initiatives in ensuring that all students receive fair and equal educational opportunities regardless of location, ability or ethnic background (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 34). Malaysia thus provides a comprehensive set of education support measures which include a textbook loan scheme, supplementary food plan, trust funds, scholarships, food assistance, transport assistance, monthly allowances for disabled students and tuition aid schemes. The Committee noted that, according to the UNESCO Education for All Global Monitoring Report of 2008 (UNESCO Report), Malaysia has made extraordinary progress in reducing the number of children not enrolled in education and universal primary education has been achieved. Indeed, the Committee noted that, according to the UNESCO Report, the net enrolment rate in primary education is 100 per cent. However, the Committee noted that, while the gross enrolment rate is 90 per cent at the lower secondary level, it is only 53 per cent at the upper secondary level. **The Committee welcomes the efforts made by the Government and encourages it to pursue its efforts to improve the operation of the education system in the country, in particular by increasing school attendance at the secondary level and reducing school dropout rates. It requests the Government to provide information on the progress made in this regard and the results achieved.**

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking.* The Committee had previously noted that the Trafficking in Women and Children Report of the Human Rights Commission of Malaysia of 2004 shows that Malaysia is considered primarily a destination country for victims of trafficking. The findings of the report showed that, even if the trafficking involved mostly women over 18 years of age, a number of girls between 14 and 17 years of age were also reported to be victims of trafficking.

The Committee noted that, according to the Universal Periodic Review of Malaysia of 3 March 2009, the Anti-Trafficking in Persons Act came into force in 2008 (A/HCR/11/30, paragraph 58). It also noted that, according to the UNODC Global Report on Trafficking in Persons of 2009 (UNODC Report), a National Plan of Action to combat trafficking in persons was drafted in 2008. The UNODC Report further indicates that about 160 persons were convicted of "trafficking and abduction of children" between 2003 and 2006. Most of the persons convicted were involved in child trafficking for sexual exploitation, while two were exploiting children for forced labour. The Committee further noted that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, Malaysia has set up three shelter homes to provide assistance and counselling to victims of trafficking in persons and established an Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 92). Finally, the Committee noted the Government's information that the shelter home for child victims of trafficking for exploitative purposes has been operational since March 2008 and has, thus far, received 13 rescued children. **The Committee requests the Government to continue providing information on the number of children who have been withdrawn from trafficking and rehabilitated through the shelter homes established for that purpose and through the action of the Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims. The Committee further requests the Government to provide information on the measures taken within the framework of the National Plan of Action to combat trafficking in persons to ensure that child victims of trafficking for labour or commercial sexual exploitation are withdrawn and then rehabilitated.**

*Clause (d). Identifying and reaching out to children at special risk. Migrant children, street children and child domestic workers.* The Committee noted that the Worker member of Indonesia indicated, at the Conference Committee for the Application of Standards, that the Indonesian National Commission for Child Protection (INCCP) reported, after a 2008 fact-finding mission to the plantations in Sabah, Malaysia, that tens of thousands of migrant workers' children also worked in the plantations without regulated employment hours, which meant they worked all day long. Other sectors where migrant workers' children were often found were family food businesses, night markets, small-scale industries, fishing, agriculture and catering. The INCCP Secretary-General stated that the children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education. Furthermore, in Sabah, an unknown number of children begged in the streets; estimates ranged from a few hundred to as many as 15,000 children. The Worker members emphasized the need to devote particular attention to migrant children and to children employed as domestic workers. **The Committee reminds the Government that migrant children, street children and child domestic workers are particularly exposed to the worst forms of child labour and requests the Government to take effective and time-bound measures to ensure that these children are protected from the worst forms of child labour by withdrawing them from these vulnerable situations and rehabilitating them. It requests the Government to provide information on the results achieved.**

*Article 8. International cooperation and assistance. Regional cooperation.* The Committee had previously noted that a Memorandum of Understanding (MOU) between Malaysia and Thailand was proposed as a beginning to reduce the flow of young girls into Malaysia and allow for an exchange of information in order to monitor traffickers' actions. The Committee noted the Government's information that the MOU between Malaysia and Thailand has been suspended. The Committee noted that the Worker member of Indonesia at the Conference Committee on the Application of Standards indicated that, in 2006, the Confederation of Indonesian Trade Unions established a partnership with the Malaysian Trade Union Congress (MTUC). Both parties signed an MOU to inform migrants from Indonesia going to Malaysia on the risks of migration, including the risk of their children becoming labourers. However, the Worker members noted that unions alone could not solve this problem and this problem could only be solved in a regional context. The Committee further noted that according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, due to Malaysia's porous borders, the influx of migrants, trafficked victims and refugees is increasing despite pledges by source states that they have taken progressive measures (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 94). **The Committee therefore urges the Government to take measures to cooperate with the neighbouring countries, particularly Indonesia and Thailand, and therefore strengthen security measures with a view to bringing an end to child trafficking for labour or commercial sexual exploitation and to the engagement of child migrants in the worst forms of child labour.**

*Parts IV and V of the report form. Application of the Convention in practice.* Following its previous comments, the Committee noted the Government's information that the MWFCDC is conducting a pilot study to develop a database on street children in Sabah. The Government also indicated that it will initiate the creation of a database on the phenomena of child trafficking, the commercial sexual exploitation of children and street children in Malaysia. Furthermore, the Committee noted that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, Malaysia is currently setting up a One Stop Information Centre on trafficking in persons which will provide comprehensive information on the statistics of traffickers and victims. **The Committee requests the Government to provide the statistics compiled in the framework of the database on child trafficking, the commercial sexual exploitation of children and street children in Malaysia, as well as through the One Stop Information Centre on trafficking in persons. The Committee also requests the Government to take measures to ensure that data on the number of children engaged in domestic work is available.**

*The Committee also strongly urges the Government to redouble its efforts and take the necessary measures to ensure that, during its review of the CYP Act by the tripartite technical committee set up for this purpose, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention, and amendments are made in this regard. The Committee once again requests the Government to provide information on any progress made in the review of the CYP Act in its next report.*

*Finally, in response to the Government's request for technical assistance from the Office, the Committee requests the Office to take the necessary measures to respond positively.*

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

## Mali

### Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments, the Committee noted that, according to the report of the National Survey on Child Labour (ENTE), conducted in 2005 by the National Directorate of Statistics and Information, in collaboration with the National Directorate of Labour and ILO-IPEC-SIMPOC, around two children out of three between the ages of 5 and 17 years are economically active, or just over 3 million girls and boys throughout the country. Of these, nearly 2.4 million children between the ages of 5 and 14, or 65.4 per cent of children between 5 and 14 years of age, are engaged in work. This phenomenon affects both girls and boys, in rural areas and in towns. The Committee noted that the phenomenon is more widespread in rural areas (68 per cent of 5–14 year olds) than in urban areas (59 per cent of 5–14 year olds). The Committee also noted that in 2006 Mali launched a **Time-bound Programme (TBP)** on the worst forms of child labour in collaboration with ILO-IPEC. The Committee further noted that, in the framework of the **TBP**, a programme of action was launched in 2009 for the preparation and design of the National Plan of Action for the Elimination of Child Labour in Mali (PANETEM) with a view to reinforcing the progress achieved over more than a decade of combating child labour and addressing the difficulties encountered.

The Committee takes due note of the technical validation of the PANETEM at the national level in April 2010 and its adoption by the Council of Ministers on 8 June 2011. The PANETEM covers a period of ten years divided into two phases: the first five-year phase (2011–15) focuses on the elimination of the worst forms of child labour (60 per cent of targeted children) and the second five-year phase (2016–20) on the abolition of all forms of unauthorized child labour (40 per cent of the targeted children). However, the Committee notes that, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicates that, in view of the delay in the adoption of the PANETEM, its implementation is envisaged in 2012. **Observing with deep concern that a considerable number of children are engaged in work under the minimum age for admission to employment or work, the Committee strongly encourages the Government to intensify its efforts to combat child labour, and requests it to provide information on the implementation of the PANETEM and on the results achieved in terms of the elimination of child labour.**

*Article 2(1). 1. Scope of application.* In its previous comments, the Committee noted the information provided by the Government to the effect that children under 15 years of age working on their own account could be informed by the labour inspector covering their area of the risks involved in their work and the social security measures to be envisaged in the event of employment accidents. The Committee however noted the Government's indication that no specific measures have been adopted in Mali to allow labour inspectors to target more specifically children under 15 years of age engaged in an economic activity on their own account.

The Committee notes that absence of information in the Government's report on this subject. It once again reminds that Government that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether or not it is based on an employment relationship and whether or not it is paid. **The Committee urges the Government to take measures to ensure that children who are not bound by an employment relationship, such as those working on their own account or in the informal economy, benefit from the protection afforded by the Convention. In this respect, it requests the Government to envisage the possibility of taking measures to adapt and strengthen the labour inspection services with a view to ensuring such protection.**

*2. Minimum age for admission to employment or work.* In its previous comments, the Committee noted that under section 20(b) of the Child Protection Code, all children have the right to be employed *as from 15 years of age*, in accordance with the minimum age specified when ratifying the Convention. It noted, however, that pursuant to section L.187 of the Labour Code, the minimum age for the admission of children to employment in enterprises, even as apprentices, is *14 years*, except with a written waiver issued by the Minister of Labour. The Committee also noted that section D.189-23 of Decree No. 96-178/P-RM of 13 June 1996 issued under the Labour Code lists the loads that *children between the ages of 14 and 17 years* may not carry, drag or push, depending on the type of transport equipment, the weight of the load and the sex of the child. In this respect, the Committee noted the Government's indication that it undertook to take the necessary measures to amend section L.187 of the Labour Code, which will "lead to the raising of the minimum age for admission to employment".

The Committee notes that the Government has not provided any information on this subject in its report. However, it observes that one of the principal aims of the PANETEM is to reinforce the respective legal framework and regulations in relation to combating child labour. In this context, it is envisaged to organize a national workshop for the revision of the

Labour Code and its implementing texts with a view to harmonizing them with the legislative provisions for the protection of children. ***Expressing the firm hope that the relevant provisions of the Labour Code and of Decree No. 96-178/P-RM of 13 June 1996 will be brought into harmony with the Convention so as to prohibit work by children under 15 years of age, the Committee requests the Government to take measures with a view to finalizing this revision in the very near future. It requests the Government to provide information on the progress achieved in this respect.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee noted previously that Decree No. 314/PGRM of 26 November 1981 regulates school attendance and that the age of completion of compulsory schooling in Mali is 15 years. It noted the information provided by the Government according to which the implementation of phase II of the Sectoral Investment Programme for the Education Sector (PISE) would increase the number of classes and teachers in the poorest regions and improve the access to schooling for thousands of children, particularly in rural areas. The Committee also noted that Mali is one of 11 countries involved in the implementation of the ILO-IPEC project “Tackle child labour through education in 11 countries” (the TACKLE project), the overall objective of which is to contribute to the reduction of poverty in the least developed countries by providing equitable access to primary education and the development of knowledge amongst the most underprivileged members of society. Moreover, an integrated framework to cover the educational needs of the most vulnerable categories of children was being formulated with a view to the integration of these needs into phase III of the PISE. However, the Committee noted that, according to the Education for All Global Monitoring Report of 2008, published by UNESCO under the title *Education for All by 2015: Will we make it?*, although there has been substantial progress in the field of education, Mali is still far from achieving the objective of universal primary education by 2015, and will probably not achieve gender parity by 2015, or 2025. The Committee also noted the low school enrolment rate of children between 13 and 15 years of age, which shows that a number of children drop out of school before reaching the minimum age for admission to employment and that they enter the labour market.

The Committee notes that the TACKLE project has been extended up to 2013 and that its objective is to strengthen links between educational policies and measures to combat child labour with a view to giving vulnerable children and victims of child labour the opportunity to benefit from training and education. It also notes the Government’s indications that the third phase of PISE (PISE III) takes into account children with special educational needs. The Committee observes that, according to the table of data provided by the Government, the net school attendance rate in primary school rose from 56.6 per cent in 2005–06 to 60.9 per cent in 2007–08 and to 62.7 per cent in 2008–09. In secondary education, these rates are 23.5 per cent, 28.8 per cent and 30.7 per cent, respectively.

The Committee takes due note of the measures adopted by the Government in relation to education. However, it notes that the school attendance rates for primary education remain fairly low and that the low rates of school attendance in secondary education, compared with primary education, show that a significant number of children drop out of school after primary school. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee strongly encourages the Government to pursue its efforts to improve the functioning of the education system in the country, particularly by increasing school attendance rates. In this respect, it requests the Government to provide information on the progress achieved, particularly though the implementation of the TACKLE project and of PISE III, and the results obtained.***

*Article 3(3). Admission to hazardous types of work from the age of 16 years.* The Committee noted previously that certain provisions of Decree No. 96-178/P-RM of 13 June 1996 allow children to be employed in hazardous types of work from the age of 16 years. It noted the Government’s indication that the authorization of the labour inspector, which is required to employ young persons between 16 and 18 years of age, is a guarantee that these types of hazardous work are performed under healthy, safe and moral conditions. The Government indicated that section D.189-33 of Decree No. 96-178/P-RM establishes the requirement to ascertain that young persons between the ages of 16 and 18 years engaged in hazardous types of work have received adequate specific instruction or vocational training in the relevant branch of activity, in accordance with *Article 3(3)* of the Convention. However, the Committee noted that section D.189-33, which refers to the declaration that the employer has to make to the Employment Office for the recruitment of a child, does not make any reference to the instruction or vocational training that has to be followed by a young person over 16 years of age to be able to perform hazardous types of work. ***Noting the absence of information in the Government’s report on this subject, the Committee once again urges the Government to take measures to ensure compliance with the conditions set out in Article 3(3) of the Convention. It requests the Government to provide information in its next report on any developments in this respect.***

*Article 7. Light work.* In its previous comments, the Committee noted that section 189-35 of Decree No. 96-178/P-RM of 13 June 1996 allows exceptions from the minimum age for admission to employment in the case of boys and girls of at least 12 years of age for domestic work and light work of a seasonal nature. It noted the Government’s indication that it undertook to raise the minimum age for domestic work and light work of a seasonal nature from 12 to 13 years. It also noted that a draft order was being prepared to determine light work activities and the conditions for their performance.

The Committee notes that the Government has not provided any further information in its report on this subject. ***The Committee urges the Government to take the necessary measures to harmonize the national legislation with the***

*Convention and to regulate the employment of children on light work from the age of 13 years. To this end, it once again hopes that the order respecting light work will be formulated and adopted in the near future.*

*The Committee also urges the Government to renew its efforts and to take the necessary measures to ensure that the revision of the legislation envisaged in the context of the PANETEM does not fail to take into account the Committee's detailed comments on the divergences existing between the national legislation and the Convention, and that amendments will be made in this respect.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted that, although the Government had taken several measures to combat the sale and trafficking of children for the exploitation of their labour, the trafficking of children still constituted a problem in practice, even though it is prohibited by section 244 of the Penal Code and section 63 of the Child Protection Code. It noted that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the International Federation for Human Rights (FIDH) indicated that, even though no statistics are available, Mali is a transit country for the trafficking of women and children, and it therefore recommended that the Malian authorities strictly apply sections 240 et seq. of the Penal Code penalizing the trafficking of children, and that it improve the assistance provided to children who have been victims of trafficking (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). The Committee requested the Government to provide information on the effect given in practice to the provisions respecting the sale and trafficking of children for the exploitation of their labour.

The Committee notes with *regret* that the Government has not provided any information on this matter in its report. *The Committee therefore urges the Government to take immediate measures to ensure in practice the protection of children under 18 years of age against sale and trafficking and to ensure that thorough investigations and robust prosecutions of offenders are carried out, and that effective and sufficiently dissuasive penalties are imposed. It once again requests the Government to provide information on the effect given in practice to the provisions respecting the sale and trafficking of children for the exploitation of their labour through the provision of statistics on the number of convictions and the penal sanctions imposed.*

*2. Forced or compulsory labour. Begging.* In its previous comments, the Committee noted that, according to the 2006 UNICEF report, *talibés* children originating from neighbouring countries, including Mali, are found on the streets of Dakar, who have been brought to the city by Koranic teachers (*marabouts*). These children are kept in conditions of servitude and are obliged to beg daily. The Committee also noted that the 2006 UNICEF report refers to the involvement of *marabouts* in the trafficking of children for the exploitation of young *talibé* workers from Burkina Faso in the rice fields of Mali. The Committee noted that the Committee on the Rights of the Child, in its concluding observations of May 2007, expressed concern at the vulnerability of children living in the streets or who are engaged in begging, particularly to all forms of violence, sexual abuse and exploitation, as well as economic exploitation (CRC/C/MLI/CO/2, paragraph 62). The Committee noted that section 62 of the Child Protection Code defines begging as a sole or main activity of a dehumanizing nature and an obstacle to the rights of the child. It further noted that section 183 of the Penal Code provides that any person inciting a child to beg shall be liable to a sentence of imprisonment of from three months to one year. However, the Committee noted that, in the report of the Working Group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali indicated that begging by children in Koranic schools is an infringement of the law (A/HRC/8/50, paragraph 55).

The Committee notes with *regret* the absence of information on this matter in the Government's report. The Committee once again observes that, although the legislation is in conformity with the Convention on this point, the phenomenon of child *talibés* remains a cause for concern in practice. The Committee once again expresses *serious concern* at the use of these children for *purely economic purposes*. The Committee once again reminds the Government that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency and, in accordance with *Article 7(1)* of the Convention, it shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of sufficiently effective and dissuasive sanctions. *The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of marabouts who make use of children under 18 years of age for purely economic purposes are carried out and that sufficiently effective and dissuasive sanctions are imposed upon them. In this respect, the Committee requests the Government to take the necessary measures to reinforce the capacities of the law enforcement agencies. It also requests the Government to take effective and time-bound measures to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to identify child talibés who are compelled to beg and remove them from these situations, while ensuring their rehabilitation and social integration.*

*Clause (b). Use, procuring or offering of a child for prostitution.* In its previous comments, the Committee noted that section 229 of the Penal Code, under which inciting a girl or a woman, even with her consent, to debauchery or forcing her to engage in prostitution are punishable offences, applies only to female children. The Committee noted the

Government's indication that it undertook to examine the question of bringing its legislation into conformity with the Convention and protecting boys from sexual exploitation, and particularly prostitution. The Government indicated that the measures taken in this respect consist of the adoption of Act No. 01-081 of 24 August 2001 concerning crimes related to minors and the appointment of magistrates to hear cases involving minors (Act No. 01-081). The Committee observed that not only do these provisions fail to prohibit the use, procuring or offering of a child for prostitution, but they also appear to punish the children concerned, making them criminally liable for their involvement in prostitution or illicit activities. The Committee observed that children who are used, procured or offered for prostitution are consequently not treated as victims and receive neither support nor protection.

The Committee notes with *regret* that the Government has not provided any information on this matter in its report. It once again reminds the Government that, under the terms of *Article 3(b)* of the Convention, the use, procuring or offering of a child under 18 years of age for prostitution is considered to be one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, immediate and effective measures have to be taken to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*. **The Committee urges the Government to take immediate measures to ensure that the national legislation prohibits the use, procuring or offering of boys under 18 years of age for prostitution.**

*Clause (c). Use, procuring or offering of a child for illicit activities.* The Committee noted previously that Act No. 1986/18 on the punishment of offences involving poisonous substances and narcotics prohibits the cultivation, production, offering and sale of drugs, but not the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Government indicated that the measures taken in this respect consisted of the adoption of Act No. 01-081. However, the Committee observed that these provisions do not prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.

The Committee notes with *regret* that the Government has not provided any information on this matter in its report. It once again reminds the Government that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*. **The Committee, therefore, urges the Government to take immediate measures to ensure that the national legislation prohibits the use, procurement or offering of children under 18 years of age for illicit activities, in particular for the production, offering and sale of drugs. It requests the Government to provide information in its next report on any progress achieved in this respect.**

*Article 5. Monitoring mechanisms. 1. Monitoring committees.* In its previous comments, the Committee noted that local monitoring committees (CLV) to combat child labour had been established in the circles of Kangala, Bougouni, Kolondiéba and Koutiala, that 344 monitoring committees are now operational in Mali and that their principal role was to identify potential victims of child trafficking, and to indicate cases in which children are the victims of trafficking and collect and disseminate data on the trafficking of children. **Noting the absence of information on this subject in the Government's report, the Committee once again requests the Government to provide information on the number of children who are prevented from becoming victims of trafficking or are removed from trafficking for labour exploitation as a result of the activities of monitoring committees.**

*2. National Committee to follow-up programmes to combat the trafficking of children.* The Committee noted previously the Government's indications that the National Committee to follow-up programmes to combat the trafficking of children in Mali (CNS) is responsible for evaluating the action taken in the context of the implementation of programmes to combat the trafficking of children, for following the implementation of cooperation agreements signed by Mali to combat the trafficking of children and for learning from the experience acquired in this field in taking responsibility for child victims of trafficking. However, the Government indicated that, since it was established in 2006, the CNS was not operational, thereby creating a gap in the coordination of action to combat the trafficking of children in Mali. To overcome this problem, three meetings had been planned between September and November 2009, during which the programme and action of the CNS were to be determined and the annual work plan for 2010 adopted.

The Committee notes that the Government has not provided any information on this subject in its report. **The Committee once again requests the Government to provide information on the activities carried out by the CNS and their impact on the elimination of the trafficking of children for the exploitation of their labour.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assistance for their removal from these worst forms of child labour. Sale and trafficking of children.* In its previous comments, the Committee noted that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the FIDH indicated that there are no institutional facilities available in Mali to shelter, offer guidance to or assist young women who have been the victims of trafficking or sexual exploitation (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). It therefore recommended the authorities of Mali to set up care and guidance facilities and to provide assistance for the return of girls who are victims of trafficking.

The Committee notes the Government's indication that one of the strategic focuses of the National Plan of Action for the Elimination of Child Labour in Mali (PANETEM), adopted in 2010, is the implementation of direct action to combat the worst forms of child labour, including trafficking. **The Committee requests the Government to provide**

*information on the measures adopted within the framework of the PANETEM project to prevent children under 18 years of age from becoming victims of sale or trafficking and to remove child victims from this worst form of child labour. It also once again requests the Government to envisage the establishment of care and guidance facilities and the provision of assistance for the return of child victims of trafficking, as recommended by the FIDH, with a view to ensuring their rehabilitation and social integration. The Committee once again requests the Government to provide information on any progress achieved in this regard.*

*Article 8. Regional cooperation.* In its previous comments, the Committee noted that the Government had signed bilateral cooperation agreements on the cross-border trafficking of children with Burkina Faso, Côte d'Ivoire, Guinea and Senegal. It also noted that, in addition to the Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in July 2005, Mali had also signed the Abuja Multilateral Cooperation Agreement in 2006. It further noted that, in the context of the ILO-IPEC project to combat the trafficking of children, it was planned to reinforce the application of the bilateral and multilateral treaties signed by Mali. However, the Government indicated that, although the countries which signed agreements with Mali met periodically, they were more dynamic in their activities within the national territory than in terms of mutual international assistance. Indeed, the Committee observed that, in the Report of the Working Group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali noted that, with regard to trafficking in children, the main difficulties stemmed from the cross-border nature of the phenomenon (A/HRC/8/50, paragraph 54).

The Committee notes the Government's indication that the National Cell to Combat Child Labour (CNLTE) represented the Ministry of Labour at the follow-up meetings to the Cooperation Agreement to Combat Trans-border Child Trafficking between Mali and Burkina Faso, held in Ouagadougou in March 2009, as well as the meeting between Mali and Guinea, held in Bamako in September 2010. However, it observes that the Government has not provided any information on the number of child victims of trafficking for sexual exploitation or for labour who have been protected through the implementation of the multilateral agreements signed by Mali, or on the arrests that have been made as a result of the concerted action of the national border police. *In view of the importance of trans-border trafficking in the country, the Committee urges the Government to take practical and effective measures for the implementation of the multilateral agreements signed in 2005 and 2006, particularly through the establishment of a system for the exchange of information to facilitate the discovery of child trafficking networks and the arrest of persons working in these networks. It also requests the Government to provide information on the outcome of the follow-up meetings held in Ouagadougou in 2009 and Bamako in 2010.*

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

## Mauritania

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2001)**

The Committee takes note of the communication from the General Confederation of Workers of Mauritania (CGTM) dated 22 August 2011, and of the Government's report.

*Article 1 and Part V of the Convention. National policy and application of the Convention in practice.* In its previous comments, the Committee had noted the indications of the International Trade Union Confederation (ITUC), according to which the Ministry of Labour authorized, without exception, work by 13-year-old children in both the agricultural and non-agricultural sectors. The Committee had noted that, according to the study undertaken by the Government in 2004 in collaboration with UNICEF, entitled "Child labour in Mauritania", around 90,000 children under 14 years of age worked in the country, signifying an increase of around one third over four years. The study showed that poverty was responsible for child labour.

The Committee notes the allegations of the CGTM that, despite this worrying situation, the Government is not conducting any coherent and concerted policy to redress the situation. There is a department specifically dealing with children's matters, but none of the programmes developed in this department tackle the problem of child labour. Furthermore, the trade union organizations are not involved in these programmes.

The Committee expresses its *deep concern* at the large number of young children working out of personal necessity in Mauritania. *The Committee urges the Government to take short or medium-term measures to bring about a gradual improvement in this situation, for instance by adopting a national policy aimed at abolishing child labour once and for all, in cooperation with the employers' and workers' associations concerned, and to provide information in this respect. The Committee also asks the Government to provide information on the way in which the Convention is applied in practice, by providing, for example, statistical data disaggregated by sex and age group on the nature, extent and trends of child labour and the employment of young persons working below the minimum age specified by the Government at the time of ratification, as well as extracts from the reports of the inspection services.*

*Article 2(3). Compulsory schooling.* The Committee had previously noted the information provided by the Government to the effect that one of the methods to ensure the abolition of child labour was the adoption of Act No. 2001-054 of 19 July 2001, making basic education compulsory for children of both sexes from 6 to 14 years of age,

signifying a minimum duration of schooling of six years. It had also noted that the parents were henceforth required, subject to penalties, to send children aged between 6 and 14 years to school.

The Committee notes the allegations of the CGTM that thousands of school drop-outs contribute greatly to the phenomenon of child labour in Mauritania and that children are often forced to leave school because of pressure from their parents.

The Committee notes that, according to the Government, it is sparing no effort to improve the education system. In this respect the Government states that it is planning to organize a general education meeting (*états généraux de l'éducation*) in the near future. Furthermore, the Government indicates that the capacity of the labour inspections services has been strengthened and that they now have enough human resources to combat child labour effectively. A new labour inspectorate was also set up in 2010, which will help to cut child labour and help children enter economic and social life by providing training and apprenticeship programmes carried out in the formal and informal sectors.

While noting the efforts made by the Government, the Committee notes that, according to 2009 UNICEF statistics, 79 per cent of girls and 74 per cent of boys are in primary school, whereas only 15 per cent of girls and 17 per cent of boys are in secondary school. The Committee expresses once again its *concern* at the persistence of low school attendance rates, especially at the secondary school level. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee requests the Government to renew its efforts to improve the working of the education system, particularly by increasing the secondary school attendance rate, especially among girls. In this respect, it asks the Government to provide information on the outcome of the general education meeting, as well as on any improvements in the education system it might bring. It also requests the Government to provide information on the number of children working under the minimum age who have been identified by the labour inspection services and integrated into the school system or in apprenticeships or vocational training, on condition that the minimum age requirements are respected.***

*Article 3(3). Authorization to employ children in hazardous work as from the age of 16 years.* In its previous comments, the Committee had noted that section 1 of Order No. 239 of 17 September 1954 (Order No. 239), as amended by Order No. 10.300 of 2 June 1965 respecting child labour (the Child Labour Order), unequivocally provides that “it is prohibited to employ children of either sex under 18 years of age on work that exceeds their strength, involves risks of danger or which, by its nature or the conditions in which it is carried out, is likely to harm their morals”. The Committee had nevertheless pointed out that this provision had established the general prohibition of employing young persons under 18 years of age on hazardous types of work, whereas other provisions, such as sections 15, 21, 24, 25, 26, 27 and 32 of Order No. 239 and section 1 of Order No. R-030 of 26 May 1992 (R-030), set forth exceptions to this prohibition for young persons between 16 and 18 years of age. The Committee had requested the Government to provide information on the measures taken to ensure that the performance of hazardous types of work by young persons aged between 16 and 18 was only permitted under strict conditions of protection and prior instruction in conformity with the provisions of *Article 3(3)* of the Convention.

The Committee notes the allegation of the CGTM that children are exploited in dangerous work in large cities, as apprentices, in the bus transport sector, as deliverers of large amounts of goods and as garage workers.

The Committee notes that, according to the Government, labour inspectors and supervisors ensure strict compliance of the provisions of the Orders in question. The Government also states that, if the need exists, measures are taken to guarantee that the performance of hazardous work by young persons between 16 and 18 years of age is only authorized if their health, safety and morals are fully protected and if they have received adequate specific instruction or vocational training in the relevant branch of activity. While taking account of the Government's information, the Committee notes that the national legislation still does not stipulate that the two conditions provided for under *Article 3(3)* of the Convention are a prerequisite for allowing young people aged 16 years and over to perform hazardous work, despite the fact that there seems to be a problem in practice in this respect. ***The Committee therefore requests the Government to take the necessary measures to ensure that Orders Nos 239 and R-030 are amended so as to provide that hazardous types of work by young persons aged 16 to 18 years is only authorized in accordance with the provisions of Article 3(3) of the Convention.***

*Article 7(3). Determination of light work.* In its previous comments, the Committee noted that, under section 154 of the Labour Code regulating the employment of children between 12 and 14 years of age in light work, no child over 12 but under 14 years of age may be employed without the express permission of the Minister of Labour, and only under certain conditions restricting the hours of this employment. The Committee had reminded the Government that *Article 7(3)* provided that, in addition to the hours and conditions of work, the competent authority should determine the activities in which light employment might be permitted for children between 12 and 14 years of age. The Committee had noted the Government's indication that it would take the necessary measures to determine the activities in which light work or employment by children might be authorized.

The Committee notes the Government's indication that a copy of the provisions determining the activities in which light employment or work may be permitted for children will be sent to the Office as soon as they have been adopted. ***Observing that a significant number of children work under the minimum age for admission to employment in Mauritania, the Committee urges the Government to take the necessary measures to bring national legislation into line***

*with the Convention and to regulate the employment of children engaged in light work from the age of 12 years. It expresses the firm hope that light work will be determined by the national legislation in the very near future.*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the communication of 22 August 2011 from the General Confederation of Workers of Mauritania (CGTM), and the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery or practices similar to slavery.*

1. *Sale and trafficking of children.* In its previous comments, the Committee noted the adoption of Act No. 025/2003 of 17 July 2003 to suppress the trafficking of persons. The Committee also noted that, according to a UNICEF report on trafficking in persons with particular reference to women and children in West and Central Africa, in the streets of Dakar there are boy *talibés* from neighbouring countries, including Mauritania, who have been brought to the city by their Koranique masters (*marabouts*). According to the same report, there is also child trafficking inside Mauritania in which *talibé* children from rural areas beg on the streets of Nouakchott. The Committee observed that Mauritania appeared to be a country of origin for the trafficking of children for the purpose of exploiting their labour.

The Committee notes that in its concluding observations of 17 June 2009, the Committee on the Rights of the Child (CRC) expressed concern at reports of children being sold to work as jockeys in the Middle East (CRC/C/MRT/CO/2, paragraph 77). The CRC was also concerned to note that Mauritania's report contained no information on the extent of the trafficking or the measures taken to prevent such crimes. The Committee notes with *regret* the lack of information on this subject in the Government's report. ***The Committee once again expresses concern at the situation of child victims of trafficking, and requests the Government to step up its efforts to ensure that, in practice, children under 18 years of age are protected against the sale and trafficking of children for the purposes of sexual exploitation or exploitation of their labour. The Committee again requests the Government to provide information on the application of Act No. 025/2003 of 17 July 2003 to suppress the trafficking of persons in practice, including statistics on the number and nature of offences reported, investigations held, prosecutions, convictions and penal sanctions applied.***

2. *Forced or compulsory labour. Begging.* In its previous comments the Committee noted that section 42(1) of Ordinance No. 2005-015 on the protection of children under penal law provides that the act of causing a child to beg or directly employing a child to beg is punishable by imprisonment of one to six months or a fine of 100,000 ouguiyas. The Committee nonetheless noted that a UNICEF study entitled "Child Labour in Mauritania" indicated that, according to a study of July 2003 by the National Children's Council (CNE), observations in the field suggested that street children tended to be beggars who give a daily account of their begging activities to their *marabouts*.

The Committee notes that, according to the CGTM, teachers in religious schools force children onto the streets to beg, exposing them to crime and the danger of assault on their integrity.

The Committee notes that in its concluding observations of 17 June 2009, the CRC expressed concern over the lack of protection for *talibé* children, who are forced by *marabouts* to beg in slavery-like conditions (CRC/C/MRT/CO/2, paragraph 73). The Committee also notes that in her report of 24 August 2010 to the Human Rights Council, the Special Rapporteur on contemporary forms of slavery stated that although she had been informed that the Government was working with religious leaders to put an end to this practice, many did not consider forced begging to be a form of slavery (A/HRC/15/20/Add.2, paragraph 46). The Minister of Families, Children and Social Affairs nonetheless informed the Special Rapporteur of the collaboration between her and the Ministry of the Interior to address the issue of street children, some of whom are *talibés* in Nouakchott. There appears to be a specialized police force which is trained to work with children, and the services of the Minister of the Interior monitor *madrassas* to ensure that children are not encouraged to go begging for their religious teachers (paragraph 75).

The Committee nevertheless notes with *regret* that the Government provides no information on this matter in its report. It again notes with *deep concern* that children are being used *for purely economic purposes*, in other words children are being exploited for their labour by certain *marabouts*. The Committee again points out to the Government that, according to *Article 1* of the Convention, immediate and effective measures must be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour and that, in conformity with *Article 7(1)* of the Convention, the Government must take all necessary steps to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of effective and sufficiently dissuasive sanctions. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations are carried out and completed and that marabouts who use children under 18 years of age for purely economic purposes are effectively prosecuted and punished by effective and sufficiently dissuasive penalties. The Committee requests the Government to provide information on the number of talibé children identified by the special police unit and the services of the Minister of the Interior, and requests it to take the necessary steps to build the capacity of law enforcement bodies.***

*Article 7(2). Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Forced or compulsory labour. Begging.* In its previous comments the Committee noted that, according to information in the second periodic report submitted by Mauritania in July 2008 to the CRC

(CRC/C/MRT/2, paragraph 88), a centre for the protection and social integration of children in difficult situations was established which targets street children, children forced to beg or children subject to economic exploitation.

The Committee notes that in her report, the Special Rapporteur on contemporary forms of slavery indicates that the Ministry of the Interior informed her that *talibé* children are offered education or vocational training and provided with shelter (A/HRC/15/20/Add.2, paragraph 75). The Committee nonetheless notes with *regret* that the Government provides no information on this matter in its report. It also observes that in its concluding observations of 17 June 2009, the CRC likewise expressed concern at the lack of information on the measures adopted by Mauritania to identify and protect children working or living in the street (CRC/C/MRT/CO/2, paragraph 73). ***The Committee urges the Government to indicate the number of child victims of begging who have been removed from the street and rehabilitated and integrated into society, particularly by the centre for the protection and social integration of children in difficult situations or by the services of the Ministry of the Interior. The Committee also requests the Government to indicate any other effective time-bound measures taken to prevent children under 18 years of age from falling victim to forced or compulsory labour, such as begging, and to identify talibé children who are forced to beg, and to remove them from such situations, ensuring their rehabilitation and social integration.***

*Clause (e). Special situation of girls. Domestic employees.* In its previous comments the Committee noted the Government's statement that most girls engaged in domestic work received little schooling or no schooling at all. Furthermore, according to the results of a survey on girls in Mauritania which was cited in a UNICEF study entitled "Child Labour in Mauritania", girls could be recruited as from 8 years of age, and 32 per cent of the girls questioned during the survey were under 12 years of age. The Committee noted that according to the second periodic report submitted by Mauritania to the CRC in July 2008 (CRC/C/MRT/2, paragraphs 247 and 255), two surveys had been under way for some time on child labour (including girls in domestic service) in Kiffa and Nouakchott "to determine the possibilities of educating and training these young workers and securing their social reintegration". It noted that the "El Mina Centre for Child Protection" in Nouakchott has been carrying out various activities since 2001 (training, literacy, hygiene, etc.) for girl domestic workers. A basic education pilot programme was also carried out in Dar Naim and a unit for "girls in difficult situations" was established.

The Committee notes that according to the CGTM, domestic work amounts to a daily workload of heavy chores for children, who are subjected to abuse from a very young age. Furthermore, the International Trade Union Confederation (ITUC) indicated in a report it submitted to the General Council of the World Trade Organization for the trade policy reviews of Guinea and Mauritania on 28 and 30 September 2011, many girls are forced into unpaid domestic service and are particularly vulnerable to exploitation. The Committee also notes that in its concluding observations of 17 June 2009, the CRC expressed particular concern at the situation of girls who work as domestic servants in exploitative slavery-like conditions (CRC/C/MRT/CO/2, paragraph 75).

The Committee notes with *regret* that the Government provides no information on this matter in its report. It again points out that small girls, particularly those employed as domestic servants, are often the victims of exploitation, which can take many different forms, and that it is difficult to supervise their conditions of employment in view of the clandestine nature of their work. ***It therefore urges the Government to take measures to ensure that children who are victims of exploitation in domestic work, particularly girls, are removed from this worst form of child labour and are rehabilitated and integrated in society, in particular through the activities of the El Mina Centre for the Protection of Children and the Dar Naim pilot project. The Committee requests the Government to provide information on progress made in this regard. Lastly, it urges the Government to provide information on the development and conclusions of the two surveys under way in the country.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes that according to the report of 24 August 2010 of the Special Rapporteur on contemporary forms of slavery, children under 13 years of age work in all sectors of activity in Mauritania. In rural areas, enslaved children usually work taking care of the livestock, cultivating subsistence crops and performing domestic work and other significant labour in support of their masters' activities. Children live in slavery-like conditions in urban areas and are often found working in domestic households (A/HRC/15/20/Add.2, paragraphs 42 to 45). The Committee notes, however, that in its concluding observations of 17 June 2009, the CRC expressed particular concern at the lack of comprehensive documentation on the incidence of child labour and effective measures to ensure that children are protected from economic exploitation and the worst forms of child labour and that they can exercise their right to education (CRC/C/MRT/CO/2, paragraph 75). ***The Committee expresses concern at the situation of children engaged in hazardous work and in slavery-like conditions, and therefore urges the Government to take immediate and effective measures to ensure protection in practice for these children against this worst form of child labour. It also requests the Government to provide statistics of the nature, extent and tendencies of worst forms of child labour, particularly as concerns the sale and trafficking of children begging in the streets. It also requests the Government to provide information on the number and nature of the offences reported, investigations and prosecutions, and convictions and the penal sanctions imposed. To the extent possible, all information provided should be disaggregated by sex and age.***

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

## Mauritius

### Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

*Article 2(1) of the Convention. Minimum age for admission to employment.* In its previous comments, the Committee had noted with satisfaction that the Labour Act was amended in 2006 to raise the minimum age for employment to 16 years (section 3(a) of the Labour (Amendment) Act 2006) from the age of 15 years specified at the time of ratification. **The Committee takes this opportunity to draw the Government's attention to the provisions of paragraph 2 of Article 2 of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office.**

## Mexico

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties.* In its previous comments the Committee noted the observations from the International Trade Union Confederation (ITUC) referring to the trafficking of girls for sexual exploitation, including forced prostitution, within the country and abroad. It also noted that, according to a study carried out in six Mexican cities with the support of UNICEF, an estimated 16,000 boys and girls were victims of commercial sexual exploitation. Another study, conducted 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 in the Federal District of Mexico alone. The Committee also noted the adoption of the Act of 27 November 2007 concerning the prevention and punishment of trafficking in persons under 18 years of age for forced labour and/or sexual exploitation, and the establishment on 31 January 2008 of the Special Prosecutor's Office dealing with violence against women and trafficking in persons (FEVIMTRA), whose mandate includes providing assistance for the victims of trafficking in order to secure their collaboration in trials and obtain useful information for investigations. The Committee further observed that the Special Rapporteur on the sale of children, child prostitution and child pornography, who visited the country from 4 to 15 May 2007, indicated in his report of 28 January 2008 (A/HRC/7/8/Add.2) that the sexual exploitation of children is related to various forms of organized crime and clandestine circuits of the sex trade, where the vast amount of money generated by such activities, and corrupt connections with various bodies in the State sector, facilitate exploitation and frequently make it impossible to prosecute the perpetrators.

The Committee notes the information communicated in the Government's report to the effect that the National Centre for Planning, Analysis and Information to Combat Crime (CENAPI) attached to the Office of the Attorney-General of the Republic has developed the National System to Combat Trafficking in Persons (SINTRA) with a view to collecting information on human trafficking and other related offences. The Government's report also indicates that FEVIMTRA has conducted a total of 53 investigations into suspected trafficking activity, including 30 cases of labour exploitation and 19 cases of commercial sexual exploitation. Between June 2009 and May 2011, FEVIMTRA conducted 12 investigations into trafficking activity (six cases of trafficking of minors and six cases of trafficking of persons for sexual exploitation). Moreover, the Government's report refers to the first conviction secured by FEVIMTRA relating to trafficking for labour exploitation. The perpetrator was sentenced to nine years' imprisonment. However, the Committee observes that, according to information in a 2011 report on the trafficking of persons in Mexico, which can be consulted on the website of the United Nations High Commissioner for Refugees (UNHCR), few prosecutions are brought by the states, except the Federal District of Mexico. Many judges are reportedly unfamiliar with the legislation on human trafficking and prosecute cases of trafficking under other laws, such as rape or procuring, under which penalties are lower. The report also indicates that corruption among public servants, especially officials responsible for law enforcement in the states, or among immigration officers remains a source of serious concern.

While noting the Government's efforts to take practical action against the sale and trafficking of children under 18 years of age, the Committee expresses its **concern** at the small number of convictions secured for trafficking of children, in view of the extent of the practice in the country, at the major disparities among the various states regarding the enforcement of the laws concerning the sale and trafficking of children and at the allegations of complicity in trafficking on the part of public officials. **The Committee, therefore, urges the Government to intensify its efforts to ensure the elimination in practice of the sale and trafficking of children and young persons under 18 years of age by ensuring the thorough investigation and robust prosecution of the perpetrators of such acts, including state officials suspected of complicity, and the imposition of sufficiently effective and dissuasive penalties in practice. It requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and criminal penalties imposed by the federal states for violations of the legal provisions concerning the sale and trafficking of children, and also pursuant to the Act of 2007 concerning the prevention and punishment of trafficking in persons.**

*Article 3(b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* In its previous comments the Committee noted that one of the strategic projects of

FEVIMTRA was to create a database of information on the number and nature of offences relating to prostitution, sexual exploitation and sex tourism involving persons under 18 years of age.

The Committee notes the Government's indication that FEVIMTRA has been tasked with establishing this database since July 2008, with the collaboration of 23 prosecutors from the federal states. It notes the Government's indication that only one investigation relating to child prostitution was initiated by FEVIMTRA compared with nine investigations into child pornography between June 2009 and May 2011. These investigations resulted in one conviction for child prostitution and three convictions for child pornography. However, the Committee observes that, according to information in the 2011 report on trafficking in persons, sex tourism involving children continues to increase in tourist areas such as Cancun and Acapulco and cities in the north, such as Tijuana and Ciudad Juárez. Moreover, the Committee on the Rights of the Child (CRC), in its concluding observations of 7 April 2011 on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, expressed concern at the high level of child sex tourism, especially in tourist areas (CRC/C/OPSC/MEX/CO/1, paragraph 27). ***The Committee therefore urges the Government to intensify its efforts to secure the elimination of the use, procuring or offering of children for prostitution, for the production of pornography or for pornographic performances, especially in the tourism industry, by ensuring the effective prosecution of the perpetrators of such acts. It requests the Government to provide information on the number of reported violations, investigations, prosecutions, convictions and criminal penalties imposed for violations involving child prostitution and child pornography.***

*Articles 3(d) and 4(1). Hazardous work and determination of hazardous types of work.* In its previous comments the Committee noted that certain provisions of the national legislation set the age of 18 years for admission to certain types of work which, by their nature and the circumstances in which they are carried out, are likely to harm the health, safety or morals of young persons. However, it also noted that, with the exception of those provisions, the general age established for admission to hazardous and unhealthy kinds of work is 16 years.

The Committee takes due note of the Government's indication that a tripartite group of experts has been set up as part of the "Stop child labour in agriculture" project, conducted in collaboration with ILO-IPEC, in order to draw up a list of hazardous and unhealthy types of work prohibited for workers under 18 years of age. It notes that this list will be presented to the Occupational Hazard Prevention Sub-Committee of the National Advisory Committee on Occupational Safety and Health. The Committee recalls that, under *Article 3(d)* of the Convention, any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children shall be considered one of the worst forms of child labour and shall, therefore, be prohibited for children under 18 years of age. ***The Committee therefore expresses the firm hope that the list of hazardous and unhealthy types of work prohibited for persons under 18 years of age will be adopted in the near future, after consultation of the employers' and workers' organizations, in order to bring the legislation into conformity with the requirements of Articles 3(d) and 4(1) of the Convention, and requests the Government to send a copy of the list once it has been adopted.***

*Article 6. Programmes of action. Trafficking.* Further to its previous comments, the Committee notes the information in the Government's report concerning the adoption in January 2011 of the National Programme for the prevention and suppression of trafficking. It observes that the purpose of the programme is to provide an effective and comprehensive response at federal level to the problem of trafficking and has four objectives, namely to: (i) understand the causes and consequences of human trafficking in the country; (ii) prevent human trafficking and change cultural patterns of tolerance regarding sexual and labour exploitation; and (iii) contribute towards improving the enforcement of legislation regarding trafficking; (iv) provide comprehensive, high-quality care for victims of trafficking and their families and for witnesses. ***The Committee requests the Government to provide information on the measures taken in the context of the National Programme for the prevention and suppression of trafficking.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in, and removing them from, the worst forms of child labour, and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* Further to its previous comments, the Committee takes due note of the information in the Government's report concerning the various awareness-raising activities established in the context of the National Plan of Action for preventing, combating and eliminating the sexual exploitation of children, in which more than 82,000 girls and boys have taken part. It also notes the Government's indication that FEVIMTRA is running a centre that specializes in care for the victims of trafficking and commercial sexual exploitation. The centre provides the following services for victims: (i) immediate medical care; (ii) legal aid; (iii) psychological and social support geared to the rehabilitation of victims; (iv) programmes of rehabilitation through work; (v) social integration programmes; and (vi) capacity-building programmes. The Government's report also indicates that between June 2009 and May 2011, FEVIMTRA provided assistance for 53 girls and 25 boys who were potential victims of trafficking. ***The Committee urges the Government to continue to take measures to remove children from trafficking and commercial sexual exploitation and ensure their rehabilitation and social integration. It requests the Government to continue to provide information on the measures taken in this respect, including under the National Plan of Action for preventing, combating and eliminating the sexual exploitation of children, as well as on the results achieved in terms of the number of children removed from this worst form of child labour and their subsequent rehabilitation and social integration.***

*Article 8. International cooperation.* In its previous comments the Committee noted that the Government of Mexico had signed a memorandum of understanding (MOU) with the Governments of Guatemala and El Salvador concerning the protection of women and child victims of selling and trafficking at the borders of these States.

The Committee notes the information supplied by the Government to the effect that, further to the signature in 2007 of regional directives for the special protection of child victims of trafficking in cases of repatriation, a large number of child protection officers have been trained with a view to the creation of a regional protection model. In 2010 and 2011, a total of 60 child protection officers were trained in the Dominican Republic and 62 in Honduras. The Committee also notes that a bi-national study on trafficking between El Salvador and Mexico is in progress. ***The Committee requests the Government to continue to provide information on the measures taken and the results achieved in the context of the MOUs signed with the Governments of Guatemala and El Salvador. It also requests the Government to provide a copy of the bi-national study on trafficking between El Salvador and Mexico in its next report.***

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

## Mongolia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2002)**

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

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* In its previous comments, the Committee noted that in 2002 the Government approved a National Programme of Action for the Development and Protection of Children for 2002–10 (NPA 2002–10). It noted that particular attention has been given to the issue of child labour in this document and that one of its objectives is to amend national legislation to ensure the protection of children. The Committee requested the Government to provide information on any developments regarding the review and possible amendments to the Labour Code and the Law on the Protection of the Rights of the Child in order to better address the problem of child labour. The Committee noted in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the Labour Code has recently been amended. It also noted that the NPA 2002–10 is ongoing, as are a number of other projects and programmes, most of them dealing with the worst forms of child labour. ***The Committee requests the Government to supply a copy of the recently amended Labour Code. The Committee also requests the Government to continue providing information on the NPA 2002–10, or any other such programmes, aimed at ensuring the effective abolition of child labour.***

*Article 2(1). Scope of application.* The Committee previously noted that the Labour Code, according to its section 4, covers relations governed by a labour contract, defined as a mutual agreement on work for pay between an employee and an employer (section 3(1)(3)). The Committee therefore noted that the Labour Code appeared to exclude work performed outside the framework of a labour contract and self-employment from its scope of application. In this regard, the Committee noted the Government's information that, according to the survey conducted by the Mongolian Employers' Federation in 2003, 54.3 per cent of employers involved in the survey had been employing children without a labour contract. In this regard, the Committee requested the Government to provide information on the manner in which protection is given to children carrying out an economic activity that is not covered by a labour contract, such as work on their own account.

The Committee noted the information in the Government's report that, following an audit by the ILO on labour inspection in Mongolia, the Parliament approved a review of the Labour Code and state policy on informal employment. The Committee noted that the Government plans to revise the Labour Code to extend its scope of application in 2010. The Committee also noted the Government's statement that child protection is still weak in the informal sector. The Committee further noted the information in the Human Rights and Freedoms in Mongolia Status Report, issued in 2007 by the National Human Rights Commission of Mongolia, that approximately 6,950 children were working in the informal economy in urban areas (page 50). ***The Committee requests the Government to take the necessary measures to ensure that, within the review of the Labour Code and the state policy on informal employment, protection is given to children carrying out work on their own account or in the informal economy. The Committee requests the Government to continue to provide information on developments in this regard.***

*Article 2(3). 1. Age of completion of compulsory education.* In its previous comments, the Committee noted that, according to section 109(2) of the Labour Code, a person aged 15 years may enter into a labour contract with the permission of parents or guardians. It noted however that, according to National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 8), the new Law on Primary and Secondary Education was adopted on 3 May 2002. The Committee also noted that the Government indicated in its report to the Committee on the Rights of the Child (CRC) that “the Law on Education provides that a child shall be provided a compulsory basic education up to 17 years of age” (CRC/C/65/Add.32 of 15 November 2004, page 19). The Committee observed that the minimum age of 15 years specified by the Government seems to be lower than the age of completion of compulsory schooling.

The Committee noted, in its concluding observations, that the CRC expressed concern “about some contradictory provisions of the domestic laws leaving children without adequate protection, e.g. the compulsory school age is 17, whereas the labour law allows children aged 14 and 15 years old to work 30 hours per week” (CRC/C/15/Add.264, 21 September 2005, paragraph 9). The Committee further noted in the Government's report submitted under Convention No. 182, that the Law on Education was amended in December 2006, and noted the Government's statement in its report to the CRC of 9 June 2009 that education is mandatory until the age of 16 (CRC/C/MNG/3-4 paragraph 280).

The Committee recalled that, pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 15 years) should not be lower than the age of completion of compulsory schooling. The Committee also considered that compulsory schooling is one of the most effective means of combating child labour. If the age of admission to employment and the age limit for compulsory education do not coincide, a number of problems may arise. For example, if the age of completion of compulsory education is higher than the minimum age for admission to work or employment, children who are required to attend school are at the same time legally competent to work and may be tempted to abandon their studies. ***The Committee therefore***

*requests the Government to indicate the legislative provisions contained in the Law on Primary and Secondary Education, in the Law on Education or in any other legislation, fixing the actual age of completion of compulsory education and to supply a copy of the same. Noting that the minimum age for admission to employment appears to be less than the age of completion of compulsory schooling, the Committee requests the Government to take the necessary measures to raise the minimum age for admission to employment in order to link it with the age of completion of compulsory schooling in conformity with Article 2(3) of the Convention.*

2. *Providing education for school drop-outs.* The Committee noted that, according to the National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 9), since the mid-1990s, school enrolment has been gradually improving and the school drop-out rate has reversed.

The Committee noted in the Government’s report submitted under Convention No. 182 that the National Statistical Office with support from UNICEF carried out the “Random sampling research on groups with mixed indicators” in 2005–06. One finding of this research was that 90.2 per cent of children living in Ulaanbaatar are studying in secondary school versus only 76.1 per cent in the remote rural areas, mostly due to a high drop-out rate for children of herders, who need the assistance of their children in their family’s livestock herding activities. The CRC expressed similar findings (CRC/C/15/Add.264, 21 September 2005, paragraphs 51–52). The Committee noted that the Ministry of Education, Culture and Science, with financial support from UNICEF, is implementing the “Circular for alternative training of primary, basic and complete secondary education” (Circular). This Circular, as well as the newly amended Law on Education both make explicit provisions for providing working children and drop-out children with educational services, including informal education. *The Committee requests the Government to continue providing information on the impact of the Circular, and any other measures taken, on providing educational services to both working and drop-out children as well as in increasing school attendance rates, in particular in the remote areas. It also requests the Government to continue providing statistical information on school attendance and school drop-out rates, in particular in rural schools.*

*Article 7. Light work.* The Committee previously noted that, according to a national survey conducted by the National Statistical Office in 2000, quite a number of children under the specified minimum age for admission to employment are economically active in some way or another. The Committee recalled that *Article 7(1)* of the Convention provides that national laws or regulations may permit persons from the age of 13 to engage in light work, which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalled that, according to *Article 7(3)* of the Convention, the competent authority shall determine what is light work and shall prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. *Noting the absence of information in this regard, the Committee once again requests the Government to indicate the measures taken or envisaged in respect of provisions to determine light work activities and the conditions in which such employment or work could be undertaken by young persons of 13 years or more.*

*Article 8. Artistic performances.* The Committee previously noted that section 25(6) of the Law on the Protection of the Rights of the Child provides that individuals and officials using a child in press and commercial advertising without the consent of the child or his/her parents, guardians, caregivers and conducting profit-oriented activities illegally using the name of the child will face a penalty of 20,000–30,000 tughriks with confiscation of their income and profit. The Committee recalled that, according to *Article 8* of the Convention, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment under the general minimum age, for such purposes as participation in artistic performances. Permits so granted shall limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed. It requested the Government to indicate whether in practice children under the age of 15 years participate in artistic performances and, if so, to provide information on provisions of the national legislation which determine conditions of such work. The Committee noted the information in the Government’s report that, pursuant to section 8.1 of the Law on the Protection of the Rights of the Child, a list of plays and performances which may adversely affect a child’s health shall be developed and approved by Governmental officials responsible for health issues. *The Committee requests the Government to provide a copy of this list, once approved.*

*Article 9(1). Penalties.* In its previous comments, the Committee noted that, according to section 141(1)(6) of the Labour Code, if an employer forces minors to do work prohibited to them, or to lift or carry loads exceeding the prescribed limits, or has required employees under 18 years of age to work in a workplace that adversely affects their health and mental development, or in abnormal working conditions, or compels them to work overtime or during public holidays or weekends, the state labour inspector shall impose a fine on that officer of 15,000–30,000 tughriks. It also noted that section 25(5) of the Law on the Protection of the Rights of the Child provides for penalties for engaging a child in hazardous work stating “individuals forcing the child to beg and officials engaging the child in a work harmful for his/her health will face a penalty of 10,000–20,000 tughriks”.

The Committee noted in the Government’s report, submitted under Convention No. 182, that the penalties for breach of provisions found in the Criminal Code (such as human trafficking in children, involvement in pornography, sexual exploitation, drug trafficking) and other laws relating to children’s rights are appropriate. However, the penalties imposed upon employers, parents and other representatives in connection with employment in hazardous work are weak. The Committee further noted the Government’s indication that the fine imposed upon someone employing minors in prohibited work is insufficiently small to deter employers from resorting to the labour exploitation of minors. The Government indicated that much still remains to be done in relation to updating the legislation by imposing penalties, by ordering injunctions and ameliorating the penalty mechanism imposed upon parents and family members who allow the employment of children in the worst forms of child labour. *The Committee encourages the Government to continue updating the legislation in this regard and requests it to provide information on any developments thereof. The Committee also requests the Government to take the necessary measures to ensure that a person found to be in breach of the provisions giving effect to the Convention, in particular those in respect of hazardous work, is prosecuted and that adequate penalties are imposed. It asks the Government to provide information on the types of violations detected, the number of persons prosecuted and the penalties imposed.*

*Article 9(3). Registers of employment.* In its previous comments, the Committee noted that the national legislation does not appear to contain provisions on the obligation of an employer to keep and make available the registers of persons under the age of 18 whom he/she employs. The Committee reminded the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, wherever possible, of

persons whom he/she employs or who work for him/her and who are less than 18 years of age. *Noting the absence of information in the Government's report, the Committee once again requests the Government to indicate in which manner it ensures that employers shall keep and make available registers, which contain the names and ages or dates of birth, duly certified whenever possible, of persons under the age of 18 years employed or working for them.*

*Part V of the report form. Application of the Convention in practice.* The Committee noted in the Government's report submitted under Convention No. 182 that the National Statistics Office recently conducted the second National Child Labour Survey (2006–07) (NCL Survey). The Committee noted 621,500 children, of which 60.3 per cent were boys and 39.7 per cent girls, were covered in the NCL Survey and that at least 11.5 per cent worked at least one hour a week or were economically active. Though the survey has some shortcomings as it did not include homeless children, as well as those living in correctional labour colonies, orphanages and childcare institutions, it is nevertheless significant in creating the official and objective database. The prevalent sectors of work for children were: 84.6 per cent in agriculture; 5.1 per cent in services; 3.5 per cent in trade and industry; and 5.8 per cent in sweatshops. In relation to the employment relationship, the NCL Survey indicated that 93.1 per cent of working children work in household enterprises and are not paid, 9.2 per cent are self-employed and 1.7 per cent have a contractual relationship.

Another survey, conducted by the Mongolian Employers Federation in 2003, (Employers' Survey), reveals that labour standards in relation to children working in the formal sector are not always adhered to: 59.5 per cent of employers hiring children aged 14–18 years of age did not conclude any contracts and 29.2 per cent were employing the children on a wage or work performance contract. The main motives for not concluding a contract were not wanting to pay the social insurance premiums and other deductions (36 per cent) and the temporary nature of the employment (52 per cent). According to the reports submitted by employers and used in the Employers' Survey, 46 per cent of the children's conditions at the workplace were deemed "normal", 11.7 per cent were too hot, 21 per cent too dusty or with poor air circulation and 10.6 per cent were too noisy.

In addition, the Committee noted that the Population Training and Research Centre of the National University of Mongolia also carried out a survey which focused mostly on children aged 16–18 years of age working in the gold- and coal mining sectors in the Selenge and Tuv aimags (provinces). This survey indicates that most children started mining at an average age of 12, work an average of four hours per day in the winter, and an average of eight to nine and 10–11 continuous hours in the summer for children aged below 16 and 16–18, respectively. A total of 37.7 per cent of the children mining gold used mercury and 66.7 per cent of them work at home. Of these, 22.5 per cent have been involved in an accident in which 92.6 per cent have injured their legs, arms or their organs. Half of all children mining gold experience some form of health problem: 43.3 per cent suffer regularly from respiratory diseases, 41.7 per cent suffer from kidney and urinary disorders, 25 per cent suffer from orthopaedic illnesses and 23.3 per cent suffer from ear, nose and throat diseases.

Finally, the Committee noted that the report "Understanding children's work and youth employment outcomes in Mongolia", issued in June 2009 by the ILO, UNICEF and the World Bank (through the Understanding Children's Work Project), indicates that 13.2 per cent of children between the ages of 5 and 14 are engaged in economic activity and that 7.5 per cent of children between the ages 15 and 17 are engaged in hazardous work. The Committee also noted that, in its concluding observations, the CRC expressed concern "at the high rate of working children in Mongolia and the various kinds of negative consequences resulting from the exploitation of child labour, including the school drop outs and negative impacts on health caused by the harmful and hazardous work. The high number of child domestic and rural workers and children working in very harmful conditions in gold and coal mines give cause for serious concerns" (CRC/C/15/Add.264, 21 September 2005, paragraph 59). *While noting the efforts made by the Government to combat child labour, the Committee expresses serious concern at the large number of children working under the age of 15, as well as the significant number of children engaged in hazardous occupations, and therefore strongly encourages the Government to redouble its efforts to improve the situation, including through the allocation of additional resources for the implementation of measures aimed at combating child labour. The Committee also requests the Government to continue providing information on the situation of child labour in Mongolia and, in particular, to supply copies or extracts from official documents of inspection services. The Committee also asks the Government to provide information on the number and nature of the contraventions reported and penalties imposed.*

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

## Morocco

### Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

*Article 1 of the Convention. National policy.* In its previous comments, the Committee noted the adoption of a National Action Plan for Children (2006–15) (PANE), a major component of which is devoted to combating child labour. In this regard, the Committee noted that the activities envisaged in the PANE include support for NGOs working to combat child labour and the preparation of a study on the working conditions of children. The Committee also noted that the PANE aims to remove children under 15 years of age from work situations at the rate of 10 per cent per year until 2015 and to improve the situation of needy families at the rate of 5 per cent per year. The Committee also noted that the issue of combating child labour had been included in other national social development strategies in Morocco, including the Government Declaration for the period 2007–11 and the National Human Development Initiative (INDH),

The Committee notes the Government's indications that significant efforts have been made during the first phase of the implementation of the PANE between 2006–10. The Committee observes, among other action, that a bill on domestic labour has been finalized, with the objective of determining the working conditions and terms and conditions of employment of domestic workers, and prohibiting the employment of girls under 15 years of age as domestic workers. The Government adds that the national study on the working conditions of children has not yet been undertaken, but that it is planned for 2012. Finally, the Committee notes the Government's indication that the aims of the INDH include prevention, protection and the integration of children as essential human capital for development. The fields of action covered by the INDH accordingly include projects in the field of education and training to improve learning, as well as projects for shelters intended for young homeless persons, street children, abandoned children and other needy children. *The Committee requests the Government to continue providing information on the implementation of the PANE and*

***the INDH, and on the results achieved in terms of the progressive abolition of child labour. It requests the Government to provide a copy of the Act on domestic work, once it has been adopted. It also requests the Government to provide the findings of the national study on working conditions, when it has been completed. To the extent possible, the statistical data should be disaggregated by age and sex.***

*Article 2(1) and (3). Scope of application and compulsory schooling.* In its previous comments, the Committee noted that, under section 143 of the Labour Code, minors may not be employed or admitted to enterprises or the premises of employers before the age of 15 years, and it observed that the protection provided by the Labour Code does not apply to persons working on their own account. The Committee notes the Government's indication that the Labour Code does not protect children working on their own account, but that the latter are protected by the Dahir of 13 November 1963 on compulsory education, as amended by Act No. 04.00 of 25 May 2000, which requires parents to enrol their children at school and establishes penalties for refusal to do so. The Committee also noted that labour inspectors are only authorized by law to enforce the application of the labour legislation when there is an employment relationship. Consequently, labour inspectors do not carry out any supervision in the informal economy. The Committee however noted that an emergency plan had been adopted for the period 2009–12, consisting of 10 projects aimed at giving effect to the requirement to attend school up to the age of 15 years, including, in particular, the development of the pre-school level, equality of opportunity with regard to access to compulsory education and measures to reduce repetition and drop-out rates. However, the Committee notes that, according to the 2008 UNESCO report entitled *Education for All by 2015: Will we make it?*, although school attendance rates have increased significantly in Morocco (20 per cent), the rate of the repetition of the first year of primary school is one of the highest in the region and stands at 16 per cent.

The Committee notes the Government's indication that the emergency programme is still being implemented in Morocco. It notes with *interest* the statistics provided by the Government, according to which the school attendance rate in primary school increased from 91.4 per cent in 2007 to 97.5 per cent in 2010 (for girls, the rate rose from 89.1 per cent to 96.3 per cent). It also notes that the school drop-out rate in primary school fell from 5.4 per cent in 2006 to 3.1 per cent in 2010. The Government adds that 38,197 children benefited from formal education programmes in 2010, compared with 33,177 in 2008. ***Noting the efforts made by the Government and considering that compulsory schooling is one of the most effective means of combating child labour, the Committee encourages the Government to continue its efforts to increase the school attendance rate, particularly for children under 15 years of age, so as to prevent them from working, especially on their own account and in the informal sector. It requests the Government to continue providing information on the progress achieved in this respect.***

*Article 2(1) and Part V of the report form. Minimum age for admission to employment and application of the Convention in practice.* 1. *Child workers in artisanal industries and other sectors.* In its previous comments, the Committee noted the information provided by the International Trade Union Confederation (ITUC) according to which child labour was common in informal artisanal industries. It also noted that, according to the report entitled "Understanding children's work in Morocco" (pp. 19, 20, 22 and 23), some 372,000 children aged between 7 and 14 years, representing 7 per cent of the reference group, were engaged in work, while for the 12 to 14 age group, 18 per cent of children were economically active. According to this study, 87 per cent of working children were in rural areas where they were working in the agricultural sector. In urban areas, children were engaged in the textile, commercial and repairs sectors.

The Committee notes the Government's indication that the outcome of the activities undertaken with ILO–IPEC support as from 2010 is that: 12,192 children have been removed from child labour and 21,694 have been prevented from working. The Government adds that the activities of the National Office to Combat Child Labour resulted in 218 children under 15 years of age being removed from work in 2010 and that interventions by associations covered by agreements with the Ministry of Employment and Vocational Training led to 249 children under 15 years of age being removed from work in 2009. The Committee once again reiterates its appreciation of the efforts made and the measures taken by the Government to abolish child labour, efforts which it considers to be a reflection of the political resolve to develop strategies to overcome these problems. However, the Committee observes that, by virtue of section 4 of the Labour Code, employers in purely traditional sectors, i.e. performing manual work, with the assistance of their partners, ascendants and descendants, and with a maximum of five assistants, at home or at another place of work, for the purpose of manufacturing traditional products for commercial sale, are excluded from the scope of application of the Code. The Committee therefore notes that children employed in informal artisanal industries, or formal artisanal industries involving five employees or less, do not benefit from the protection of the Labour Code and, consequently, from the application of the minimum age of 15 years. ***The Committee requests the Government to take measures to ensure that the minimum age of 15 years is duly applied to all children working in artisanal industries. It requests the Government to continue its efforts to combat child labour and requests it to continue providing information on the implementation of the projects referred to above and any other relevant projects, as well as on the results achieved in terms of the progressive abolition of child labour.***

2. *Child domestic workers.* In its previous comments, the Committee noted that, according to the "Understanding Children's Work in Morocco" report, children working in urban areas were often employed in domestic work. The Committee also noted that, according to past observations communicated by the ITUC in response to the Government's report under the Worst Forms of Child Labour Convention, 1999 (No. 182), some 50,000 children, mainly girls, are

employed in domestic work. Of these, about 13,000 are young girls under the age of 15 employed as servants in Casablanca, with 70 per cent of them under 12 years of age and 25 per cent under 10 years of age. In this regard, in its comment under Convention No. 182, the Committee noted that a bill on domestic work was elaborated and in the process of being validated by national authorities. This bill fills the current legislative gap and sets the minimum age for admission to this type of employment at 15 years, lays down conditions of work and establishes supervisory measures and penalties, including imprisonment, for persons employing children under 15 years of age.

The Committee notes the Government's indication, in its report under Convention No. 182, that the process to adopt the bill on domestic work has been under way since June 2011. ***The Committee expresses the firm hope that this bill will be adopted as soon as possible. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 3(2). Determination of hazardous types of work.* The Committee notes with ***interest*** the adoption of Decree No. 2-10-183 of 16 November 2010 determining the list of hazardous types of work in which it is prohibited to engage certain categories of persons, including children under 18 years of age. This Decree replaces the Decree of 29 December 2004 and extends by over 30 the number of hazardous occupations prohibited for children, such as greasing operations, the use of certain machines, demolition work, glass melting, any work exposing them to ionizing radiations, the manufacture or transport of explosives, and other types of work.

*Article 8. Artistic performances.* In its previous comments, the Committee noted that the Decree of 29 December 2004 prohibits the employment of any minor under 18 years of age as an actor or performer in public performances without the written authorization of the official responsible for labour inspection, following consultation with the minor's guardian. The Committee also noted the Government's indication that the Decree of 29 December 2004 does not establish the particulars of the authorization from parents and the labour inspector, nor the penalties to be applied in the event of violation, and that the law sets out details concerning working hours and conditions. In this respect, the Committee noted that section 145 of the Labour Code provides that "No minor under 18 years of age may, without the prior individual authorization in writing of the official responsible for labour inspection, granted following consultation with the minor's guardian, be employed as an actor or performer in public performances organized by enterprises, the list of which shall be determined by regulation. The official responsible for labour inspection may withdraw the authorization previously granted, either at his own initiative or at the initiative of any authorized person". The Committee however noted that this provision does not require that permits granted to minors under 18 years of age under the Decree of 29 December 2004 must limit the number of hours during which and prescribe the conditions in which such employment or work is allowed.

The Committee notes the Government's indication that the Labour Code sets out all the detailed provisions concerning working hours and working conditions. The Government adds that the authorizations granted to minors to participate in artistic performances are not employment contracts and consequently do not contain details of working conditions. The Committee however reminds the Government that *Article 8* of the Convention requires the permits granted to allow minors to participate in artistic performances to limit the number of hours during which and prescribe the conditions in which employment or work is allowed. ***The Committee therefore once again requests the Government to take the necessary measures to bring the national legislation into conformity with Article 8 of the Convention, so that permits granted to minors under 18 years of age allowing them to participate in artistic performances limit the number of hours during which and prescribe the conditions in which employment or work is allowed.***

*Article 9(1). Penalties.* The Committee previously noted that section 151 of the Labour Code provides that the employment of a child under 15 years of age, in breach of section 143 of the Labour Code, shall be punishable by a fine of 25,000 to 30,000 dirhams (US\$3,000 to \$3,600), and that a repeat offence is subject to a term of imprisonment of six days to three months and/or a fine of 50,000 to 60,000 dirhams (US\$6,000 to \$7,200). It nevertheless noted that sections 150 and 183 of the Labour Code provide for a fine of between 300 and 500 dirhams (between US\$36 and \$60) for breaches of section 147 of the Labour Code (prohibiting the employment of children under 18 years of age in hazardous work) or section 179 (prohibiting the employment of children under 18 years of age in quarries or mines, or in work likely to hamper their growth). The Committee also noted that, before resorting to penalties, labour inspectors have to give advice and information to employers on the dangers to which child workers are exposed. Under the terms of sections 542 and 543 of the Labour Code, a labour inspector who detects a violation of the legislation provisions or regulations respecting health and safety, which poses an immediate risk to the health or safety of the workers, shall issue an order requiring the employer to take all the necessary measures immediately. If the employer refuses or fails to comply with the requirements set out in the order, the labour inspector shall immediately refer the matter to the president of the court of first instance, who may give the employer a deadline for taking all the necessary measures to prevent the imminent danger and may order the closure of the undertaking and determine, where appropriate, the necessary duration of the closure. The Committee observed that persons who employ children in breach of the provisions giving effect to the Convention are not generally prosecuted if such employment is brought to an end.

The Committee notes the Government's indications that the number of reports of employers in breach of the law increased from 803 in 2008 to 874 in 2009, and to 1,863 in 2010. The Government adds that the number of offences and violations rose from 67 in 2008 to 451 in 2009, falling back to 45 in 2010, and that reports have been drawn up and sent to the respective courts for decision. However, the Government does not indicate whether these reports of violations relate specifically to violations of the provisions giving effect to the Convention or whether penalties have been applied to the

employers. The Committee once again reminds the Government that it is necessary to ensure the application of the Convention by means of penalties set out in the legislation. The Committee also once again observes that the penalties envisaged in sections 150 and 183 of the Labour Code, relating to the employment of children under 18 years of age in hazardous work, are still not adequate and sufficiently dissuasive to ensure the application of the provisions of the Convention relating to hazardous types of work, in accordance with *Article 9(1)*, of the Convention, particularly when they are compared with the penalties envisaged in section 151 of the Labour Code, which are much more severe. ***The Committee therefore urges the Government to take the necessary steps to ensure that any person who violates the provisions prohibiting the employment of children under 18 years of age in hazardous types of work is prosecuted and that sufficiently effective and dissuasive penalties are applied. It once again requests the Government to provide information on the type of violations detected by the labour inspection services, the number of persons prosecuted and the penalties applied.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention and Part V of the report form. Worst forms of child labour and application of the Convention in practice. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child domestic labour.* In its previous comments, the Committee noted the statement from the International Trade Union Confederation (ITUC) to the effect that child domestic labour, performed under conditions of servitude, is common practice in the country, with parents selling their children, sometimes as young as 6 years of age, to work as domestic servants. The ITUC also indicated that some 50,000 children, mainly girls, are employed in domestic work. Of these, about 13,000 young girls under the age of 15 are employed as servants in Casablanca, with 70 per cent of them under 12 years of age and 25 per cent under 10 years of age. The Committee noted that section 10 of the Labour Code prohibits forced labour and that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age. It further noted that a Bill on domestic work had been adopted and was in the process of being validated by the national authorities. The Bill sets the minimum age for admission to this type of employment at 15 years, lays down conditions of work and establishes supervisory measures and penalties, including imprisonment for persons employing children under 15 years of age. The Committee further noted that a specific list determining hazardous types of work prohibited in the domestic work sector would be drawn up and adopted pursuant to the future law on the conditions of employment and work of domestic workers.

Furthermore, the Committee noted that an initial qualitative and quantitative survey of girls under 18 years of age engaged in domestic work was undertaken in 2001 in the *wilaya* of Casablanca. According to the results of the statistical survey undertaken in 2001, nearly 23,000 girls under 18 years of age were working in the Greater Casablanca area as domestic workers, 59.2 per cent of whom were under 15 years of age. The Committee noted that the survey revealed that a significant proportion of these girls were uneducated, were subject to punishment in the course of their work, received beatings and/or were subjected to sexual abuse. The Committee noted that a second survey was planned in the Greater Casablanca area during the second half of 2010 with an extrapolation of the results and data at national level.

The Committee notes the Government's indication that the specific list of hazardous types of domestic work will be drawn up and adopted in conjunction with the future law concerning the conditions of employment and work of domestic workers. The process to adopt this Bill has been under way since June 2011. The Committee also notes the Government's indications that the figures recorded by the 2001 survey have decreased significantly since then, owing to the efforts of the Moroccan Government in recent years, especially in seeking to reduce school drop-out rates and all other forms of social exclusion. As regards the second survey to be conducted with respect to girls engaged in domestic work in Casablanca, the Government indicates that the methodological report, which, among others, enables the target group to be identified and the survey to be planned and implemented, has been drawn up and that the survey itself is currently in progress. While noting the Government's efforts, the Committee recalls that young girls engaged in domestic work are often victims of exploitation and that it is difficult to supervise their conditions of employment due to the clandestine nature of such work. ***The Committee therefore requests the Government to take the necessary measures to ensure that the Bill on domestic work and the list of prohibited types of hazardous domestic work are adopted and implemented as a matter of urgency. The Committee also requests the Government to take the necessary measures to complete the 2010 survey on the situation of young girls engaged in domestic work in Casablanca and to send the Office a copy of the results with its next report.***

*Article 4(3). Periodic examination and revision of the list of hazardous types of work.* With reference to its previous comments, the Committee notes with **satisfaction** the adoption of Decree No. 2-10-183 of 16 November 2010, establishing the list of hazardous types of work which are prohibited for certain categories of persons, including children under 18 years of age. The Decree replaces that of 29 December 2004 and increases to over 30 the number of dangerous occupations forbidden for children, including greasing work, the use of certain machines, demolition work, glass melting, any work involving exposure to ionizing radiation, and the manufacture or transport of explosives.

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and removing them from these worst forms, and ensuring their rehabilitation and social integration. Child prostitution and sex tourism.* In its previous comments the Committee expressed concern at the persistence of child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, despite an amendment to the Penal Code in 2003 making sex tourism a criminal offence. The Committee noted the Government's

indications that the scourge of the sexual exploitation of children remains unseen and unrecognized in Morocco, and for this reason the Government is making every effort to tackle it.

The Committee also noted that child protection units (UPEs) had been set up in Casablanca and Marrakesh to provide better medical, psychological and legal assistance for children who have been the victims of violence or ill-treatment, including children who have suffered from sexual or economic exploitation. It further noted that, as part of the National Plan of Action for Children (PANE) for 2006–15, a preliminary study on the problem of the sexual exploitation of children was carried out in February 2007, with a view to formulating a national strategy to prevent and combat such exploitation.

The Committee notes the Government's indications that five UPEs have been set up since 2007, in Marrakesh, Casablanca, Tangier, Meknès and Essaouira. The Government indicates that, by the end of 2010, a total of 313 child victims of violence (including sexual exploitation) (131 girls and 182 boys) received assistance from the UPE in Marrakesh; 244 children (124 girls and 120 boys) were assisted by the UPE in Casablanca; and 88 children (41 girls and 47 boys) received assistance from the UPE in Tangier. Moreover, the Committee notes that the UPEs in Marrakesh, Casablanca and Tangier are being consolidated, and a plan for their further development in 2011–12 has been drawn up with a view to strengthening their operation and their structure.

Nevertheless, the Committee observes that the Government has not provided any information with regard to the national strategy to prevent and combat the sexual exploitation of children. *The Committee therefore, urges the Government to take immediate and effective measures to ensure that the national strategy to prevent and combat the sexual exploitation of children is implemented as soon as possible and to provide information on progress made in this respect. It also requests the Government to continue to supply information on the number of children prevented from engaging in prostitution or withdrawn from it through the UPEs. Finally, the Committee requests the Government to supply a copy of the preliminary study on the problem of the sexual exploitation of children which was conducted in February 2007, with a view to the formulation of the national strategy.*

*Clause (d). Children at special risk. Child domestic labour.* The Committee previously noted the adoption of the national programme to combat the use of young girls as housemaids (INQAD) as part of the PANE. It also noted that, as part of its strategic plan for 2008–12 and following implementation of the INQAD programme, the Ministry of Social Development, Family Affairs and Solidarity was planning to organize a second nationwide awareness-raising campaign to combat the use of young girls as housemaids and to prepare regional action plans. It further noted that, as part of the multi-sectoral programme implemented in collaboration with UNDP to combat gender-based violence by empowering women and girls in Morocco, ILO–IPEC launched an action programme to combat the use of young girls in domestic labour in the region of Marrakesh–Tensift–El Haouz for the period from 1 January 2009 to 31 December 2010. The Committee asked the Government to provide information on the results achieved in the context of the INQAD programme with regard to the protection of girls under 18 years of age working as housemaids.

The Committee notes the Government's statement that the second campaign to raise awareness of domestic work involving young girls took place on 12 June 2010, on the occasion of the World Day Against Child Labour. The Committee notes with *interest* the Government's indication that, as part of the ILO–IPEC programme, a total of 1,306 children under 15 years of age and 478 children under 18 years of age have been withdrawn from child labour. *The Committee encourages the Government to strengthen its efforts with respect to the identification, withdrawal and reintegration of girls under 18 years of age working as domestic servants who are subjected to economic or sexual exploitation. It requests the Government to continue to supply information on the results achieved.*

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

## Mozambique

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). 1. Use, procuring or offering of a child for prostitution.* The Committee previously noted that section 63(1)(b) of the Child Protection Act requires the Government to adopt legislative or administrative measures to protect children against all forms of sexual exploitation, including prostitution. Section 63(2)(b) of the Child Protection Act states that the legislative measures adopted need to provide for rigorous sanctions. The Committee requested the Government to indicate the legislative or administrative measures that had been adopted pursuant to section 63 of the Child Protection Act.

The Committee notes with *concern* the absence of information on this point in the Government's report. However, the Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 4 November 2009, expressed deep concern that child prostitution is increasing in Mozambique, especially in the Maputo, Beira and Nacala regions, as well as in some rural areas (CRC/C/MOZ/CO/2, paragraph 84). *The Committee urges the Government to take the necessary measures to ensure the adoption of legislation, pursuant to section 63(1)(b) of the Child Protection Act, prohibiting the use, procuring or offering of a child under the age of 18 for the purpose of prostitution in the very near future. It requests the Government to provide a copy of the relevant provisions, once adopted.*

2. *Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that, although national legislation provided for the protection of children from being exposed to pornography, it did not prohibit the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances. It also noted that section 63(1)(c) of the Child Protection Act states that the State must take legislative measures to protect children from all forms of sexual exploitation, including the exploitation of children in pornography or pornographic performances. ***Noting an absence of information on this point in the Government's report, the Committee requests the Government to take the necessary measures to ensure the adoption of legislation prohibiting the use, procuring or offering of children under the age of 18 for the production of pornography or pornographic performances, pursuant to section 63 of the Child Protection Act.***

*Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments, the Committee noted the adoption of the Law on Drugs No. 3/97, and noted that this legislation contained provisions relating to the use of minors for the production, transport, distribution and consumption of drugs. ***Considering that the Committee has been requesting a copy of the Law on Drugs No. 3/97, since 2005, the Committee urges the Government to provide a copy of this legislation, along with its next report.***

*Clause (d). Hazardous work. Children in domestic service.* The Committee previously noted that section 3 of Act No. 23/2007 of 27 August 2007 (Labour Law), provides for special regimes governing employment relationships in domestic work. The Committee also noted the Government's indication that regulations to implement the new Labour Law were under preparation, including regulations on domestic work. It further noted the Government's statement in its 23 March 2009 report to the CRC that domestic work is one of the most common types of child labour in Mozambique, and that children are frequently forced to work in this sector (CRC/C/MOZ/2, paragraphs 356 and 358).

The Committee notes that the Regulations on Domestic Work (No. 40) were adopted on 26 November 2008, section 4(2) of which prohibits employers from employing a person under 15 years of age in domestic work. However, the Committee observes that these regulations do not address the issue of hazardous domestic work of children. In this regard, the Committee recalls that children, and particularly young girls, engaged in domestic service are often victims of exploitation, and that it is difficult to supervise their conditions of employment due to the clandestine nature of such work. ***The Committee, therefore, requests the Government to provide information on any measures taken or envisaged to ensure that children under the age of 18 engaged in domestic work do not engage in hazardous work.***

*Article 4(1). Determination of hazardous types of work.* The Committee previously noted that, pursuant to section 23(2) of the Labour Law, employers shall not engage persons under 18 years of age in hazardous work, as defined by the competent authorities after consultation with the organizations of employers and workers. The Committee noted the information provided by the Government that, in the context of the legislative reform, work was being carried out on the formulation of specific legislation on this subject.

The Committee notes with ***concern*** the statement in the Government's report that no measures have been adopted to determine the types of dangerous work prohibited to persons under the age of 18. In this regard, the Committee once again reminds the Government that, by virtue of *Article 4(1)* of the Convention, the types of hazardous work prohibited to persons under the age of 18 shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). ***The Committee urges the Government to take the necessary measures to ensure that regulations are adopted pursuant to section 23(2) of the Labour Law to determine the hazardous types of work prohibited for children under 18 years of age in the near future. It also requests the Government to provide a copy of this legislation once adopted.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* In its previous comments, the Committee noted that the Government had taken measures to improve the education system, particularly with regard to school attendance rates. It noted the information in the Government's reply to the list of issues of the CRC of 29 September 2009 that the gross rate of completion of primary education continued to rise, from 75 per cent in 2006 to 78 per cent in 2008 (CRC/C/MOZ/Q/2/Add.1, paragraph 55). However, the Committee noted that, in its concluding observations of 4 November 2009, the CRC expressed concern that one in five children remain deprived of education and that significant disparities in accessing education persist between provinces, particularly affecting the provinces of Niassa, Nampula and Zambezia (CRC/C/MOZ/CO/2, paragraph 71). The CRC also expressed concern at the high prevalence of sexual abuse and harassment in schools which reportedly result in the refusal by some girls to go to school (CRC/C/MOZ/CO/2, paragraph 73).

The Committee notes the information in the Government's report that, through the National Action Plan for Children (NAPC), a school attendance rate of 81 per cent was achieved, and a transition rate between (primary level 1 and primary level 2) of 77.1 per cent was reached. The Committee also notes the Government's statement in its report submitted under the Minimum Age Convention, 1973 (No. 138), that, with regard to girls entering and staying in education, the Government has undertaken various initiatives with educational authorities, including prioritizing access to grants for vocational courses, the appointment of female managers at various levels, and raising awareness among teachers and communities on the sexual abuse of girls. The Committee further notes the information in the 2011 UNESCO *Education for All Global Monitoring Report* that, since 1999, the net enrolment rate in the first year of primary education rose from

18 per cent to 59 per cent, and that over this same period, the percentage of girls composing the primary school population rose from 43 per cent to 47 per cent. **Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to pursue its efforts to improve the functioning of the educational system, particularly by increasing school enrolment rates and reducing school drop-out rates, with special attention to the situation of girls. It also urges the Government to address the regional disparities of access to education, to facilitate access to free and basic education to all children in Mozambique.**

*Clause (d). Reaching out to children at special risk.* 1. *Orphans and other vulnerable children (OVCs).* The Committee previously noted that the Government had formulated a National Action Plan for Children, Vulnerable Children and Orphans (POA OVC), which aimed to provide six basic services to OVCs: health, education, nutritional/food support, legal and psychological and financial support. However, the Committee noted the statement in the Government's progress report for the UN General Assembly Special Session on HIV/AIDS of January 2008, that the number of children who had lost their parents to HIV/AIDS was estimated to reach 630,000 by 2010. The Government further stated in this report that HIV/AIDS orphans had very limited means of generating income, and thus often had to resort to risky coping strategies, such as transactional sex or hazardous child labour. In this regard, the Committee noted that the CRC, in its concluding observations of 4 November 2009, expressed concern that services for orphans and vulnerable children, including child heads of households, remained inadequate (CRC/C/MOZ/CO/2, paragraph 67). The CRC also expressed serious concern at the situation of orphaned children being economically exploited by foster families (CRC/C/MOZ/CO/2, paragraph 79).

The Committee notes the information in the Government's report that, between 2005 and 2009, actions were implemented through the NAPC to locate, document and reunite the families of orphaned, lost or abandoned children. The Government indicates that a total of 31,198 children were found and documented and that 6,690 of these children were integrated into their families. The Committee also notes the Government's statement in its report to the UN Human Rights Council for the Universal Periodic Review of 11 November 2010, that the impact of HIV/AIDS is a contributing factor to the continuation of child labour in the country (A/HRC/WG.6/10/MOZ/1, paragraph 97). The Committee further notes the information in the Government's country progress report to the UN General Assembly Special Session on the Declaration of Commitment to HIV/AIDS of 2010, that in 2009 there were approximately 1.3 million OVCs in the country. The Government indicates in this report that 357,905 of these children (27 per cent) were provided with at least three basic services through a combination of initiatives from the Government and civil society organizations. The Committee expresses its **concern** at the increasing number of children orphaned in Mozambique as a result of HIV/AIDS. **Recalling that OVCs are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to ensure that such children are protected from these worst forms of child labour. It requests the Government to provide information on the effective and time-bound measures taken in this regard, and on the results achieved, particularly with regard to increasing the number of OVCs with access to external support.**

2. *Street children and begging.* The Committee previously noted the Government's indication that many children live or work in the streets in Mozambique and that the exploitation of child beggars is increasingly frequent in several provincial capitals. However, the Committee noted the Government's statement in its report to the CRC of 23 March 2009 that, to address the increasing problem of begging, it had taken measures to reduce poverty, to increase social protection and to improve housing policies (CRC/C/MOZ/2, paragraphs 278 and 279). However, the Committee noted that the CRC, in its concluding observations of 4 November 2009, expressed concern that insufficient measures had been taken to address the situation of children living in the streets (CRC/C/MOZ/CO/2, paragraph 82).

The Committee notes an absence of information on this point in the Government's report. **Recalling that children who live or work in these streets are particularly vulnerable to the worst forms of child labour, the Committee requests the Government to take effective and time-bound measures to protect children living in the streets from these worst forms, and to provide for their rehabilitation and social integration. It requests the Government to provide information on measures taken in this regard, particularly the number of street children reached through these initiatives.**

**The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. In this regard, the Committee reminds the Government that it may avail itself of ILO technical assistance to bring its legislation into conformity with the Convention.**

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

## Namibia

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted that, due to the absence of a specific provision on human trafficking in Namibia, no prosecutions or convictions were recorded for trafficking in persons during the reporting period. It therefore requested the Government to take the necessary measures to ensure the adoption of legislation prohibiting the sale and trafficking of children under 18 years.

The Committee notes with *satisfaction* that section 15 of the Prevention of Organized Crime Act (No. 29 of 2004) prohibits trafficking in persons, and notes that this Act came into force on 5 May 2009. The Committee also notes that section 1 of the Prevention of Organized Crime Act defines trafficking as the recruitment, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of 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 Committee requests the Government to provide information on the application in practice of the Prevention of Organized Crime Act, including statistics on the number and nature of reported violations, investigations, prosecutions, convictions and penalties imposed.***

*Clause (b). Use, procuring or offering of a child for prostitution or for the production of pornography or for pornographic performances.* The Committee previously observed that the prohibitions related to prostitution contained in national legislation (particularly in the Immorality Act 1988 and the Immoral Practices Act 1980) did not encompass the use, procuring or offering of all persons under the age of 18 for the purpose of prostitution or pornography. However, the Committee noted the information in the Action Programme to Eliminate Child Labour in Namibia 2008–12 (APEC 2008–12), that a draft of the Child Care and Protection Bill contained provisions prohibiting the commercial sexual exploitation of children.

The Committee notes the information provided by the Government in the report of the Working Group on the Universal Period Review of the UN Human Rights Council of 31 May 2011 that the Child Care and Protection Bill was approved by Cabinet in May 2011 and is due to be tabled in Parliament soon (A/HRC/17/14/Add.1, paragraph 5). The Committee also notes that section 176(1)(a) of the draft Child Care and Protection Bill prohibits the use, procuring or offering of a child for the purpose of commercial sexual exploitation. The Committee further notes the statement in the Government's report to the Committee on the Rights of the Child of 15 September 2011 that the criminal and sexual exploitation of children had occurred in the country both through children being prostituted, and through adults taking advantage of needy children by providing basic necessities in return for sex (CRC/C/NAM/2-3, paragraph 226). ***The Committee therefore expresses the hope that the draft Child Care and Protection Bill will prohibit the use, procuring and offering of all persons under the age of 18 for prostitution and pornography, and will be adopted without delay. It requests the Government to provide a copy of the Child Care Protection Act, once adopted.***

*Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments, the Committee noted that national legislation did not appear to prohibit the use, procuring or offering of a child for illicit activities. It also noted that the 2007 ILO rapid assessment study "Children used by adults to commit crimes (CUBAC) in Namibia" indicated that approximately one third of children involved in crimes had been used by adults to commit such crimes.

The Committee notes that section 176(1)(b) of the draft Child Care and Protection Bill prohibits the use, procuring or offering of a child for illicit activities, including drug production and trafficking. ***Recalling that, by virtue of Article 3(c) of the Convention, the use of children by adults for illicit activities, including to commit crimes, is considered to be one of the worst forms of child labour, the Committee urges the Government to take the necessary measures to ensure the adoption of the draft Child Care and Protection Bill in the near future.***

*Article 4(1). Determination of types of hazardous work.* The Committee previously noted that, pursuant to section 3(3)(d) and section 3(4) of the Labour Act, children between the ages of 14 and 18 are prohibited from performing the types of hazardous work listed in section 3(3)(d), including: (i) work underground or in a mine; (ii) construction or demolition work; (iii) manufacture of goods; (iv) work related to the generation, transformation or distribution of energy; (v) work related to installing or dismantling machinery; and (vi) any work-related activities which may place the child's health, safety, physical or mental health or spiritual, moral or social development at risk.

The Committee notes the Government's statement that a list of Hazardous Work (in terms of Conventions Nos 138 and 182) was finalized by the Towards the Elimination of the worst forms of Child Labour project (TECL), phase II, Project Advisory Committee on Child Labour, and that this list has been submitted to the Tripartite Labour Advisory Council for its consideration and recommendation to the Minister of Labour and Social Welfare. The Government indicates that supporting regulations for hazardous work will subsequently be developed, pursuant to this list. ***The Committee requests the Government to take the necessary measures to ensure the elaboration and adoption of regulations containing a determination of prohibited types of hazardous work. It requests the Government to provide a copy of the relevant regulations, once adopted.***

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

## Netherlands

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution, pornography or pornographic performances.* The Committee previously noted the Government's indication that it was in the process of tightening sexual offences legislation by introducing stricter penalties for involvement in child pornography, criminalizing the sexual corruption of children and criminalizing the practice of grooming. The Committee notes with *satisfaction* the Government's indication that this legislation which was intended to

implement the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse came into force on 1 January 2010. It also notes the Government's information that the Bill to Regulate Prostitution and to Combat Abuses in the Sex Industry which raises the minimum age for prostitution from 18 to 21 years was approved by the Lower House of the Parliament and is currently before the Senate. ***The Committee requests the Government to provide information on the practical application of the newly adopted legislation which introduces stricter penalties for the provisions under the Dutch Criminal Code with regard to the offences related to child pornography, sexual corruption of children and grooming of a child for sexual acts.***

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

## Aruba

### **Minimum Age Convention, 1973 (No. 138)**

*Article 2(3) of the Convention. Age of completion of compulsory schooling.* In its previous comments, the Committee had noted that the Government of Aruba had made a commitment to ensure that all children receive compulsory education up to the age of 17 years. The Committee noted the Government's indication that the State Ordinance on Compulsory Education had not yet been approved.

The Committee notes the Government's information that the State Ordinance on Compulsory Education has still not been approved, partly due to the financial consequences of such a law. The Government indicates that the final draft of the Ordinance will be resubmitted to Parliament within the coming weeks and it trusts that this last draft will be adopted, at which point a copy of the ordinance will be submitted to the Office. ***The Committee trusts that the State Ordinance on Compulsory Education will be in conformity with Article 2(3) of the Convention. Considering that there is presently no specified age of completion of compulsory schooling in Aruba, the Committee once again urges the Government to take the necessary measures to ensure that the State Ordinance on Compulsory Education is adopted without delay. It requests the Government to provide a copy of this Ordinance with its next report.***

*Article 3(1) and (2). Hazardous work.* In its previous comments, the Committee had noted that section 17(1) of the Labour Ordinance provides that it is prohibited to cause women and juvenile persons to perform night work or work of a hazardous nature, which is to be described by a State decree. Section 4 of this Ordinance defines juveniles as persons who have reached the age of 14, but not yet the age of 18. The Committee had noted the Government's information that one of the tasks of the Committee for the Modernization of Labour Legislation (CMLL) is to fill the existing voids in the legislation, creating the State decrees (which are yet formalized) referred to in the Labour Ordinance. It had noted the Government's indication that the labour legislation review is still under way and that the state decree specifying the types of hazardous work prohibited to young persons under 18 years of age has not yet been enacted.

The Committee notes the Government's information that the CMLL has proposed to eliminate the need for the formal requirement of a decree to determine the types of hazardous work, and to allow the Director of the Labour Department to determine through official labour policy which types of work would fall under this category, which would then be published officially in the *State Gazette*. The Committee recalls that under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee urges the Government to take the necessary measures to ensure that the Director of the Labour Department determine through official labour policy the types of hazardous work, as proposed by the CMLL, at the earliest possible date. It requests the Government to provide information in this regard in its next report.***

*Article 6. Vocational training and apprenticeship.* In its previous comments, the Committee had noted the Government's indication that the state decree provided for under section 16(a) of the Labour Ordinance allows exemptions for certain tasks which are necessary for the learning of a trade or profession, and can be done by children of 12 years or over who have completed the sixth class of primary school. It had also noted the Government's information that there were no instances recorded to indicate that children between 12 and 14 years of age are employed for training purposes. The Committee noted the Government's information that the state decree provided under section 16(a) of the Labour Ordinance has not yet been addressed in the CMLL.

The Committee notes the Government's information that the CMLL has proposed to eliminate the need for the formal requirement of a decree to specify the employment permitted for vocational education or technical training purposes, and to allow the Director of the Labour Department to do so through official labour policy, which would then be published officially in the *State Gazette*. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the Director of the Labour Department will specify the employment permitted for vocational education or technical training purposes under section 16(a) through official labour policy in the near future. It requests the Government to provide information on any progress made in this regard.***

*Article 7. Light work.* In its previous comments, the Committee noted the Government's information that the state decree provided for under section 16(b) of the Labour Ordinance to specify certain tasks which can be carried out by children of 12 years of age and above, who have completed the sixth class of primary school, had not yet been addressed in the CMLL.

The Committee notes the Government's information that, in this case also, the CMLL has proposed to allow the Director of the Labour Department to determine the types of light work through official labour policy, which would then only need to be published officially in the *State Gazette*. The Committee once again recalls that *Article 7(3)* of the Convention requires that the competent authority determine the activities allowed as light work in which young persons between 12 and 14 years of age may be permitted to participate, and to prescribe the number of hours of work and the conditions of employment or work. ***The Committee expresses the firm hope that the Director of the Labour Department will determine the types of light work permitted to children of 12 years and above, provided for under section 16(b) of the Labour Ordinance through official labour policy at the earliest possible date. The Committee once again requests the Government to provide information on all progress made in this regard.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the Government's indication that control and enforcement of the labour legislation by the labour inspectors continues to be weak due to regulatory and financial challenges.

The Committee notes that the Government provides no new information on the practical application of the Convention. ***The Committee therefore once again requests the Government to provide more detailed information on the manner in which the Convention is applied in practice including statistical data on the nature, extent and trends in child labour and extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied. To the extent possible, this information should be disaggregated by sex and age.***

***The Committee encourages the Government to take into consideration the Committee's comments on discrepancies between national legislation and the Convention. It requests the Government to provide any information on progress made in this regard and invites it to consider seeking technical assistance from the ILO.***

## New Zealand

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government's detailed report. It also notes the comments made by Business New Zealand.

*Article 3(d) of the Convention. Hazardous work. 1. Minimum age for admission to hazardous work.* The Committee previously noted that, by virtue of section 54(d) of the Health and Safety in Employment Regulations of 1995 (HSE Regulations), "every employer shall take all practicable steps to ensure that no employee under the age of 15 works in any area at a place of work under the control of that employer ... at any time when any work is being carried out in that area that is likely to cause harm to the health and safety of a person under the age of 15 years". It had observed that the prohibition did not extend to children under 18 years of age, as specified under *Article 3(d)* of the Convention.

The Committee also noted the allegation of the New Zealand Council of Trade Unions (NZCTU) that in 2006, about 300 children under 15 years visited their local doctor for a work-related injury and that accident compensation entitlements and rehabilitation assistance were provided to between 1,000–2,000 children between the ages of 15 and 19. The NZCTU contended that there was widespread under-reporting of accident compensation claims and workplace accidents. In this regard, the Committee noted the Government's response that while it shared the concerns raised by the NZCTU with regard to the workplace injuries of children and young persons, which in some cases proved fatal, legislative protections existed to protect young persons. The Government also stated that it was aware of the under-reporting of accident claims and workplace injuries. The Committee further noted the information from the Government report on the prosecutions in 2007 and 2008 related to workplace injuries sustained by a 14-year-old child with partial amputation of three fingers on a snip saw; the death of a 12-year-old who fell from a truck; and a 17-year-old who had his fingers and wrist crushed by a pastry machine.

The Committee notes the Government's statement that the existing legislative protections generally ensure that young people are not exposed to hazardous work and that employers have an obligation to ensure a healthy and safe working environment, as well as duties related to training and supervision. Business New Zealand also states that the existing legislative framework provides effective age thresholds for entry into work, particularly when read together with the obligation on all employers to provide their employees of whatever age, with a safe and healthy working environment. However, the Committee also notes the information in a research paper entitled "School children in Paid Employment – A summary of research findings" produced by the Department of Labour in September 2010 (DoL Report of 2010) according to which employers are not effective in raising schoolchildren's awareness of hazards, nor their rights, in the workplace as expected under the Health and Safety in Employment Act (1992). The DoL Report of 2010 states that one study found that a third of secondary school students indicated that their employers had not provided them with *any* information about workplace hazards. Moreover, this DoL Report of 2010 indicates that inadequacies in training and supervision of children in workplaces were also frequently reported. The Committee, therefore, notes with **concern** the information in the DoL Report of 2010 indicating that the existing legislative protections, which rely on the employer to protect children under the age of 18 from work place hazards, do not appear in practice to be fully and effectively protecting children from hazardous work.

Moreover, the Committee notes the information in the DoL Report of 2010 according to which injuries are a common and occasionally serious occurrence in school children's workplaces, with one-sixth of secondary school students in part-time work reportedly being injured at work in the past year. The DoL Report of 2010 states that while half of these injuries appear to be relatively minor, around a fifth of such injuries were severe enough to warrant a visit to a medical professional or hospital. Moreover, the DoL Report of 2010 indicates that children aged 15–16 were more likely to have had an injury than children aged 13–14, and that 20 per cent of working children of 16 years of age had had an employment injury. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of 11 April 2011, expressed concern that children between the ages of 15 and 18 are allowed to work in dangerous workplaces (CRC/C/NZL/CO/3-4, paragraph 41).

The Committee must express its *serious concern* that children between 15 and 18 years of age are allowed, in law and in practice, to perform the types of work which are clearly hazardous, as previously acknowledged by the Government and supported by the Department of Labour's research. The Committee must, therefore, emphasize that, by virtue of *Article 3(d)*, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety or morals of children *under 18*, constitutes one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee also recalls that Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190) addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee urges the Government to take immediate and effective measures to comply with Article 1 of the Convention, read with Article 3(d), to prohibit children under 18 years of age from engaging in hazardous and dangerous work. However, where such work is performed by young persons between 16 and 18 years of age, the Committee urges the Government to take the necessary measures to ensure that such work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young persons be protected and that they receive adequate specific instruction or vocational training in that activity. The Committee requests the Government to provide information on the progress made in this regard.***

2. *Self-employed children.* The Committee previously noted that the HSE Regulations, which contain provisions for the employment of children in hazardous occupations, only apply to a "place of work under the control of that employer" (section 54). However, it noted the Government's statement that the provisions restricting the employment of children in hazardous work (15 years) and night work (16 years) under the HSE Regulations had been amended, in order to cover self-employed children working as independent contractors. It requested a copy of the Regulations, as amended.

The Committee notes that on 1 April 2009, the HSE Amendment Regulations came into force. In this regard, it notes that section 58A of the HSE Regulations has been amended to state that sections 58B to 58E (prohibiting injurious tasks, the use of machinery and the use of tractors) apply to a principal who engages a person under the age of 15 years as a contractor to do any work (except residential work), and that section 58F (prohibiting night work) applies to a principal who engages a person under the age of 16 years as a contractor to do any work (except residential work). The Committee, accordingly, notes that these amendments restrict young persons under 15 years who are working as independent contractors from working in hazardous workplaces or doing hazardous work, and persons under 16 from engaging in night work. The Committee observes that these revisions do not ensure the protection of persons between the ages of 16 and 18 working as contractors from engaging in hazardous work, but notes the statement from Business New Zealand that when contractors between the ages of 16 and 18 are working on an employer's premises, they are subject to the same safety and health constraints that apply to the employer's own employees. The Committee recalls that, pursuant to *Article 3(d)* of the Convention, all persons under the age of 18, including self-employed workers, are entitled to be protected against types of work, which by their nature or the circumstances in which they are carried out, are likely to harm their health, safety and morals. ***Accordingly, the Committee urges the Government to take immediate and effective measures to ensure that all self-employed workers and independent contractors under the age of 18 years are protected from hazardous work. It requests the Government to provide information on progress made in this regard.***

*Article 4(1).* *Determining the types of hazardous activities prohibited to persons under 18 years of age.* The Committee previously noted the Government's indication that children under 18 years cannot work in any restricted areas of licensed premises, such as bars, licensed restaurants or clubs. However, it also noted the Government's statement that, pursuant to sections 54–58 of the HSE Regulations, only employees under 15 years of age are prohibited from working in a number of high-hazard workplaces, such as in construction, logging and tree-felling operations, in work where goods are being manufactured and prepared for sale, in work with any machinery, lifting heavy loads or performing other tasks likely to be injurious to the employee's health, night work and driving or riding any tractor or heavy vehicles.

The Committee notes the information in the Government's report that research has found that children represent a significant proportion of farm injuries, with nearly one fifth of all injuries on farms occurring in children aged 15 and younger. The Government indicates that the majority of child fatalities occur on farms, most typically with regard to children aged 10–14 years riding in vehicles to shift stock, and that this was being addressed through a safety campaign on the subject of quad bikes. The Committee also notes that the DoL Report of 2010 identifies the construction, agriculture and hospitality industries as posing the most risk to young workers. The DoL Report of 2010 also identifies some types of

work which are more dangerous to young persons: by volume, working in shops (including petrol stations and supermarkets) and working in restaurants, takeaway outlets and other eateries. These types of activities are the largest contributors to workplace injuries and account for 60 per cent of injuries to schoolchildren in regular part-time work. Noting that the DoL Report of 2010 identifies the sectors posing the most risk to young workers (construction, agriculture and hospitality), as well as the types of activities which are most injurious, the Committee reminds the Government that, pursuant to *Article 4(1) and (3)* of the Convention, the types of work which, by their nature or the circumstances in which they are carried out, are likely to harm the health, safety or morals of children, shall be determined by national laws or regulations, and that this list shall be periodically examined and revised as necessary, in consultation with the organizations of employers and workers concerned. ***Observing that the types of work most hazardous to young persons have been identified by the Government, the Committee urges the Government to take the necessary measures to ensure the determination of a list of types of hazardous work to be prohibited for all persons under 18 years of age, in consultation with the organizations of employers and workers concerned.***

*Article 5. Monitoring mechanisms. Occupational safety and health service.* The Committee previously noted the Government's statement that the Department of Labour was continuing to investigate workplace practices relating to persons between 16 and 18 years of age engaged in hazardous work. The Committee requested information on the outcome of these investigations.

The Committee notes the Government's statement that the monitoring of health and safety outcomes is becoming more systematic. The Government states that it is using the "serious injury outcome indicators" developed for the New Zealand Injury Prevention Strategy to monitor the performance in reducing serious injury for the population as a whole and for persons under 14. The Committee also notes the Government's statement that in May 2010 the Department of Labour launched an online toolkit entitled "My First Job" with a view to improving awareness on children's employment rights. The Government also indicates that in 2011, the Department of Labour released a new National Action Agenda, which is a strategic approach to reducing work-related injuries and fatalities that focuses on five sectors, including agriculture and construction.

While noting the programmatic measures taken by the Government, the Committee notes an absence of information regarding investigations carried out by the Department of Labour. ***Observing that children of 15 years and above are allowed to perform hazardous work, the Committee requests the Government to provide information on the results of the investigations carried out by the Department of Labour on workplace practices related to persons between 15 and 18 years engaged in hazardous work.***

*Parts IV and V of the report form. Application of the Convention in practice.* The Committee previously noted the Government's indication that, during the period 2007–08, there were three prosecutions under the HSE Act and HSE Regulations regarding injuries sustained by young persons under 18 years at the place of employment.

The Committee notes the statement by Business New Zealand that the kind of work (and working conditions) about which the Committee is concerned are not found in New Zealand and that all work undertaken is subject to strict safety and health controls. It states that, until the age of 16, work can only be undertaken on a part-time or casual basis. Business New Zealand states that where serious workplace accidents occur, there has recently been a considerable increase in the penalties imposed on employers by the courts. However, the Committee notes the Government's statement that there have been no prosecutions in respect of the prohibition contained in the HSE Act or Regulations on engaging a young person under the age of 15 in hazardous work, despite the information in the DoL Report of 2010 that 17 per cent of students in part-time work under the age of 15 reported a work-related injury in the past year, some of which were serious injuries. ***The Committee requests the Government to provide information on the number of workplace accidents and injuries involving all persons under 18 years of age, as well as the subsequent investigations and prosecutions, with its next report. It also requests the Government to supply statistics on the employment of children and young persons in hazardous work and extracts from the reports of inspection services as soon as this information becomes available. To the extent possible, all information provided should be disaggregated by age and sex.***

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

## Nicaragua

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1981)***

The Committee notes the comments of 30 August 2011 by the Trade Union Unification Confederation (CUS) and the Government's report.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments the Committee noted that according to a 2005 national study on child labour (ENTIA 2005), 239,220 children between 5 and 17 years of age were engaged in work in Nicaragua. Furthermore, the Committee noted with interest that according to the final evaluation report (October 2006) of the National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers, child labour has fallen by around 6 per cent since 2000. It noted that a second National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (PEPETI 2007–16) was in preparation.

The Committee takes due note of the detailed information in the Government's report regarding the measures taken and results obtained in the implementation of PEPETI 2007–16. It notes with *interest* that numerous activities to raise awareness about the problems of child labour were carried out in 2009–10: an advertising spot was produced; leaflets on the rights of young workers were disseminated; information workshops on the worst forms of child labour were held and visits to schools and homes were organized in order to alert parents and children to the importance of education; and a literacy and school enrolment campaign was launched, targeting out-of-school children and young people. The Committee also takes due note of the results obtained under this programme, and notes that according to the Government's report, 11,128 at-risk children and young people, street children or children engaged in child labour, were integrated in to the education system in 2010. The Committee further notes that in December 2010 Nicaragua adopted a "roadmap" to make Nicaragua a country free of child labour and its worst forms, providing a national strategic framework for attaining the objectives laid down in "Decent work in the Americas: An agenda for the Hemisphere", namely the elimination of the worst forms of child labour by 2015 and the eradication of all forms of child labour by 2020, which was prepared with the support of ILO-IPEC. It notes that the strategic framework proposed by the "roadmap" covers six themes: poverty reduction, education, health, legal and institutional frameworks, awareness raising and social mobilization, and generation of knowledge and follow-up measures. The Committee observes, however, that according to UNICEF statistics for the years 2000–09, many children under 14 years of age are still involved in child labour (15 per cent). ***The Committee strongly encourages the Government to pursue its efforts to combat child labour and requests it to continue to provide information on the results obtained under PEPETI 2007–16 and under the "roadmap" to abolish child labour in all its forms by 2020. It also requests the Government to provide statistical information on the nature, extent and trends of the labour of children and young people under 14 years of age, in its next report. To the extent possible, all information provided should be disaggregated by sex and by age.***

*Article 2(1). Scope of application of the Convention.* The Committee noted previously that Ministerial Agreement JCHG-008-05-07 on the implementation of Act No. 474 provides that the General Directorate of Labour Inspection shall be responsible for the implementation of Act No. 474 and the organization of a system of inspection for the prevention of child labour and its supervision in the formal and informal sectors. It also noted the Government's statement that in order to reinforce the labour inspectorate's work in the informal sector, and in particular to eliminate child labour, it had strengthened the inspection system through links with various governmental and non-governmental organizations.

The Committee notes that according to the CUS, the Ministry of Labour does not take adequate measures to ensure that effect is given to the provisions of the Convention in practice. The CUS also reports that children work in quarrying limestone at San Rafael del Sur, in coffee harvesting in the north of the country and in itinerant trading in the streets of Managua.

The Committee takes due note of the awareness-raising activities conducted by the Ministry of Labour to combat child labour. It also notes the statistics supplied in the Government's report on the inspection services' work supervising child labour legislation. It observes that in 2010, 624 inspection visits were carried out for this purpose, the number of such inspections having increased every year since 2007. The Government further indicates that 1,350 children and young people benefited in 2010–11 from an informal education strategy known as "educational bridges" under the programme "Coffee harvesting without child labour". The Committee further notes that following the adoption of Act No. 666 of 4 September 2008 on domestic work, which amends Title VIII, Chapter I, of the Labour Code, labour inspectors have the authority to visit homes that employ children and young persons as domestic workers. Thus, between 2009 and 2010, 577 children and young people were registered as domestic workers by the labour inspection services. Awareness-raising activities were also conducted to inform children and young persons working as domestic workers of their rights. ***While taking due note of the measures taken by the Government to strengthen and adapt the inspection services' capacities in the area of child labour, the Committee requests the Government to intensify its efforts to ensure that children working in limestone quarrying, coffee harvesting and itinerant trading likewise enjoy the protection established in the Convention. It requests the Government to provide information on the measures taken to this end.***

*Article 2(3). Age of completion of compulsory schooling.* Following its previous comments, the Committee takes due note of the information provided by the Government on the measures taken to improve the functioning of the education system. It observes in particular that primary and secondary education has been free since 2007 and that the Government has adopted a National Education Strategy (2010–15) and that it launched a national school enrolment campaign in 2010 which aims to make primary education accessible to all children. The Government's report also indicates that fast-track primary education (three years instead of six) is offered to children over 9 years of age in rural areas to facilitate their access to basic education. The Committee also notes the information in the *Education for All: Global Monitoring Report 2010*, "Reaching the marginalized", published by UNESCO the net primary enrolment ratio rose by 20 per cent over eight years, reaching 96 per cent in 2007. It nonetheless notes that 56 per cent of children enrolled in primary school drop out before reaching the last grade. The rate of children dropping out of the first year of primary education is also particularly high compared to the average rate of other countries in the Latin American and Caribbean region (26 per cent in Nicaragua as compared to the regional average of 4 per cent). The Committee further notes that pursuant to the 2006 Education Act, schooling is compulsory only to the age of 12. The Committee observes that the requirement set in *Article 2(3)* of the Convention is met to the extent that the minimum age of admission to employment or work (14 years) is not lower than the age of the end of compulsory schooling (11 years). It nonetheless takes the view

that the age of admission to employment or work needs to be linked to the age at which compulsory education ends. Where the two ages do not coincide a number of problems may arise. If compulsory schooling ends before young people may lawfully work, there may be a period of enforced inactivity. The Committee therefore considers that it is desirable to ensure compulsory education up to the minimum age of admission to employment or work, in accordance with Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary steps to ensure compulsory schooling up to the minimum age of admission to employment or work of 14 years. It also requests the Government to continue to take steps to increase school attendance rates and reduce the school drop-out rates so as to prevent children under 14 years of age from working. It requests the Government to provide information on progress made in this respect.***

*Article 3(2). Determining types of hazardous work.* Further to its previous comments, the Committee notes with **satisfaction** the adoption of Ministerial Agreement JCHG-08-06-10 of 19 August 2010, which replaces the list of hazardous jobs approved by Ministerial Agreement VGC-AM-0020-10-06 of 14 November 2006. It notes that under section 1 of the Agreement, hazardous work is prohibited for children and young persons under 18 years of age and that section 6 gives a detailed list of the types of work so defined. It notes that section 6 defines 36 types of different tasks prohibited for persons under 18 years of age, including a working day of over six hours (section 6(F)(3)), night work (section 6(F)(4)), work that interferes with school activities (section 6(F)(8)) and various hazardous jobs in agriculture. The Committee also notes that according to the Government, a series of activities have been developed in ten or so cities in Nicaragua to promote and publicize the new list of hazardous jobs.

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)***

*Article 3 of the Convention. Worst forms of child labour. Clause (d). 1. Hazardous work in agriculture.* Further to its previous comments, the Committee takes due note of the adoption of Ministerial Agreement JCHG-08-06-10 of 19 August 2010, replacing the list of hazardous jobs approved by Ministerial Agreement VGC-AM-0020-10-06 of 14 November 2006. It notes with **interest** that the list sets out types of hazardous work carried on in the agricultural sector, such as tasks involving the use or handling of heavy machinery or tasks involving exposure to chemicals. The Committee also notes the statistics sent in the Government's report which show that the number of inspection visits carried out in the agricultural sector by the inspectorate responsible for child labour increased from 127 in 2009 to 163 in 2010. It also notes the statistics of the number of violations recorded and the penalties imposed and observes that between 2010 and the first quarter of 2011, 263 offences were reported, yet only four fines appear to have been imposed. The Committee further notes from information in a 2011 report on the worst forms of child labour in Nicaragua, available on the website of the United Nations High Commissioner for Refugees, that inspection visits for child labour in the agricultural sector are limited owing to a lack of resources and capacity. ***The Committee requests the Government to pursue its efforts to ensure that no children or young persons under 18 years of age employed in the agricultural sector are engaged in hazardous work, and to this end to take steps to build the capacity of the inspectorate responsible for child labour. It also requests the Government to provide information on the practical effect given to Ministerial Agreement JCHG-08-06-10 of 19 August 2010.***

*2. Domestic work by children.* In its previous comments the Committee noted with satisfaction the adoption of Act No. 666 of 4 September 2008 on domestic work which protects young persons in domestic service by laying down recruitment and working conditions as well as penalties for abuse, violence or humiliation of these workers. The Act also requires the employer to notify such recruitment to the labour inspectorate and to promote and facilitate the education of these young domestic workers.

The Committee notes that according to the Government labour inspectors have the authority to visit homes in order to monitor the working conditions of children and young persons employed as domestic workers. It observes that following the adoption of Act No. 666, 577 children and young persons engaged in domestic work have been registered by the labour inspectorate and 11 children under 14 years of age have been withdrawn from such employment. The Committee nevertheless notes from the statistics supplied in the Government's report on child labour inspection in private households employing domestic workers, that the number of inspection visits fell from 76 to 13 between 2009 and 2010. ***The Committee requests the Government to strengthen its efforts to build the capacity of the inspectorate in charge of child labour so as to guarantee the protection laid down in Act No. 666 of 4 September 2008 for children and young persons employed in domestic service. It asks the Government to continue to provide information on the number of inspection visits carried out, the offences reported and the penalties imposed.***

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Child labour in agriculture.* Further to its previous comments, the Committee notes with **interest** that according to the information sent in the Government's report, 2,626 children were withdrawn from labour and benefited from care in the departments of Jinotega and Matagalpa under the "Coffee harvesting without child labour" programme. ***The Committee encourages the Government to pursue its efforts and asks it to continue to provide information on the results obtained under the "Coffee harvesting without child labour" programme. Please also provide information on the measures taken to withdraw from labour children and young persons carrying on hazardous work in other agricultural sectors and on the measures taken to ensure their rehabilitation and social integration.***

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

## Niger

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1978)**

The Committee notes the communication of the International Trade Union Confederation (ITUC), of 31 August 2011, and the Government's reply to the ITUC's allegations, received on 14 November 2011.

*Article 2(1) of the Convention. Scope of application.* The Committee noted previously that the Labour Code does not apply to types of employment or work performed by children outside an enterprise, such as work performed by children on their own account. It noted the Government's indication that the broadening of the scope of application of the labour legislation to children engaged in an economic activity on their own account would require formal collaboration between the Ministries of the Civil Service, Labour, Mines, the Interior, Justice and Child Protection. In that respect, it reminded the Government that the Convention applies to all sectors of economic activity and that it covers all types of employment or work, whether or not a contractual employment relationship exists.

The Committee notes the Government's indication that a national survey of the informal economy will be organized by the National Statistical Institute (INS) in 2012 which will make it possible to measure the extent of the phenomenon of children working on their own account and will enable the labour administration to intervene more effectively in this field. ***The Committee requests the Government to take the necessary measures to ensure that the INS survey of the informal economy is completed effectively in the very near future and that discussions on this matter are held between the Ministries concerned. The Committee once again requests the Government to provide information on the progress achieved in this respect.***

*Article 2(3). Compulsory schooling.* In its previous comments, the Committee noted that the Ten-year Educational Development Programme (PDDE), drawn up in 2002, aimed at achieving an 80 per cent enrolment rate in primary school by 2012 and 84 per cent by 2015, with special emphasis on narrowing the gap between boys and girls.

However, the Committee noted that, in its concluding observations of 18 June 2009 (CRC/C/NER/CO/2, paragraph 66), the Committee on the Rights of the Child, while commending the major efforts made by Niger to expand access to primary education, as well as the increase in the access of girls to education, the building of new educational infrastructures in rural areas and the training programmes for teachers, expressed concern at the poor quality of the education system, the high drop-out rate and weak gender equity in education. The Committee also observed that the low rate of school attendance of children between 7 and 12 years of age shows that a significant number of children drop out of school well before attaining the minimum age for admission to employment and are on the labour market.

The Committee notes the Government's indication that it is continuing its ceaseless efforts in the field of education and that encouraging results have already been obtained in that respect. As a result, according to the Government, the growth in the gross school attendance rate in primary school, which was 57.1 per cent (47.7 per cent for girls and 66.7 per cent for boys) in 2006–07, rose to 67.8 per cent (58.6 per cent for girls and 77 per cent for boys) in 2008–09. However, the Committee notes that, according to the National Survey on Child Labour in Niger (ENTE) of 2009, 43.2 per cent of children between the ages of 5 and 11 years and 62.5 per cent of children between the ages of 12 and 13 years in Niger are engaged in types of child labour to be abolished, at an age when they are supposed to be at school, as school attendance is compulsory up to 14 years. According to the ENTE, 22.8 per cent of children between the ages of 7 and 11 years and 23 per cent of children aged 12 and 13 years do not attend school because they consider that education is not useful, while 18.7 per cent of children between the ages of 7 and 11 years and 15 per cent of children aged 12 and 13 do not attend school because they assist with household work. Despite the efforts made by the Government, the Committee expresses its **concern** at the persistence of the low rates of school attendance. It observes that poverty is one of the primary causes of child labour and, when combined with a defective education system, prevents the development of the child. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to intensify its efforts to improve the functioning of the education system and to take measures to enable children to attend compulsory basic education. It also requests the Government to continue taking measures to increase the school attendance rate and reduce the school drop-out rate, particularly for girls, with a view to preventing children under 14 years of age from working. The Committee further requests the Government to continue providing information on the results achieved.***

*Article 3(3). Authorization to employ young persons in hazardous work from the age of 16 years.* In its previous comments, the Committee noted that Decree No. 67-126/MFP/T of 7 September 1967 authorizes the employment of young persons over 16 years of age in certain types of hazardous work. It also noted that health and safety committees have been established in enterprises and that they are responsible for training and awareness raising on safety. The Committee observed that these committees do not appear to provide adequate specific instruction or vocational training in the relevant branch of activity. In this respect, the Government indicated that a distinction needs to be made between three categories of young persons: those whose activities are performed in the context of a formal school curriculum, namely students in technical and vocational training schools; those who work in the context of an apprenticeship contract, supervised by one or more professional adults with many years of experience in the trade; and those who are trained under the traditional system for learning a trade and whose superior/trainer has also been trained under this system of

transmission of practical knowledge. With regard to the latter category, the Committee asked the Government to provide information on the manner in which the health and safety committees ensure that the work performed by young persons does not jeopardize their health or safety.

Once again noting the absence of information in the Government's report, the Committee once again recalls that, in addition to the requirement of training, *Article 3(3)* of the Convention allows employment or work by young persons as from the age of 16 years in hazardous types of work only on the condition that their health, safety and morals are fully protected. **Observing that this matter has been raised on many occasions, the Committee once again urges the Government to take the necessary measures to ensure that enterprise safety and health committees ascertain that the conditions of work of young persons aged between 16 and 18 years do not jeopardize their health and safety. It once again requests the Government to provide information on this subject in its next report.**

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted the Government's indication that studies were being conducted in the country, including the ENTE undertaken by the INS in collaboration with ILO-IPEC and in partnership with a consortium of NGOs, and that the Government would provide the findings of the ENTE when they were published.

The Committee notes the allegations by the ITUC that 46 per cent of children of school age are engaged in work under arduous conditions and perform types of work which exceed their physical capacities. Children also frequently work with their families in rural areas and participate in work in fields, crushing cereals, tending animals, seeking firewood and water.

The Committee notes the Government's indication in its reply to the ITUC's allegations that the rate of 46 per cent alleged by the ITUC is only an approximate figure.

However the Committee notes that, according to the findings of the ENTE, children who were economically active in 2009 represented 50.4 per cent of children between the ages of 5 and 17 years and that the phenomenon of child labour is more significant in rural than in urban areas. It also shows that in Niger girls are much more engaged in work than boys. Furthermore, 83.4 per cent of the children aged between 5 and 17 years who are economically active, that is 1,604,236 children, are engaged in types of work to be abolished (i.e. all types of work that are prohibited by the Convention). Of these, 1,187,840 children are involved in hazardous types of work. In other words, nearly two out of three children (61.8 per cent) between the ages of 5 and 17 who are economically active perform their work under hazardous conditions, with the rate being 63.6 per cent of children between the ages of 5 and 11 years and 57.9 per cent of children aged 12 and 13. The findings of the ENTE also indicate that children engaged in the types of work to be abolished mostly work in domestic service (65.5 per cent of children between the ages of 5 and 11 years and 44.5 per cent of children aged 12 and 13), trade (16.7 per cent of children between the ages of 5 and 11 years and 21.7 of children aged 12 and 13), agriculture (12.8 per cent of children between the ages of 5 and 11 years and 18.3 per cent of children aged 12 and 13) and industry (3.8 per cent of children between the ages of 5 and 11 years and 6.2 per cent of children aged 12 and 13). The Committee expresses its *deep concern* at the high number of children engaged in work in Niger who are below the minimum age for admission to employment and work, and that the significant proportion of these children who work under hazardous conditions. **It strongly encourages the Government to intensify its efforts to improve the situation with regard to child labour in the country and requests it to continue providing information in its next report on the application of the Convention in practice, including extracts from the reports of the labour inspection services indicating the number and nature of the contraventions reported and the penalties applied. It requests the Government to provide statistical data in its next report disaggregated by sex and age group, on the nature, extent and trends of child labour and work by young persons under the minimum age specified by the Government when ratifying the Convention.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 31 August 2011, and the Government's reply to the ITUC's allegations received on 14 November 2011.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery and practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted the comments of the ITUC reporting the existence in the country of the internal trafficking of girls for domestic work, as well as the trafficking of boys for economic exploitation and of girls for sexual exploitation. It also noted that, according to the information obtained by the high-level fact-finding mission (the mission), which visited Niger from 10 to 20 January 2006 at the request of the Conference Committee in June 2005, "Niger is certainly a *transit country* since its geographical location makes it a hub for trade between North Africa and sub-Saharan Africa," and that "Niger is both a *country of origin* and a *country of destination* for human trafficking, including the trafficking of children." The Committee noted that, when examining the second periodic report submitted by Niger on 20 November 2008 (CRC/C/NER/2, paragraphs 433–437), the Committee on the Rights of the Child (CRC) observed that the national survey on trafficking in persons showed that, of the 1,540 households surveyed, 5.8 per cent answered that a member of the household had been a victim of trafficking and 29.4 per cent answered affirmatively that there had been human trafficking in their locality/village/neighbourhood. The Committee noted the Government's indication that a National Plan to Combat Child Trafficking had been drawn up and approved. It also noted that a Bill for the prevention, repression and punishment of trafficking in Niger had been

drafted by the Niger Association for the Defence of Human Rights, but that the Bill on trafficking had still not been adopted by Parliament, and that accordingly the legal void persisted in that respect.

The Committee notes that, according to a report on trafficking of persons of 2011 (the 2011 trafficking report), available on the website of the United Nations High Commissioner for Refugees, the Government appears to have adopted Ordinance No. 2010-86 to combat the trafficking of persons in December 2010, which consists of comprehensive legislation prohibiting all forms of sale and trafficking and establishing sentences of imprisonment of between ten and 30 years in cases where the victim is a child. However, the Committee notes the Government's indication that the National Plan of Action to Combat Child Trafficking has still not been adopted. ***The Committee requests the Government to provide information on the application of Ordinance No. 2010-86 to combat trafficking of persons in practice, including statistics on the number and nature of the violations reported, investigations conducted, prosecutions and convictions obtained, and the penal sanctions applied. The Committee requests the Government to provide a copy of this Ordinance with its next report. The Committee also urges the Government to take the necessary measures to ensure the adoption of the National Plan of Action to Combat Child Trafficking as soon as possible.***

2. *Forced or compulsory labour. Begging.* The Committee noted previously the indication by the ITUC that children are forced to beg in West Africa, including Niger. For economic or religious reasons, many families entrust their children from the age of 5 or 6 years to a spiritual guide (*marabout*), with whom they live until they are 15 or 16 years of age. During this period, they are entirely under the responsibility of the *marabout*, who teaches them religion and, in return, requires them to carry out certain tasks, including begging. The Committee noted that the existence of begging for purely economic ends had been acknowledged by those interviewed by the mission, including the Government, and that, in this form of begging, children are especially vulnerable since their parents, even though they are concerned for the children's religious education, are unable to provide for their subsistence. The children are, therefore, left entirely dependent on the *marabouts*. The Committee expressed serious concern at the use of children for purely economic ends by certain *marabouts*, particularly since, according to the information gathered by the mission, this form of begging seemed to be very much on the increase.

The Committee noted previously that a National Observatory to Combat Begging had been set up. It also noted with interest that Circular No. 006/MJ/DAJ/S/AJS of 27 March 2006 of the Minister of Justice of Niger, addressed to the various judicial authorities, calls for sections 179, 181 and 182 of the Penal Code, which punish begging and any person, including the parents of minors under 18 years of age, who habitually engage in begging, who cause others to beg or who knowingly make a profit from begging, to be strictly applied through the prosecution, without leniency, of any persons engaging in begging or using children for begging for purely economic ends. In this respect, the Committee noted the Government's indications that there had been some cases of the arrest of *marabouts* presumed to use children for purely economic ends. However, the Government indicated that in general they are released for lack of legal proof of their guilt.

The Committee notes the Government's indication that Niger has undertaken awareness-raising campaigns with a view to changing attitudes with the support of NGOs and development partners, including UNICEF. However, the Committee notes with **concern** the Government's indication once again in its report that *marabouts* who have been arrested for using children for purely economic ends have been released for lack of legal proof of their guilt. The Committee, therefore, once again notes with **regret** that, even though the legislation is in conformity with the Convention on this matter, the phenomenon of child *talibés* remains a cause of serious concern in practice. The Committee once again reminds the Government that, under *Article 1* of the Convention, immediate and effective measures have to be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour, and that under *Article 7(1)* of the Convention, it is under the obligation to take all the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of sufficiently effective and dissuasive penal sanctions. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of marabouts who use children under 18 years of age for purely economic ends are carried out and that sufficiently effective and dissuasive sanctions are applied to them. In this respect, the Committee requests the Government to take the necessary measures to reinforce the capacities of law enforcement agencies. The Committee also requests the Government to take effective and time-bound measures to prevent children under 18 years of age from becoming victims of forced or compulsory labour, such as begging, and to identify child talibés who are compelled to engage in begging, remove them from such situations and ensure their rehabilitation and social integration.***

*Clause (d). Hazardous types of work. Children working in mines and quarries.* In its previous comments, the Committee noted that section 152 of Decree No. 67-126/MFP/T of 7 September 1967 prohibits the employment of children in underground work in mines. However, it noted that, according to the information gathered by the mission, work by children in hazardous types of work, particularly in mines and quarries, existed in informal locations, that young children accompany their parents to informal sites and that they "become involved in the chain of production, whether in gypsum mines or salt quarries, sometimes performing small tasks to facilitate their parents' work or, in some cases, tasks that are physically hazardous for more than eight hours a day, every day of the week, running the risk of accident or disease". The Committee noted with interest that the Minister of the Interior had issued a circular strictly prohibiting the employment of children in mines and quarries in the areas concerned, namely Tillabéri, Tahoua and Agadez, and that the Minister for Mining had received directives to take this prohibition into account in drawing up mining agreements.

However, the Committee noted the Government's indication that no conviction had yet been handed down in this respect. It further noted that the review and modification of the list of hazardous types of work were carried out at a workshop held in Ayorou on 2 and 3 July 2009. In this respect, the Committee noted the Government's indication that the list of hazardous types of work was drawn up under the responsibility of the Ministry of Labour, in collaboration with the technical ministries and the employers' and workers' organizations concerned.

The Committee notes the Government's indication that the list of hazardous types of work has been reviewed and improved by the Ministry of Labour, in collaboration with the technical ministries and employers' and workers' organizations. The Government adds that it will provide the Office with a copy of this list when it has been adopted. ***Expressing the hope that the list of hazardous types of work will extend the protection afforded by the Convention to children working in mines in the informal sector who are obliged to engage in hazardous types of work, the Committee urges the Government to take the necessary measures for the adoption of this list in the very near future. It therefore requests the Government to provide a copy of the amended list of hazardous types of work with its next report. It also urges the Government to take immediate measures to ensure the effective application of the national legislation for the protection of children against underground work in mines.***

*Article 5. Monitoring mechanisms. Labour inspection.* In its previous comments, the Committee noted the indication by the mission in its report that "the labour inspectorate, which plays a key role in combating child labour and forced labour, is severely lacking in both the human and material resources needed to perform its duties". The mission recommended that a labour inspection audit be carried out to ascertain the exact nature and extent of the needs of the labour inspectorate in Niger. The Committee noted the Government's indication that it was making every effort to ensure that the audit was carried out in the near future.

The Committee notes the allegations of the ITUC that the inadequacy of resources means that the labour inspection services are very ineffective and that no inspections on child labour were carried out in 2010.

The Committee notes the Government's indication in reply to the ITUC's allegations that the labour inspection services have lacked resources for a long time, but that the Government has made significant efforts in 2011 to provide them with sufficient resources, and that these efforts will continue so that they are able to discharge effectively the duties entrusted to them.

The Committee notes that, in its report provided to the Office under the Labour Inspection Convention, 1947 (No. 81), the Government once again agrees to the audit being carried out. However, it notes with *concern* that the audit has still not been undertaken. ***The Committee, therefore, urges the Government to take the necessary measures to reinforce and adapt the capacities of the labour inspection services so as to ensure better supervision of children under 18 years of age who are engaged in the worst forms of child labour, including the implementation of the mission's recommendation. It once again requests the Government to provide information in this respect in its next report.***

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. 1. Access to free basic education.* In its previous comments, the Committee noted from the mission report that "parents hesitate to send their children to school when they see that such education affords no guarantee of a job, whereas the Muslim religious schools at least train children to be good Muslims or even teachers of the Koran, which explains why such schools are on the increase in Niger". The Committee noted the mission's recommendation that the operation "of the education system needs to be improved to ensure access for all to high-standard education". With regard to Koranic schools, the Committee noted that, in the context of the Franco-Arab education support project, measures had been taken for the restructuring of these schools. The Committee also noted that the Ten-year Educational Development Programme (PDDE), drawn up in 2002, aims to achieve an 80 per cent enrolment rate in primary school by 2012 and 84 per cent by 2015, with special emphasis on narrowing the gap between girls and boys. The Committee however noted that, in its concluding observations of 18 June 2009, the CRC expressed concern at the poor quality of the education system, the high drop-out rate and the weak gender equity in education (CRC/C/NER/CO/2, paragraph 66).

The Committee notes the Government's indication that several actions have been taken to prevent the engagement of children in the worst forms of child labour, including their school attendance. In this respect, the Government indicates that programmes of action have resulted, among other outcomes, in the enrolment in school of 922 children, including 440 girls in Komabangou, with a view to preventing them from becoming engaged in the worst forms of child labour. It also notes the school enrolment of 1,273 children in M'Banga; the support for the recruitment of teachers for primary schools in M'Banga, Komabangou and 16 satellite villages; and the implementation of the support project for the school enrolment of children and young school drop-outs in the rural community of Makalondi.

However, the Committee notes that, according to the National Survey of Child Labour in Niger of 2009 (ENTE), only 39 per cent of girls between the ages of 7 and 17 years engaged in a type of work that is to be abolished attend school, compared with 47 per cent of boys. Furthermore, the proportion of boys between the ages of 7 and 11 years who attend school is 56 per cent, compared with 48 per cent for boys aged 12 and 13 years, and 24 per cent for the 14–17-year age group. Among girls, these proportions are respectively 46.4 per cent, 28 per cent and 13 per cent. The ENTE also indicates that, among children engaged in forms of work that are to be abolished, 57.2 per cent do not attend school. The failure to attend school is of greater concern among children between the ages of 14 and 17 years who are engaged in

hazardous types of work, 80.9 per cent of whom do not attend school. With regard to school drop-outs, 21.4 per cent of children between the ages of 7 and 17 years engaged in types of work that are to be abolished have dropped out of school, out of which 36.5 per cent of children between the ages of 14 and 17 years are engaged in hazardous types of work. The Committee therefore expresses its *deep concern* at the school attendance rates and the school drop-out rates of children who are compelled to work. *Accordingly, considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to improve the operation of the educational system, taking into account the special situation of girls. In this respect, it also requests the Government to ensure an increase in school enrolment rates and a reduction in school drop-out rates, and to adopt other measures for the integration of Koranic schools into the national educational system. It requests the Government to continue providing information on the results achieved.*

2. *Raising awareness and educating the public about the problems of child labour and forced labour.* The Committee noted previously the recommendation made by the mission in its report that specific measures should be taken “to raise awareness among Koranic teachers and parents to prevent the ‘instrumentalization’ of begging by certain *marabouts*”. The Committee noted the information provided by the Government concerning the awareness-raising and training activities undertaken among those involved in combating child labour, and particularly its worst forms, including political decision-makers, employers, community leaders and traditional chiefs, police officers, magistrates, current or potential working children, parents, teachers, students and the public in general with regard to the problem of child labour.

The Committee notes the Government’s indication that the awareness-raising campaigns have succeeded in raising the awareness of the actors concerned with regard to the danger represented by this phenomenon. The Government adds that it is continuing awareness-raising activities, including for the population in general, with a view to changing attitudes. *The Committee once again requests the Government to provide detailed information on the awareness-raising activities undertaken for traditional chiefs, civil society and elected local officials, and on their impact in terms of the number of children who have been prevented from begging for purely economic ends by certain marabouts.*

*Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration.* In its previous comments, the Committee noted the results of the implementation of the ILO–IPEC project for the prevention and elimination of child labour in artisanal gold mining in West Africa. It also noted that the measures for the social integration of victims of the worst forms of child labour removed from gold mines are provided free of charge by national associations and NGOs, with the support of technical ministries and partners, such as UNICEF.

The Committee notes the ITUC’s allegations that the use of children in gold, salt and gypsum mines and other forms of extraction persists. The ITUC indicates that these children have to work under deplorable conditions, with inadequate ventilation, the risk of rock falls and a lack of light, and that they are exposed to the consumption of alcohol and drugs.

The Committee notes the Government’s indication that the ILO–IPEC project has come to an end in Niger. The Government adds that, despite this, the schools built in the context of the project continue to enrol a significant number of students. *The Committee requests the Government to provide information on the number of children who are, in practice, removed from artisanal gold mines and then rehabilitated and socially integrated, particularly in schools built for that purpose. Furthermore, noting that the ILO–IPEC project has come to an end, the Committee strongly encourages the Government to continue taking measures to remove children under 18 years of age from these mines and for their rehabilitation and social integration. It requests the Government to provide information on the progress achieved in this respect.*

*Article 8. Regional cooperation.* The Committee noted previously that, in addition to the multilateral cooperation agreement to combat child trafficking in West Africa, signed in July 2005, Niger also signed the Abuja Multilateral Cooperation Agreement in 2006 and a bilateral agreement for the establishment of a mixed frontier control brigade between Niger and Nigeria. Following the implementation of these various cooperation agreements to combat trafficking in children, Niger has established 30 vigilance committees and widespread joint mobile brigades on all national frontiers. The Government added that child victims of trafficking have been intercepted in frontier areas. However, the Committee noted with deep concern the Government’s indication that those presumed guilty had been released by the police for lack of legal proof.

The Committee notes the Government’s indication that no new cases of trafficking of children have been recorded since 2009. However, according to the 2011 trafficking report, the Government assisted in the repatriation of 89 child victims of trafficking to Mali, Nigeria, Burkina Faso, Benin, Cameroon and Liberia, and the return to their villages from Niger. *Recalling that under Article 7(1) of the Convention, the Government is under the obligation to take all the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, the Committee once again urges the Government to take the necessary measures to ensure that persons involved in the trafficking of children are prosecuted and that sufficiently effective and dissuasive sanctions are imposed upon them, in the context of the agreements concluded with other signatory countries.*

*Parts IV and V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that the ENTE had already been undertaken by the National Institute of Statistics and that the findings would be provided to the Office when they were published.

The Committee notes that, according to the findings of the ENTE, 83.4 per cent of economically active children between the ages of 5 and 17 years, or 1,604,236 children, are engaged in types of work that are to be abolished. Of these, 1,187,840 children are involved in hazardous types of work and, as a result, 74 per cent of children between the ages of 5 and 17 years engaged in types of work that are to be abolished do so under hazardous conditions. The gender distribution of children engaged in hazardous types of work shows that girls (31.2 per cent) and boys (31.1 per cent) are involved almost in the same proportions. The Committee also observes that children in rural areas (36.6 per cent) are more exposed than those living in urban centres (18.2 per cent) and in Niamey (7.5 per cent). ***Expressing its deep concern at the situation of children under 18 years of age engaged in the worst forms of child labour, the Committee urges the Government to renew its efforts to ensure the protection of children from these forms of labour in practice, and particularly from hazardous types of work. It requests the Government to continue providing information on the progress achieved in this respect.***

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

## Nigeria

### ***Minimum Age (Underground Work) Convention, 1965 (No. 123)*** ***(ratification: 1974)***

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

The Committee recalled that for a number of years, it had been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4(5)*), under which the employer shall make available to the workers' representatives, at their request, lists of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government which is 16 years. The lists should contain the dates of birth of persons aged between 16 and 18 years and the dates at which they were employed or worked underground in the undertaking for the first time.

The Committee noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and to produce the register for inspection when required by an authorized labour officer. The Committee further noted that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth. ***The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62 of the Labour Act is amended so that such registers may also be made available to workers' representatives, at their request. The Committee once again asks the Government to provide information on progress made in this regard in its next report.***

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

## Oman

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)***

*Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work. Camel jockeys.* In its previous comments, the Committee expressed concern for the health and safety of children under 18 years of age involved in camel racing. The Committee noted that the Regulations on holding and organizing camel races in the Sultanate of Oman (Camel Race Regulations), issued by the Oman Equestrian and Camel Federation on 7 August 2005, stated that no jockey under 18 years of age would be allowed to take part in camel races. However, it also noted that section 2 of these Regulations stated that this minimum age would be reached progressively starting from a minimum age of 14 years, over four years starting from the 2005–06 season. In this regard, the Committee expressed the firm hope that the targeted minimum age of 18 years would be reached in the 2009–10 season, and that this age limit would be strictly and effectively enforced.

The Committee notes with *satisfaction* that, pursuant to the Camel Race Regulations of 2005, children under 18 years of age are not allowed to participate in camel races. Moreover, the Committee notes the information in the Government's report that new regulations were adopted, by virtue of Order No. 7 of 2009, on 18 September 2009. The Government indicates that section 9 of Order No. 7 of 2009 specifies that no camel jockey under 18 shall participate in a camel race and that the jockey must show an identity card prior to the race. The Committee further notes the information in the Government's report that the use of robot camel jockeys was approved on 17 September 2009. The Government indicates that all camel races have since adopted the use of robot jockeys. ***The Committee requests the Government to provide a copy of the regulations issued by virtue of Order No. 7 of 2009, with its next report.***

*Article 4. Determination of types of hazardous work.* The Committee previously noted that Omani law provides that juveniles under the age of 18 may not be employed in mines and quarries or in hazardous work. The Committee also noted the Government's indication that a list of hazardous occupations prohibited to persons under the age of 18 was being prepared, in consultation with the social partners. The Committee expressed the firm hope that this list would be adopted as soon as possible.

The Committee notes the information in the Government's report that the Ministry of Manpower has prepared, in collaboration with the social partners and other competent bodies, a list of hazardous types of work prohibited for persons

under the age of 18. The Government indicates that this list is currently being revised for submission to the competent bodies. *Noting that the Government has been referring to the pending adoption of this list since 2006, the Committee urges the Government to take the necessary measures to ensure that a list determining the types of hazardous work prohibited to persons under the age of 18 is adopted in the near future. It requests the Government to provide a copy of this list, once adopted.*

*Article 7(1). Penalties.* The Committee previously noted that Decision No. 30-2002 of 8 August 2005, of the Oman Equestrian and Camel Federation states that any person who violates the Camel Race Regulations shall be convicted by the courts. It also noted the Government's statement that the relevant bodies would promulgate regulations and a statute on penalties with regard to the use of under-age racing before the 2009–10 season.

The Committee notes the Government's statement that sanctions imposed on persons who are in violation of the prohibition of persons under 18 participating in camel races consist of a warning as well as depriving a person found in violation from participating in all races for one year. The Government indicates that if a second offence is committed, the sanction shall be doubled.

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

## Pakistan

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2006)**

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

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* The Committee previously noted that a national **Time-bound Programme (TBP)** for the elimination of the worst forms of child labour 2008–16 had been drafted in consultation with the stakeholders. It also noted the implementation of several ILO–IPEC projects, including projects entitled “Activating media to combat worst forms of child labour 2006–09” and “Pakistan earthquake – Child labour response”, in addition to the expansion of the national project for the rehabilitation of child labourers. It requested the Government to provide information on the impact of these projects.

The Committee noted the information in the Government's report that the ILO–IPEC project entitled “Combating abusive child labour II” has been launched. The objective of this project is the elimination of child labour, and two districts have been selected to pilot the project. The main activities of the project include: (i) establishing the Federal Child Labour Unit, and Provincial Child Labour Units, to increase institutional capacity to monitor the implementation of the national child labour programme; (ii) the creation of provincial and district coordination committees on child labour; (iii) withdrawing and rehabilitating child labourers in the districts of implementation; and (iv) sensitizing the community to child labour issues. The Committee also noted the ILO–IPEC information that the project “Activating media to combat worst forms of child labour” has been extended until the end of 2010.

The Committee further noted the information from the ILO–IPEC Technical Progress Report (TPR) of 10 March 2010 for the project entitled “Pakistan earthquake: Child labour response project” that 3,626 children were enrolled in rehabilitation centres through the project, and 632 children received vocational training. This TPR also indicated that between September 2009 and March 2010, ten seminars on child labour were conducted in target union councils. Participants included workers, employers and target community members (particularly the family members of working children). Over 700 individuals participated in these seminars organized in 24 rehabilitation centres of seven union councils (Kaghan, Mohandri, Kewai, Balakot, Ghanoor, Shohal Mazullah and Garhi Habib Ullah). The TPR indicated that the project has contributed substantially to sensitizing the local communities on child labour issues. *The Committee takes due note of this information, and requests the Government to continue to provide information on the concrete measures taken pursuant to the “Combating abusive child labour II” project, the “Activating media to combat worst forms of child labour” project and the “Pakistan earthquake – Child labour response” project. It also requests the Government to provide information on the status of the implementation of the national TBP 2008–16. Finally, it requests the Government to provide information on the impact of these initiatives, including the number of children reached through these programmes.*

*Article 2(2). Minimum age for admission to employment or work.* The Committee previously noted that, at the time of ratification, Pakistan specified 14 years as the applicable minimum age. The Committee also noted that a draft Employment and Service Conditions Act 2009 had been elaborated and that pursuant to section 16(a) of this draft Act, the employment of a child who has not attained 14 years of age is prohibited.

The Committee noted an absence of information in the Government's report with regard to progress made towards the adoption of the draft Employment and Service Conditions Act 2009. *The Committee requests the Government to take the necessary measures to ensure that the draft Employment and Service Conditions Act 2009, which prohibits the employment of a child below 14 years of age, is adopted in the near future and to provide a copy once adopted.*

*Article 2(3). Age of completion of compulsory education.* The Committee previously noted the information provided by the Government in its report to the Committee on the Rights of the Child (CRC) of 19 March 2009 (CRC/C/PAK/3-4, paragraph 361) that three of the four provinces, Federally Administered Areas (Punjab, North-West Frontier Province and Sindh) and the Islamabad Capital Territory have compulsory primary education laws. It also noted that the Islamabad Capital Territory Compulsory Primary Education Ordinance 2001, and the Punjab Compulsory Primary Education Act 1994, provide that parents shall ensure that their children attend primary school until the completion of their primary education. However, the Committee observed that, due to the definitions of “primary education” and “child”, compulsory education could finish between the ages of 10–14. The Committee underlined the desirability of ensuring compulsory education up to the minimum age for employment, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146), and encouraged the Government to take measures in that regard.

The Committee noted an absence of information on this point in the Government's report. However, the Committee noted that the CRC, in its concluding observation of 19 October 2009, expressed concern that not all provinces have a compulsory

education law and, where this legislation exists, it is often not properly enforced. The CRC further expressed concern that nearly 7 million of the estimated 19 million primary school-age children are out of primary school and about 21 per cent drop out, many of them in the early grades (CRC/C/PAK/CO/3-4, paragraph 78). The Committee expressed its deep concern at the significant number of children under the minimum age who are not attending school. **Considering that education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to provide free and compulsory education to all children up to the minimum age for employment (of 14 years), and to ensure that, in practice, children are attending school. In this regard, it requests the Government to provide information on the measures taken to increase school enrolment rates and reduce school drop-out rates, and on the results achieved.**

*Article 3(1) and (2). Minimum age for admission to, and determination of, hazardous work.* The Committee previously noted that pursuant to sections 2, 3 and 7 of the Employment of Children Act of 1991, the employment of children under 14 is prohibited in a variety of occupations. Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee observed that these provisions do not comply with the provisions of Article 3(1) of the Convention which sets 18 years as the minimum age for admission to hazardous work. However, the Committee noted that section 16(c) of the draft Employment and Service Conditions Act 2009 prohibited the employment of persons under 18 in any of the occupations and processes listed in Parts I and II of the Schedule (containing four occupations and 39 processes). The Committee urged the Government to take the necessary measures to ensure that this draft legislation was adopted.

The Committee noted the information in the Government's report that the Road Transport Workers Ordinance prohibits the employment of persons under 18 in road transport work. The Committee also noted that the Shops and Establishments Ordinance prohibits the employment of persons under 18 in night work. **However, noting an absence of information from the Government on the status of the draft Employment and Service Conditions Act 2009, the Committee once again urges the Government to take the necessary measures to ensure that, in conformity with Article 3(1) of the Convention, this draft Act, which prohibits the employment of persons under 18 in hazardous types of work, is adopted in the near future.**

*Article 9(1) and Part III of the report form. Penalties and the labour inspectorate.* The Committee previously requested the Government to provide information on the practical application of the penalties provided for in section 14 of the Employment of Children Act 1991. It also requested the Government to indicate any measures adopted to strengthen the labour inspectorate, particularly in the informal sector.

The Committee noted an absence of information on these points in the Government's report. However, the Committee noted the information in a 2008 report on the worst forms of child labour in Pakistan, available on the website of the Office of the United Nations High Commissioner for Refugees, that enforcement of child labour legislation is weak due to the lack of inspectors assigned to child labour, lack of training and resources, in addition to corruption. This report also indicated that, while authorities cite employers for child labour violations, the penalties imposed are generally too minor to act as a deterrent. The Committee also noted that the CRC, in its concluding observations of 15 October 2009, expressed concern that the ineffectiveness of labour inspection machinery reduces the likelihood of investigations into reports of child labour, and hinders the prosecution, conviction or punishment of those responsible (CRC/C/PAK/CO/3-4, paragraph 88). **The Committee expresses its concern at the lack of capacity of the labour inspectorate to effectively monitor the legislation giving effect to the Convention and therefore requests the Government to take the necessary measures to adapt and strengthen the labour inspectorate in this regard, including through the allocation of additional resources. It also requests the Government to take the necessary measures to ensure that persons who violate the provisions giving effect to the Convention are prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. In this respect, the Committee requests the Government to provide information on the number and nature of violations relating to the employment of children and young people detected by the labour inspectorate, the number of persons prosecuted, and the penalties imposed.**

*Part V of the report form. Application of the Convention in practice.* In its previous comments the Committee noted that, according to the National Child Labour Survey conducted in 1996, of the 3.3 million children aged between 5-14 years who were economically active on a full-time basis, 46 per cent worked 35 hours per week, while 13 per cent worked for 56 hours or more per week. The Committee requested the Government to provide recent statistical data on the application of the Convention in practice.

The Committee noted the information in the Government's report that, pursuant to the "Combating abusive child labour II" project, a second national survey on child labour will be undertaken. The Committee also noted that the CRC, in its concluding observations of 15 October 2009, expressed concern that the prevalence of child labour is extremely high and has increased in recent years due to growing poverty (CRC/C/PAK/CO/3-4, paragraph 88). **The Committee expresses its concern at the high number of working children under the minimum age in Pakistan and therefore urges the Government to strengthen its efforts to improve this situation, including through continued cooperation with ILO-IPEC. It also requests the Government to provide, in its next report, information from the second national survey on child labour.**

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

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

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

The Committee noted the Government's report and the communication of the Pakistan Workers' Federation (PWF) of 31 August 2010.

*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.* The Committee previously noted the allegations of the International Trade Union Confederation (ITUC) indicating that human trafficking is a serious problem in Pakistan, including the trafficking of children. The ITUC also stated that women and children reportedly arrive from various countries in the region, many to be bought and sold in shops and brothels and that, in some rural areas, children are sold into debt bondage. The Committee observed that section 370 of the Penal Code prohibits the sale and trafficking of persons for the purpose of slavery and that, pursuant to sections 2(f) and 3 of the Prevention and Control of Human Trafficking Ordinance of 2002 (PCHTO), human trafficking for the purpose of sexual exploitation, slavery or forced labour is prohibited. However, the Committee also observed that a legal review of the PCHTO (undertaken within the framework of combating child trafficking for labour and sexual exploitation (TICSA project)) concluded

that the definition of “human trafficking” in the PCHTO focuses on interstate trafficking and ignores trafficking within Pakistan, which is prevalent in the country. In this regard, a tripartite regional workshop made recommendations to amend the legislation.

The Committee noted an absence of information in the Government’s report on any measures taken pursuant to the legal review. It noted the information in a report of 14 June 2010 on the trafficking of persons in Pakistan available on the website of the Office of the United Nations High Commissioner for Refugees (Trafficking Report) that the Government secured convictions of 385 persons under the PCHTO in 2009, a substantial increase from 2008. Nonetheless, the Committee noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 19 October 2009, expressed concern that Pakistan remains a significant source, destination and transit country for children trafficked for the purposes of commercial sexual exploitation and forced and bonded labour. The CRC also expressed concern at the growing number of children trafficked internally (CRC/C/PAK/CO/3-4, paragraph 95). Furthermore, the Committee noted the statement in the Trafficking Report that the lack of comprehensive internal anti-trafficking laws has hindered law enforcement efforts. **Therefore, the Committee once again urges the Government to take immediate measures to ensure that trafficking within the country of persons under 18 is effectively prohibited in national legislation. The Committee also requests the Government to redouble its efforts to combat and eliminate both internal and cross-border trafficking of persons under 18. It requests the Government to provide information on the measures taken in this regard and the results achieved, particularly the number of persons convicted and sentenced for cases involving victims under the age of 18.**

2. *Debt bondage.* In its previous comments, the Committee noted the ITUC’s indication that Pakistan has several million bonded labourers, including a large number of children. Debt slavery and bonded labour are mostly reported in agriculture, construction (in particular in rural areas), brick kilns and the carpet-making sector. The Committee also noted that the Bonded Labour System (Abolition) Act (BLSA) 1992 abolished bonded labour, and states that no one shall make an advance under, or in pursuance of, the bonded labour system or other forms of forced labour. The Committee further noted the operation of several measures within the national policy and plan of action for the abolition of bonded labour and rehabilitation of freed bonded labourers (National Policy for the Abolition of Bonded Labour), and requested the Government to take measures to ensure the effective implementation of this policy.

The Committee noted the information in the Trafficking Report that, while provincial police in Sindh province freed over 2,000 bonded labourers in 2009 from feudal landlords, few charges were filed against the employers. The Committee also noted that the CRC, in its concluding observation of 19 October 2009, expressed concern that, despite legislation prohibiting bonded labour and the National Policy for the Abolition of Bonded Labour, bonded and forced labour continues to occur in many industries and the informal sector, affecting the poorest and most vulnerable children (CRC/C/PAK/CO/3-4, paragraph 88). The Committee also noted the information in the Trafficking Report that the largest human trafficking problem in Pakistan is bonded labour, concentrated in the Sindh and Punjab provinces, and affects over a million men, women and children. The trafficking report further indicated that Pakistani officials have yet to record a single conviction under the BLSA.

The Committee expressed its *deep concern* at the persistence of children working in bonded labour, and reminded the Government that, by virtue of *Article 1* of the Convention, it is obliged to take *immediate* measures to prohibit and eliminate this worst form of child labour. **Therefore, the Committee urges the Government to redouble its efforts to combat and eliminate this worst form of child labour, and to provide information on the measures taken within the framework of the National Policy for the Abolition of Bonded Labour in this regard. It also urges the Government to take the necessary measures, as a matter of urgency, to ensure that perpetrators of bonded labour are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.**

3. *Compulsory recruitment of children for use in armed conflict.* The Committee previously noted that the National Service Ordinance of 1970 prescribes a minimum age of 18 for compulsory enlistment in the armed forces. The Committee noted, however, the Government’s indication that children aged 16 and above may begin training prior to regular service if they are willing. The Committee also noted that the CRC expressed its concern that, in spite of legislation prohibiting the involvement of children in hostilities, there were reports of children being recruited forcibly to participate in armed conflicts, especially in Afghanistan and in Jammu and Kashmir. The CRC also expressed its concern about *madrasas* (Islamic schools) being involved in recruiting children under 18 years of age, including forcibly, to participate in armed conflicts (CRC/C/15/Add.217, 27 October 2003, paragraphs 62, 64(c), 67 and 68). The Committee requested the Government to take immediate measures to combat and eliminate the compulsory recruitment of children under 18 years of age for use in armed conflict.

The Committee noted an absence of information on this point in the Government’s report. However, the Committee noted that the CRC, in its concluding observation of 19 October 2009 expressed deep concern at reports of *madrasas* being used for military training, as well as instances of recruitment of children to participate in armed conflict and terrorist activities (CRC/C/PAK/CO/3-4, paragraph 80). The CRC expressed grave concern with regard to reports of forced under-age recruitment and training of children by non-State actors for armed actions and terrorist activities, including suicide attacks, and at the lack of preventive measures, including awareness raising, and physical and psychological recovery for children affected by armed conflict, in particular those who were recruited. **Recalling that the forced recruitment of children for use in armed conflict constitutes one of the worst forms of child labour, the Committee requests the Government to take immediate and effective measures to bring an end in practice to the forced recruitment of persons under 18 years of age by armed groups. In this regard, it requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are imposed in practice.**

*Articles 3(d) and 4(1). Hazardous work.* The Committee previously noted that article 11(3) of the Constitution states that “no child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment”. Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee also noted that sections 2 and 3 of the Employment of Children Act of 1991 provide that children under 14 years of age shall not be employed in the occupations listed in Parts I and II of the Schedule of the Act, containing a detailed list of hazardous types of work that children shall not perform.

The Committee noted the statement in the communication of the PWF that a large number of children in Pakistan are employed in hazardous work, particularly in the brick kiln, glass and leather industries, and in the informal sector. Referring to its comments made in 2009 under the Minimum Age Convention, 1973 (No. 138), the Committee noted that a draft Employment and Service Conditions Act 2009 has been elaborated. Pursuant to section 16(c) of the draft Employment and Service Conditions Act 2009, the employment of persons under 18 in any of the occupations and processes listed in Parts I and II of the Schedule (containing four occupations and 39 processes) is prohibited. The Committee recalled that under *Article 3(d)* of the Convention, children under 18 shall 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. **The Committee accordingly urges the Government to take the necessary measures to ensure that,**

*in conformity with Article 3(d) of the Convention, the draft Employment and Service Conditions Act 2009, which prohibits the employment of persons under 18 in hazardous types of work, is adopted in the near future.*

*Article 5. Monitoring mechanisms. 1. Bonded labour.* The Committee previously noted the ITUC's indication that while the BLSA prohibits bonded labour, it remains ineffective in practice. It also noted that District Vigilance Committees (DVCs) were constituted to monitor the implementation of the BLSA but that there were reports of serious corruption within these committees. The Government indicated that efforts were being made to implement the BLSA with an Anti-Corruption Strategy and that within the framework of the National Policy for the Abolition of Bonded Labour, training workshops had been organized for key district government officials and other stakeholders to enhance their capacity and to activate the DVCs.

The Committee noted the information in the Government's report that DVCs report to the District Magistrate any cases of bonded labour being used in workplaces, and that DVCs engage in information sharing to this end. The Committee also noted the Government's statement in its reply to the list of issues of the CRC of 1 September 2009 that the DVCs have not been functioning properly. The Government indicated that it is in the process of restructuring the DVCs to improve their effectiveness and organizing orientation sessions for committee members. The Government further stated that there remain problems in the enforcement of the BLSA (CRC/C/PAK/Q/3-4/Add.1, paragraph 65). The Committee also noted the information in the Trafficking Report that police lack personnel, training and equipment to confront landlords' armed guards when freeing bonded labourers. ***The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of DVCs and law enforcement officials responsible for the monitoring of bonded labour, to ensure the effective implementation of the BLSA. It requests the Government to provide information on concrete measures taken in this regard and on the results achieved.***

*2. Labour inspection.* The Committee previously noted the ITUC's indications that the number of labour inspectors is insufficient, that they lack training and that they may be open to corruption. The ITUC added that inspections do not take place in undertakings employing less than ten employees, where most child labour occurs. The Committee also noted the PWF's statement that the Government should take more effective measures to monitor the use of child labour in the informal sector with the cooperation of the "Independent labour inspection machinery". The PWF indicated that the governments of the two largest provinces of the country, Sindh and Punjab, apply a policy of not inspecting a business for one year following its establishment and that inspectors may not enter a workplace without prior permission from, or notice to, the employer. The Committee further noted that, according to the technical progress report of March 2007 for the ILO-IPEC project entitled "Combating child labour in the carpet industry", the ILO's external monitoring system was in place in each district of Pakistan for the independent verification of the child labour situation. In the case of the carpet weaving industry, 4,865 monitoring visits had been made to 3,147 workplaces in the project areas.

The Committee noted the statement on the ILO-IPEC summary for the project entitled "Combating child labour in the carpet industry" that the external child labour monitoring system was a significant achievement as the labour inspection system does not extend to rural areas where most of the child labour in the carpet sector takes place. The Committee also noted the Government's statement in its report to the CRC of 19 March 2009 that the Ministry of Labour is working with the Asian Development Bank to devise a comprehensive labour inspection and monitoring mechanism, which will include child labour monitoring (CRC/C/PAK/3-4, paragraph 580). Nonetheless, the Committee noted the statement in a report on the worst forms of child labour in Pakistan available on the website of the Office of the United Nations High Commissioner for Refugees (WFCL report) that enforcement of child labour laws is weak due to the lack of inspectors assigned to child labour, lack of training and resources, corruption, and the exclusion of many small workplaces and informal family businesses from the inspectorate's jurisdiction. The Committee further noted that the CRC, in its concluding observations of 19 October 2009, expressed concern that the ineffectiveness of labour inspection machinery reduced the likelihood of investigations of reports of child labour (CRC/C/PAK/CO/3-4, paragraph 88). ***Therefore, the Committee requests the Government to take the necessary measures to strengthen the capacity of the labour inspection system to enable the labour inspectors to monitor the effective implementation of the provisions giving effect to the Convention. It also requests the Government to provide information on the measures taken in this regard, including measures to train labour inspectors and provide them with adequate human and financial resources. Lastly, the Committee requests the Government to provide information on the development of a comprehensive labour inspection mechanism and its impact on the monitoring of the worst forms of child labour.***

*Article 7(1). Penalties.* The Committee previously noted the ITUC's indication that persons found guilty of violating child labour legislation were rarely prosecuted and that when prosecution did occur, the fines imposed are usually insignificant. The Committee noted the All Pakistan Federation of Trade Unions (APFTU) indication that, although child labour is prohibited by national legislation, child labour and its worst forms are still widespread. The Committee recalled that by virtue of *Article 7(1)* of the Convention, the Government must take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the application of dissuasive sanctions.

The Committee noted an absence of information on this point in the Government's report. However, the Committee noted the statement in the WFCL report that the penalties imposed on persons who violate child labour laws are generally too minor to act as a deterrent. ***The Committee expresses its serious concern at the ineffectiveness of penalties for violations of child labour legislation and, therefore, urges the Government to take the necessary measures to ensure that persons who violate the legal provisions giving effect to the Convention are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. 1. Child victims of trafficking.* The Committee previously noted that the Child Protection and Rehabilitation Bureau (CPRB) was responsible for housing returned camel jockeys from the United Arab Emirates (UAE) and for facilitating their reintegration within their families and communities. The Committee requested the Government to provide information on the number of child victims of trafficking effectively withdrawn and rehabilitated by the CPRB or other rehabilitation shelters.

The Committee noted the Government's indication in its report to the CRC of 19 March 2009 that, through the programme to return and reintegrate under-age camel racers (implemented as a collaboration between the Government, UNICEF and the UAE), a total of 331 former camel jockeys have been repatriated and have been reunited with their families through the CPRB. The Government further indicated that various rehabilitation programmes have been initiated for the rehabilitation of these children and these services were also provided to 361 self-returned former camel jockeys (CRC/C/PAK/3-4, paragraph 677). However, the Committee noted the indication in the Trafficking Report that this collaboration with the UAE and UNICEF came to an end in 2009. The Trafficking Report also indicates that while the CPRB continued to provide services to victims of trafficking, governmental officials continued to lack adequate procedures and resources for proactively identifying victims of trafficking among vulnerable persons with whom they came into contact, especially child labourers, women and children in

prostitution, and agricultural and brick kiln workers. *The Committee therefore urges the Government to strengthen its efforts to remove, rehabilitate and provide for the social integration of child victims of trafficking. In this regard, it urges the Government to take the necessary measures to strengthen the procedures for identifying child victims of trafficking and to ensure that these children are referred to the appropriate services. It requests the Government to provide information on the concrete measures taken in this regard and the results achieved.*

2. *Child bonded labourers.* The Committee previously noted that the European Union and the ILO were assisting the Government in the setting up of 18 community education and action centres for combating exploitative child labour through prevention, withdrawal and rehabilitation of former child bonded labourers. The Committee also noted that the Government had established a “Fund for the education of working children and rehabilitation of freed bonded labourers”. The Committee further noted that the 2007 ILO project to promote the elimination of bonded labour in Pakistan (PEBLIP) aimed to provide social and economic assistance to the families that have been released from bondage to help them re-establish their lives.

The Committee noted the information in the Government’s report that the PEBLIB project completed its first phase in 2007. Through this project, the ILO has provided technical assistance to the Ministry of Labour, and helped in capacity building of governmental officials and the judiciary. The Government also indicated that a series of awareness-raising material on bonded labour have been published. The Committee also noted the information in the Government’s report that through the “Fund for the education of working children and rehabilitation of bonded labourers”, free legal aid services have been established in Lahore, Peshawar, Karachi and Quetta. *The Committee requests the Government to continue to provide information on the impact of the abovementioned measures on removing children from bonded labour and on providing for their rehabilitation and social integration.*

3. *Children working in the carpet industry.* The Committee previously noted the ITUC’s indication that 1.2 million children were reported to work in the carpet industry, which is a hazardous industry. It also noted that, according to a baseline survey on child labour in the carpet weaving industry in the province of Sindh, there are an estimated 33,735 carpet weaving children, out of which 24,023 are estimated to be below 14 years of age. The Committee further noted that the Pakistan Carpet Manufacturers’ and Exporters’ Association and ILO–IPEC launched a project to combat child labour in the carpet industry in 1998 and that 11,933 children had been withdrawn from carpet weaving and enrolled in non-formal education centres.

The Committee noted the ILO–IPEC information that Phase III of the “Combating child labour in the carpet industry” project began in 2007, and will be completed in 2011. The project will be implemented in the provinces of Punjab, Sindh and the North-West Frontier Province (NWFP), and aims to impact the lives of 50,000 children, 60 per cent of whom are carpet weavers. The Committee also noted the information in the WFCL report that the national project on rehabilitation of child labour, implemented by Pakistan Bait-UI-Mal (an autonomous body established by the Ministry of Social Welfare and Special Education) continues to withdraw children between the ages of 4 and 14 from several sectors, including carpet weaving. Nonetheless, the WFCL report also indicated that a significant number of children continue to work in carpet weaving, and that these children suffer eye and lung diseases due to unsafe working conditions. *The Committee therefore requests the Government to strengthen its efforts for the removal, rehabilitation and social reintegration of children working in the carpet-weaving sector. In this regard, it requests the Government to provide information on the concrete measures taken within the framework of the “Combating child labour in the carpet industry – Phase III” and the “National project on rehabilitation of child labour” project and on the results achieved.*

Clause (d). *Reaching out to children at special risk.* 1. *Child bonded labourers in mines.* The Committee previously noted that, according to the rapid assessment studies on bonded labour in different sectors in Pakistan, some miners ask their children as young as 10 years of age to work with them in mines to lighten the burden of *peshgi* (i.e. any advance whether in cash or in kind made to the labourer). In Punjab and in the NWFP, children are usually assigned the job of taking donkeys underground and bringing them out laden with coal. These children are particularly vulnerable to sexual abuse by miners.

The Committee noted the information in the Government’s report to the CRC of 19 March 2009 that an action programme is being implemented in the coal mines of Shangla, as part of the national *Time-bound Programme (TBP)* for the elimination of the worst forms of child labour 2008–16. The Committee also noted the information in the final technical progress report for the ILO–IPEC project entitled “Supporting the *TBP* on the elimination of the worst forms of child labour in Pakistan” of 14 September 2008 (FTPR) that in the context of initiatives in Shangla, 250 children received health screening, 250 children were provided with literacy and numeracy classes and 150 children received technical and vocational skills training. The FTPR also indicated that a district education plan that addressed the educational needs of child labourer was developed, printed and widely disseminated. *The Committee requests the Government to continue to take the necessary effective and time-bound measures to eliminate child debt bondage in mines as a matter of urgency.*

2. *Children working in brick kilns.* The Committee previously noted that nearly half of children aged 10–14 working in brick kilns work more than ten hours a day without any safeguards and that working in the kilns is a particularly hazardous occupation for children. It also noted that, according to the rapid assessment studies on bonded labour in different sectors in Pakistan of 2004, workers in the brick kiln sector were not aware of the general legislation that applies to bondage. The Committee further noted that an ILO–IPEC project in several sectors resulted in 3,315 children being withdrawn from hazardous work, including in the brick kiln industry. The Committee requested the Government to pursue its efforts to protect children engaged in the brick kiln sector from hazardous work.

The Committee noted the Government’s statement in its reply to the list of issues of the CRC of 1 September 2009 that most of the bonded labourers in Punjab are confined to brick kilns. The Government indicated in this report that it is working to register brick kiln workers and issue them with national identity cards to facilitate their access to benefits (CRC/C/PAK/Q/3-4/Add.1, paragraph 68). The Committee also noted that the project entitled “Combating child labour through education and training (Support to the *TBP*: Phase II)” gives priority to children working in six specific sectors, including boys and girls working in brick kilns. The Committee further noted the information in the WFCL report that the national project on rehabilitation of child labour continues to withdraw children in this industry. *The Committee requests the Government to continue to take measures to protect children under 18 engaged in the brick kiln sector from hazardous work and forced labour. It requests the Government to provide information on progress made in this regard and on the results achieved.*

Article 8. *International cooperation and assistance. Regional cooperation. Trafficking.* The Committee previously noted the Government’s participation in several regional initiatives to combat trafficking. These included the signing of the South Asian Association for Regional Cooperation’s convention on preventing and combating trafficking in women and children for prostitution in 2002 (which committed signatories to the development of a regional plan of action and the establishment of a regional task force against trafficking) and a Memorandum of Understanding with both Thailand and Afghanistan to promote

bilateral cooperation, including on the issue of human trafficking. The Committee requested the Government to provide information on progress achieved through these initiatives.

The Committee noted the information from the International Organization for Migration (IOM) that it has been working with the Government to combat human trafficking and smuggling. The IOM is currently conducting a counter-trafficking programme to create 18 district taskforces to combat human trafficking in vulnerable districts throughout the country which will identify trafficking victims, create referral mechanisms for support to victims and build a network between stakeholders in the local government, law enforcement and civil society. The Committee also noted the IOM's indication that its office in Islamabad is supporting the establishment of a trilateral dialogue between Pakistan, Afghanistan and the Islamic Republic of Iran on migration management within South-West Asia, to serve as a forum for discussion on developing comprehensive and compatible national and subregional migration management strategies. Nonetheless, the Committee noted the information in the Trafficking Report that transnational trafficking in the region persists and that persons, including children, are trafficked between the Islamic Republic of Iran and Pakistan, and to Pakistan from Afghanistan and Azerbaijan for the purpose of forced labour and prostitution. ***The Committee therefore encourages the Government to strengthen its regional cooperation efforts and to continue its collaboration with the IOM to combat the trafficking of persons under 18 years of age. It also once again asks the Government to provide information on the progress achieved in the launching of a regional plan of action and regional task force against trafficking. It also asks the Government to provide information on the impact of the Memoranda of Understanding signed with Afghanistan and Thailand, as well as of any other bilateral agreements on the elimination of child trafficking.***

*Part V of the report form. Practical application of the Convention.* In its previous comments, the Committee pointed out that accurate data on the extent of the worst forms of child labour, including bonded labour, is essential to develop effective programmes to eliminate these worst forms. It encouraged the Government to undertake a nationwide survey to determine the extent of child debt bondage and its characteristics.

The Committee noted the information in the Government's report that, pursuant to the "Combating abusive child labour II" project, a second national survey on child labour will be undertaken. ***The Committee requests the Government to take the necessary measures to ensure that this national survey includes an examination of the worst forms of child labour, including bonded labour, trafficking, commercial sexual exploitation and hazardous work. It also requests the Government to provide information from this national survey, once completed.***

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

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

## Panama

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2000)***

The Committee takes note of the Government's report. It also notes the comments from the Trade Union Convergence (CS) of 25 August 2011 and from the General Autonomous Confederation of Workers of Panama (CGTP) of 26 August 2011, as well as of the Government's reply dated 7 November 2011.

*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 expressed its concern at the increasing number of children who were working in Panama and strongly encouraged the Government to redouble its efforts to combat child labour.

The Committee notes the concerns expressed by the CS and the CGTP about the increase in the number of children working in the country during the past few years, a situation which they believe reflects the inadequacy of the measures taken by the Government to ensure the abolition of child labour.

The Committee notes the Government's reply that, according to the findings of the child labour survey of 2010, the number of children and young persons aged between 15 and 17 years engaged in economic activity has been reduced by 29,065. According to the Government, this drop in numbers is linked to the strengthening of the labour inspection services, which has led to the recruitment of 116 additional labour inspectors and the increase of inspection visits concerning child labour. The Government also states that the Bill on the protection of children and young people was approved by the National Assembly on 27 October 2011 and is waiting to be approved by the President of the Republic. Furthermore, the Committee takes due note of the detailed information in the Government's report concerning the measures adopted to ensure the abolition of child labour. It also notes that the Government, through the Committee for the Eradication of Child Labour and the Protection of Young Workers (CETIPPAT) is pursuing a policy to eliminate child labour with a view to reaching the objectives set forth in the "Decent work in the Americas: An agenda for the Hemisphere", i.e. to eliminate the worst forms of child labour from now until 2015 and to eliminate child labour from now until 2020. It also takes due note of the establishment, in February 2010, of the National Directorate against Child Labour and Protection of Young Workers (DIRETIPPAT), technical secretariat of the CETIPPAT, responsible in particular for supporting the elaboration and follow-up to the National Plan for the Elimination of Child Labour (2007–11).

The Committee notes the statistics sent by the Government on the progress made by the DIRETIPPAT and notes with ***interest*** that 2,716 children were withdrawn from their work between 2010 and 2011. It also notes that the Government adopted the 2011–13 programme to implement the "roadmap to make Panama a country free from child labour" in March 2011. This programme is intended to be a planning tool to facilitate the elaboration of short and middle-term actions to prevent child labour and its worst forms. Its main areas of action are poverty reduction, education and health. The Committee also notes the Government's information on the results of the Government programme of direct action for the prevention and elimination of child labour, carried out in collaboration with the non-governmental organizations FUNDESPA, Casa Esperanza and Fundación Telefónica in the nine provinces of the country. It observes

that more than 1,500 children and young people engaged in child labour benefited from this programme in 2011. Finally, the Committee notes the findings of the third national survey on child labour enclosed with the Government's report, which, in addition to indicating the reduction in the number of working children aged 5 to 17 years who are working (which has dropped from 89,767 to 60,702), shows that children and young people mainly work in the agricultural sector, forestry, fishing, hunting and as itinerant traders. The majority of these children work in rural areas and come from indigenous communities. Furthermore, girls are more affected by child labour (75 per cent of girls recorded as opposed to 25 per cent of boys). ***The Committee welcomes the measures taken by the Government to ensure the effective abolition of child labour and strongly encourages it to pursue its efforts. It requests the Government to continue providing information on the results obtained in this respect, particularly in the context of the National Programme for the Elimination of Child Labour. Furthermore, the Committee requests the Government to provide additional statistical information on the number of children under 14 years of age engaged in an economic activity and the number of children and young people under 18 years of age who are involved in hazardous work.***

*Article 3(3). Authorization to employ young persons from the age of 16 years onwards in hazardous types of work.* In its previous comments, the Committee noted that, although section 118 of the Labour Code and section 510 of the Family Code prohibit young persons under 18 years of age from undertaking hazardous work, this prohibition does not apply to work performed by minors in training establishments when the work is approved by the competent authority and carried out under its supervision. The Committee thus observes that a young person of 14 years of age may be authorized to carry out hazardous work in the context of a training programme, which is not in conformity with *Article 3(3)* of the Convention.

The Committee notes that, according to the Government, the exception under section 118 of the Labour Code is only authorized in the context of teaching or a vocational training course and is not in the context of a labour contract. The Committee nevertheless reminds the Government that, under the terms of *Article 3(3)* of the Convention, the competent authority may, after consultation with the organizations of the employers and workers concerned, authorize the employment or work of young persons from the age of 16 years onwards on condition that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the corresponding branch of activity. It notes that in no event can children under 16 years of age be authorized to carry out hazardous work. ***Consequently, the Committee urges the Government to take the necessary legislative measures to ensure that only young persons of 16 years and over, having received adequate specific instruction or vocational training, are authorized to carry out hazardous work, in accordance with the conditions provided for under Article 3(3) of the Convention. The Committee requests the Government to provide information on the progress achieved in this respect in its next report.***

*Part III of the report form. Labour inspection.* Further to its previous comments, the Committee takes due note of the statistics contained in the Government's report concerning the visits carried out by the labour inspection services and the penalties imposed. It notes that 2,262 inspections were carried out between August 2009 and June 2011, and that the number of visits is increasing each year. During these visits, the inspectors identified 70 children working under the minimum age of admission to employment or labour, among which were 37 girls and 33 boys. The Government also indicates that the National Directorate of Labour Inspection Services has elaborated a new support programme component, which provides for an increase in the number of inspectors specialized in the monitoring of child labour, of which there are now 130. It also notes that, when violations are reported, the labour inspection services carry out joint visits with the DIRETIPPAT in order to ensure that care is taken of the children withdrawn from labour.

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

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

The Committee noted the Government's report. It also noted the comments of the National Federation of Public Employees and Public Service Enterprises Workers (FENASEP) of 5 October 2009 and the Government's reply thereto of 10 February 2010.

*Article 3 of the Convention. Worst forms of child labour. Clause (b) and Article 7(1). Using, procuring or offering of a child for prostitution, for the production of pornography and for pornographic performances, and penalties.* The Committee previously requested the Government to provide information on the measures taken to establish penalties for the violation of the prohibition on using, procuring or offering of a child for prostitution.

The Committee noted with satisfaction that section 176-A of the new Penal Code, as amended by Act No. 26 of 21 May 2008, punishes pimping by penalties of up to ten years' imprisonment when the victim is under 18 years. It further noted that the new Penal Code punishes child pornography (sections 180, 181, 183–185) and sexual tourism involving children (section 186). The Committee also noted the Government's information that the penalties for child pornography and sexual tourism involving minors have been increased. Finally, the Committee noted the Government's information that 53 cases concerning child pornography were investigated between 2006 and 2009. ***The Committee requests the Government to continue to provide information on the practical application of the above provisions of the new Penal Code and of Act No. 22 of 2007, including statistics on the number and nature of the violations reported, investigations carried out, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.***

*Articles 5 and 7(1). Monitoring mechanisms and effective application of the Convention. Labour inspectorate.* Following its previous comments, the Committee noted the Government's information that labour inspections had increased remarkably during the period 2006–08 where 1,830 violations were detected by the labour inspectorate. However, of the 1,830 cases, only eight resulted in penalties being applied to the offenders, while 31 were pending before the judiciary. According to the

Government, this situation showed a lack of coordination between the activities of the labour inspectorate and the judiciary. The Committee noted that while the number of violations detected by the labour inspectorate was quite high between 2006 and 2008 (1,830 cases), the number of cases in which penalties were applied was low (eight cases). The Committee reminded the Government that, by virtue of *Article 7(1)* of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions of the Convention, including through the provision and application of sufficiently effective and dissuasive penal sanctions. ***It requests the Government to redouble its efforts to strengthen the capacity of the law enforcement agencies, in order to ensure that the perpetrators are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Street children.* The Committee noted the FENASEP's comment that, according to the newspaper *La Prensa*, in Chiriqui there was a network which trafficked children to make them beg. By September 2009, 28 child beggars were identified in the urban area of David. The Committee noted the Government's information that the National Office for Children and Young Persons (SENIAF) created the Office for assisting and protecting street children in situation of exploitation, which is in charge of developing programmes to assist these children. It further noted the Government's information that 52 children and adolescents were removed from the street in 2008 and 57 in 2009. In 2009, 24 of the children who were removed from the street in 2008 and 39 of the children who were removed from the street in 2009, were selected for admission to the scholarships provided by the Institute for Training and Better Use of Human Resources (IFARHU) and the Committee for the Eradication of Child Labour and Protection of the Adolescent Worker (CETIPPAT). Moreover, one family was included under the "Opportunities" conditional cash transfer programme, which was aimed at helping families in situations of extreme poverty by providing them with financial allowances subject to the condition that children of beneficiary families attend school. ***The Committee requests the Government to continue to take measures to remove children from the streets and provide for their rehabilitation and social integration, and to continue to provide information on the number of children removed from the streets and given education pursuant to the implementation of programmes and projects such as the abovementioned ones.***

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

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

## Papua New Guinea

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2000)***

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 31 August 2011 and the Government's report.

*Article 1 of the Convention and Part V of the report form. National plan of action and application of the Convention in practice.* In its previous comments, the Committee had noted that the Government had developed a "White Paper on Decent Work and Poverty Alleviation" and a national action plan on decent work and poverty alleviation, which were presented at a national tripartite workshop on 23 March 2005 but upon which no consensus had been reached. The Committee had also noted the Government's information that Parliament adopted in 2004 the Informal Sector Control and Management Act, which allows for people to engage in informal businesses for their living.

The Committee notes the ITUC's observations that child labour occurs in rural areas, usually in subsistence agriculture, and in urban areas in street vending, tourism and entertainment.

The Committee notes the Government's statement that, following revisions to the "White Paper on Decent Work and Poverty Alleviation", the Government endorsed the National Decent Work Policy in May 2010. Furthermore, the Committee notes that Papua New Guinea is one of the 11 countries that are part of a 2008–12 ILO–IPEC ***Time-bound Programme*** entitled "Tackling child labour through education" (TACKLE project), which contributes to the fight against child labour through its action programmes, research studies, legislative reviews and promotional programmes. Moreover, the Committee notes the Government's information that, following the National Child Labour Forum of 26–28 July 2011, a draft National Plan of Action on Child Labour (NPA) has been formulated and is being circulated for inputs from all the relevant stakeholders. The draft NPA intends to address issues of legislation and policy, enforcement and monitoring, data and information on child labour, accessibility to education, social security, awareness-raising and advocacy, and networking and collaboration.

However, the Committee notes the Government's statement that the Informal Sector Control and Management Act, while in place, is not appropriately regulated by the relevant bodies, such as the Department of Community Development and other management bodies. The Committee also notes the Government's indication that statistics and data sourcing remains a major loophole in the country and that no concrete or reliable information can be used or seen as a guarantee of a true depiction of the national situation of child labour. ***The Committee strongly urges the Government to strengthen its efforts, within the framework of the National Decent Work Policy, the TACKLE project and the NPA, once adopted, to combat and progressively eliminate child labour in the country. In this regard, it requests the Government to take the necessary measures to ensure that the NPA is effectively adopted in the near future. It also urges the Government to take the necessary measures to ensure that the Informal Sector and Management Act is effectively regulated by the relevant bodies in order to monitor and combat child labour in the informal sector. It further requests the Government to take the necessary measures to ensure that sufficient data on the situation of working children in Papua New Guinea is made available, including information on the number of children working below the minimum age and the nature, scope and trends of their work.***

*Article 2(1). Minimum age for admission to employment.* The Committee had previously noted that, at the time of ratification, the Government of Papua New Guinea had declared 16 years to be the minimum age for admission to employment or work within its territory. It had noted that, by virtue of sections 18 and 103(1) of the Employment Act, 1978, no person under the age of 16 years shall be employed. However, the Committee had noted that section 103(4) of the Employment Act provides that a child of 14 or 15 years may be employed during school hours if the employer is satisfied that the child is no longer attending school. The Committee had also noted that, by virtue of sections 6 and 7 of the Minimum Age (Sea) Act, 1972, the minimum age to perform work on board ships is 15 and 14 years, respectively. It had reminded the Government that, by virtue of *Article 2(1)* of the Convention, no one under the age specified upon ratification shall be admitted to employment or work in any occupation.

The Committee notes the Government's statement that the Department of Labour and Industrial Relations has undertaken a review of the Employment Act and that, once reviewed and amended, this Act will cater to the minimum age requirement. In this regard, the Government indicates that the initial assessment of the Employment Act is currently being undertaken, which will set the foundation for the review of its provisions towards the end of 2011 and into 2012. The Government also indicates that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), which Papua New Guinea is in the process of implementing, will provoke the amendment of the Minimum Age (Sea) Act, with particular focus on sections 6 and 7. ***Noting that the Government has been referring to the review of the Employment Act and the Minimum Age (Sea) Act for a number of years, the Committee urges the Government to ensure that the proposed amendments are adopted in the near future. In this regard, it expresses the hope that the amended provisions will be in conformity with Article 2(1) of the Convention.***

*Article 2(3). Age of completion of compulsory education.* The Committee had previously noted that education is neither universal nor compulsory in Papua New Guinea, and that the law does not specify a legal age for entering school or an age at which children are permitted to leave school. It had noted that the Education Department has developed a ten-year National Education Plan for 2005–15 (NEP) to enable more children to be in school.

The Committee notes the Government's information that, given the fact that neither universal nor compulsory education is available in Papua New Guinea, it continues to make sure that a least a considerable number of school children complete basic education by increasing the number of secondary schools as well as technical and vocational training centres. In this regard, it notes the Government's information that, by 2011, several outcomes have been reached through the implementation of the NEP, such as the establishment of a sufficient number of schools and the improvement of retention rates and of the quality of education, and that other outcomes would be implemented by 2014. The Committee also notes that the TACKLE project aims to contribute to poverty reduction by providing equitable access to basic education and skills development to the most disadvantaged sections of society.

The Committee notes, however, the Government's indication that the major objective of the NEP with regard to basic education is to ensure that every 6-year-old child enters the Elementary Preparatory Grade by 2012 and completes *three years* of basic education, and that relevant, affordable and quality education is provided to selected grade 8 through grade 10 graduates. The Committee therefore observes that the NEP seems to only intend to make basic education compulsory until the age of 9. Moreover, the Committee notes that according to the ITUC, the gross primary enrolment rate is 55.2 per cent, only 68 per cent of these children remain at school at the age of 10, and less than 20 per cent of the country's children attend secondary school. Furthermore, in its concluding observations of 30 July 2010, the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about traditional attitudes that constitute obstacles to girls' education and that the completion rate for girls is much lower than for boys. The CEDAW was also concerned that Papua New Guinea has not met its national targets for universal education and gender equality of the Millennium Development Goals (CEDAW/C/PNG/CO/3, paragraph 37). According to the UNESCO Education for All Global Monitoring Report of 2010, Papua New Guinea has a long way to go in order to achieve gender parity in primary education. Consequently, the Committee observes with ***concern*** that there remain a significant number of children under the minimum age of admission to work who are not attending school and, in this regard, it reminds the Government that it considers it desirable to ensure compulsory education up to the minimum age for employment, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to take the necessary measures, particularly within the framework of the NEP, to provide for compulsory education for boys and girls up to the minimum age of admission to employment of 16 years. The Committee requests the Government to provide information on the progress made in this regard.***

*Article 3(2). Determination of hazardous work.* In its previous comments, the Committee noted that the national legislation does not contain a determination of the types of hazardous work.

In this regard, the Committee notes the ITUC's information that while it is prohibited for children younger than 16 years of age to perform hazardous work, night work and work in mines, there is no list of hazardous occupations in Papua New Guinea. The Committee once again reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee requests the Government to take the necessary measures to ensure that the types of hazardous work are determined***

*either by the national legislation or the competent authority, in accordance with Article 3(2), of the Convention, and to provide information on the consultations held with organizations of employers and workers concerned on this subject.*

*Article 3(3). Admission to types of hazardous work from the age of 16 years.* The Committee had previously noted that certain provisions of the national legislation prohibit hazardous work for children under the age of 16 years.

In this regard, the Committee notes the Government's indication that the conditions of work for young people will be examined through the ongoing Employment Act review, which will be further deliberated by all national stakeholders in October and November 2011. It notes the Government's statement that the legislation relating to occupational safety and health is also going to be reviewed in a way to ensure that hazardous work does not affect the health and safety of young workers. ***The Committee expresses the strong hope that the review of the Employment Act and of the legislation pertaining to occupational safety and health will be completed as soon as possible. It also hopes that the amendments made to the legislation will include provisions requiring that young persons between 16 and 18 years of age who are authorized to perform hazardous types of work receive adequate specific instruction or vocational training in the relevant branch of activity. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 7. Light work.* The Committee had previously noted that section 103(2) of the Employment Act states that children between 11 and 16 years are admitted to employment, if the employer obtains a medical certificate of the child's fitness for that type of employment and written consent from their parent or guardian, provided that such employment: (a) is not prejudicial to attendance at school; and (b) is outside the hours prescribed for attendance at school. It had also noted that the Government was seeking ILO technical assistance in order to solve the inconsistency of the national legislation with *Article 7* of the Convention, which specifies a minimum age of 13 to perform light work.

The Committee notes the Government's statement that the review of the Employment Act will address the inconsistency of the section pertaining to the minimum age for light work with the Convention. ***The Committee expresses the hope that provisions of the Employment Act, once reviewed and amended, will ensure that the minimum age for light work is set at 13 and that children between the ages of 13 and 16 are only engaged in light work activities, in conformity with Article 7 of the Convention. It requests the Government to continue providing information on the progress made in this regard.***

*Article 9(3). Registers of employment.* The Committee had previously noted that the Employment Act does not contain any provision requiring the employer to keep registers and documents of people under the age of 18 working for them. It had also noted that section 5 of the Minimum Age (Sea) Act provides for registers to be kept by people having command or charge of a vessel, which contains particulars such as the full name, date of birth and the terms and conditions of service of each person under 16 years of age employed on board the vessel. The Committee had requested the Government to take the necessary measures to ensure that, in conformity with *Article 9(3)* of the Convention, employers are obliged to keep registers that shall contain the names and ages or dates of birth, duly certified wherever possible, of people whom they employ or who work for them and who are less than 18 years of age.

The Committee notes the Government's information that this issue will be addressed within the review of the Employment Act and the Minimum Age (Sea) Act. ***The Committee requests the Government to indicate the measures taken to ensure that the obligation of keeping a register extends to all people below the age of 18 years and to provide information with regard to the progress made in ensuring that the Employment Act and Minimum Age (Sea) Act are in conformity with Article 9(3) of the Convention.***

***The Committee urges the Government to strengthen its efforts to ensure that, during its review of the Employment Act and of the Minimum Age (Sea) Act, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention. It requests the Government to provide information on any progress made in the review of these Acts in its next report and invites the Government to consider seeking technical assistance from the ILO.***

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the communication of the International Trade Union Confederation (ITUC) of 31 August 2011 and the Government's report.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* The Committee previously noted that, with respect to trafficking, the Criminal Code only provided protection to girls trafficked for the purpose of sexual exploitation. The Committee observed that there did not appear to be any similar provisions protecting boys or prohibiting the sale and trafficking of children for the purpose of labour exploitation. It noted the Government's indication that Papua New Guinea was embarking on a major legislative review and that issues such as gender and age would be at the forefront of this legislative review. The Committee further noted that women and children are trafficked within the country for the purpose of commercial sexual exploitation and domestic servitude and that women and children from China, Malaysia, the Philippines and Thailand are trafficked to Papua New Guinea for forced prostitution and that men are trafficked to logging and mining camps for the purpose of forced labour. Moreover,

the Committee noted that Government officials facilitate trafficking by accepting bribes to allow illegal migrants to enter the country or by ignoring victims forced into prostitution or labour.

The Committee notes the ITUC's observation that there are no legislative provisions prohibiting the sale and trafficking of children for the purpose of labour exploitation.

In this regard, the Committee notes that the Government confirms that there are no legislative provisions prohibiting the sale and trafficking of children for the purpose of labour exploitation. The Government indicates that the current amendments to the Employment Act will help address issues of trafficking of both boys and girls. The Committee observes, however, that the Government has been referring to a legislative review for a number of years. It recalls that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children for both labour and sexual exploitation, constitutes one of the worst forms of child labour, and that by virtue of *Article 1* of the Convention, all worst forms of child labour must be prohibited as a matter of urgency. In light of this situation, the Committee once again expresses its **deep concern** that comprehensive legislation prohibiting all forms of trafficking of both boys and girls has yet to be adopted. It also again expresses its **concern** regarding allegations of complicity by government officials in the trafficking of children. **The Committee once again requests the Government to take the necessary measures, as a matter of urgency, to adopt legislation prohibiting the sale and trafficking of both boys and girls under 18, for the purposes of labour and sexual exploitation. The Committee also urges the Government to redouble its efforts to ensure that perpetrators of human trafficking, and complicit government officials, are prosecuted and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to provide information in its next report on progress made in this regard.**

*Clause (c). Use, procuring or offering of a child for illicit activities.* The Committee previously noted that the relevant legislation does not specifically prohibit the use, procuring or offering of a child for the production and trafficking of drugs. It noted the Government's statement that the Department of Labour and Industrial Relations undertook, as part of the review process of the Employment Act, a scoping mission of the Employment Act, which concluded that where other legislation does not adequately address the worst forms of child labour, it is appropriate to fill these gaps through the Employment Act. The Committee also noted the Government's statement that the use and procuring of children for illicit activities is slowly rising.

The Committee notes the ITUC's allegation that the Dangerous Drugs Act does not specifically prohibit the use, procuring or offering of a child for the production and trafficking of drugs.

The Committee notes the Government's statement confirming that the current legislative reforms will prohibit the use, procuring and offering of children under the age of 18 for illicit activities, in particular for the production and trafficking of drugs. It observes, however, that the Government has been referring to these legislative reforms for a number of years. **Recalling that, pursuant to Article 1 of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency, the Committee once again urges the Government to take the necessary measures to ensure that provisions prohibiting this worst form of child labour are adopted as soon as possible, within the framework of the Employment Act review. It once again requests the Government to provide information on progress made in this regard, and to provide a copy of the relevant legislation, once adopted.**

*Articles 3(d) and 4(1). Hazardous work and determination of these types of work.* In its previous comments, the Committee noted that the legislation prohibits hazardous work, night work and work in mines for persons under 16 years of age. It also noted that apart from a definition of "heavy labour", the national legislation did not determine the types of hazardous work that were prohibited for children under 18 years of age. The Committee also noted the indication in the Government's report that the conditions of work for young people would be examined through the ongoing Employment Act review. It further noted the Government's statement that the review of the occupational health and safety related legislation has yet to begin, although the Government is in the process of consulting with the Government of Fiji for assistance in the process of the legislative review.

The Committee notes the ITUC's information that, while it is prohibited for children younger than 16 years of age to perform hazardous work, night work and work in mines, there is no list of hazardous occupations in Papua New Guinea.

The Committee notes the Government's information that section 96 of the Lukautim Pikinini Act, adopted in 2009, relates to provisions on harmful child labour and provides that a person who permits a child to be engaged in employment in conditions that: (a) are likely to be hazardous to the child; or (b) are harmful to the health or physical, mental, spiritual or social development of the child, is guilty of an offence. However, the Committee notes that there appear to be no provisions determining the types of hazardous work prohibited to children under 18 years. **The Committee once again urges the Government to take the necessary measures, within the context of the ongoing legislative review, to ensure that provisions which determine the types of hazardous work prohibited to children under 18 years of age are adopted in the near future, after consultation with the social partners. It requests the Government to provide information on progress made to this end and to provide a copy of the new legislation, once it has been adopted.**

*Article 5 of the Convention and Part V of the report form. Monitoring mechanisms and the application of the Convention in practice.* The Committee previously noted the Government's indication that there were gaps and loopholes in the existing structures and monitoring mechanisms with regard to child trafficking, prostitution and

children's involvement in illicit activities. The Committee also noted that, while the Department of Police and the Department of Labour and Industrial Relations are responsible for implementing and enforcing child labour laws, enforcement by these departments was poor due to a lack of resources and cultural acceptance of child labour.

The Committee notes the Government's information that, during the Child Labour Forum of 26–28 July 2011, a draft National Plan of Action for the Elimination of Child Labour was elaborated. The Committee also notes the Government's indication that, in the framework of the ILO–IPEC *Time-bound Programme* “Tackling child labour through education” (TACKLE project), many measures have been undertaken in order to combat child labour and its worst forms. Capacity-building workshops were conducted; three proposals for action programmes targeting the withdrawal and prevention of children in labour were discussed; child labour sensitization workshops were held at the University of Papua New Guinea; and child labour research was conducted in Port Moresby, with over 400 children participating. Moreover, the most recent study undertaken within the scope of the TACKLE project was conducted from December 2010 to February 2011 and pertained to street children and the commercial sexual exploitation of children in the national capital district of Papua New Guinea.

However, the Committee notes the Government's information that the incidence of worst forms of child labour continues to rise in the country. The Government also indicates that child prostitution, child exploitation, and the use of children for illicit activities, including the trafficking of drugs, are also increasing at a fast rate. The Committee notes the Government's information that several factors must be considered in the decision-making process to combat the worst forms of child labour, such as a greater collaboration between all stakeholders, the increase of enforcement and inspections in all industries, and awareness-raising in all media forms. The Committee, therefore, once again express its *concern* at the increasing incidence of the worst forms of child labour in the country, and at the weak monitoring mechanisms for the prevention of this phenomenon. ***It once again urges the Government to take the necessary measures, including through the allocation of additional resources, to strengthen the capacity of the Department of Police and the Department of Labour and Industrial Relations in terms of monitoring and combating the worst forms of child labour. It requests the Government to provide information on the measures taken in this respect and on the results achieved. The Committee also requests the Government to supply the results of the study on street children and commercial sexual exploitation of children and of the child labour research conducted in Port Moresby. To the extent possible, this information should be disaggregated by age and by sex.***

*Article 7(2). Effective and time-bound measures. Clause (e). Take account of the special situation of girls.*  
 1. *Child victims of prostitution.* The Committee previously noted the Government's indication that the number of girls (some as young as 13) engaging in prostitution as a means of survival was a growing problem in both urban and rural areas. Moreover, the Committee also noted that the laws prohibiting prostitution were selectively or rarely enforced, even in cases involving children.

The Committee observes the Government's information that it is implementing a National Action Plan against Commercial Sexual Exploitation of Children 2006–11 (NPA–CSEC). However, the Government does not provide any other information on measures taken to ensure the enforcement of laws prohibiting prostitution and to protect children under 18 from this worst form of child labour. ***The Committee once again expresses its concern at the prevalence of the commercial sexual exploitation of children in Papua New Guinea and urges the Government to take effective and time-bound measures to provide the necessary and appropriate direct assistance to persons under 18 to remove them from this worst form, and provide for their rehabilitation and social integration. In this regard, it requests the Government to provide information on the number of child victims of prostitution who have benefited from the implementation of the NPA–CSEC. It also once again requests the Government to take the necessary measures to ensure that those responsible for the commercial sexual exploitation of children are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

2. *“Adopted” children.* The Committee previously noted that children who are informally adopted are sometimes trapped into situations characterized by long hours of work, lack of rest and leisure, lack of freedom of mobility, and a deprivation of the right to education and medical treatment. Young girls are particularly vulnerable to this and, when brought into a household as babysitters, their role is often transformed into overworked, unpaid or underpaid domestic servant. The Committee also noted the Government's indication that the practice of “adoption” is a cultural tradition in Papua New Guinea. The Committee observed that these adopted girls often fell prey to exploitation, as it is difficult to monitor their working conditions, and it requested the Government to provide information on measures taken to protect these children. In this regard, the Committee noted the statement in the Government's report that the work conducted by these adopted children will be taken into consideration during the Employment Act review.

The Committee notes the ITUC's observations that indebted families sometimes pay off their dues by sending children – usually girls – to their lenders for domestic servitude. The ITUC indicates that “adopted” children usually work long hours, lack freedom of mobility or medical treatment, and do not attend school.

The Committee notes the Government's information that the Lukautim Pikinini Act, adopted in 2009, provides for the protection of children with special needs. A person who has a child with special needs in his care but who is unable to provide the services required for the upbringing of a child may enter into a Special Needs Agreement with the Family Support Service. Under these agreements, financial assistance may be provided. According to section 41 of the Lukautim Pikinini Act, the definition of a “child with special needs” includes children who have been orphaned, displaced or

traumatized as a result of natural disasters, conflicts or separation, or children who are vulnerable to violence, abuse or exploitation. However, the Committee must express its *concern* at the exploitation of “adopted” children under 18 years of age who are compelled to work under conditions similar to bonded labour or under hazardous conditions. *The Committee requests the Government to take immediate and effective measures to ensure, in law and in practice, that “adopted” children under 18 years of age may not be exploited under conditions equivalent to bonded labour or under hazardous conditions, taking account of the special situation of girls. In this regard, the Committee requests the Government to provide information on whether “adopted” children will be protected from exploitation and hazardous work within the framework of the Employment Act review. The Committee also requests the Government to provide information on the number of “adopted” children engaged in exploitative and hazardous work who have benefited from Special Needs Agreements. Finally, it requests the Government to provide a copy of the Lukautim Pikinini Act of 2009.*

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

## Paraguay

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

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

The Committee notes the comments of 31 August 2011 by the National Union of Workers (CNT), and the Government’s report. It also notes the detailed discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011.

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children and penalties.* In its previous comments the Committee noted that according to a study on the trafficking of persons in Paraguay produced in 2005 by the NGO Grupo Luna Nueva, referred to in comments by the International Trade Union Confederation (ITUC), the trafficking of persons, including boys and girls, at both the international and domestic levels, is on the increase in the country. It noted with satisfaction that new provisions, sections 129b and 129c, introduced in the Penal Code by Act No. 3440/08, punish trafficking for the purposes of prostitution, slavery and forced labour by means of force, threats, deception or trickery, by prison sentences of up to 12 years. It also noted that the Legislative Committee of the Roundtable on Trafficking is reviewing a bill on the combating of trafficking, which would cover all relevant aspects, including prevention, investigation, penalties, assistance and the social rehabilitation of victims. The Committee noted, however, that according to the Attorney General’s Office, only 50 per cent of the cases of trafficking occurring between 2004 and 2008 have been brought before the judicial authorities, although action to combat trafficking in 2008 led to an increase in the number of cases reported that year. Furthermore, according to a 2009 report on the trafficking of persons in Paraguay, available on the website of the Office of the United Nations High Commissioner for Refugees, some government officials, including police, border guards and elected officials reportedly facilitated trafficking crimes by accepting payments from traffickers; other officials allegedly undermined investigations or alerted suspected traffickers of impending arrests. Despite the serious nature of these allegations, the Paraguayan authorities reportedly did little to investigate acts of trafficking-related corruption and there were no prosecutions related to official complicity in trafficking offences.

The Committee notes the draft bill to combat the trafficking of persons attached to the Government’s report. It notes with *interest* that the bill prohibits human trafficking, both inside the country and across international borders, for the purpose of sexual exploitation and forced labour, and punishes offenders of such crimes with prison terms ranging from ten to 25 years where the victim is a minor. It notes that the bill will shortly be submitted to the National Congress. Furthermore, the Government’s report indicates that according to information supplied by the Public Prosecutor’s special unit to combat the trafficking of persons and sexual exploitation, 101 cases were registered between 2009 and 2011, and proceedings are still under way in 86 of these. The Committee notes that more than 60 victims of trafficking under the age of 18 years have been identified in the context of these proceedings. It notes, however, that the Government’s report provides no information on the number of convictions for trafficking in these cases. The Committee observes that the Conference Committee on the Application of Standards expressed deep concern at the particularly weak application of the national legislation and at the allegations of complicity of government officials with traffickers. *Consequently, the Committee urges the Government to strengthen its efforts to ensure the elimination of the sale and trafficking of children and young persons under 18 years of age in practice, making sure that thorough investigations are undertaken and completed, and that persons committing such offences, including government officials suspected of complicity, are effectively prosecuted, and that effective and sufficiently dissuasive sanctions are imposed on offenders. It requests the Government once again to provide information on the number of offences reported, investigations held, prosecutions, convictions and penal sanctions imposed. Lastly, it asks the Government to provide information in its next report on the progress made in enacting the draft bill on trafficking.*

*Clause (b). Use, procuring or offering of children for prostitution.* The Committee noted previously that according to a communication from the ITUC, most child victims of prostitution in Paraguay are girls, but transsexual boys are also beginning to work in prostitution as from age 13 and are often victims of trafficking to Italy. It further noted that according to a study carried out by ILO–IPEC in June 2002 on the commercial sexual exploitation of girls and boys,

and to the report of 9 December 2004 by the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78/Add.1), two-thirds of sex workers are minors.

The Committee notes the information in the Government's report to the effect that the Public Prosecutor's special unit to combat human trafficking and sexual exploitation registered 101 cases between 2009 and 2011 involving more than 90 girls and boys under 18 years of age who had fallen victim to commercial sexual exploitation. It nonetheless notes that the report supplies no information on the number of convictions obtained in these cases. The Committee notes that in its conclusions, the Conference Committee on the Application of Standards shared the concern expressed, inter alia, by the Employer and Worker members at the large number of children under 18 years of age who are victims of commercial sexual exploitation in practice. **Consequently, the Committee requests the Government to strengthen its efforts to combat the commercial sexual exploitation of children. It requests the Government to provide detailed information on the number of offences reported, investigations held, prosecutions, convictions and penal sanctions imposed for breach of the provisions of the national law concerning the use, procuring or offering of children for prostitution.**

*Clause (c). Use, procuring or offering of a child for illicit activities.* In its previous comments the Committee noted that the Government has taken several initiatives to prevent and punish the hiring of children for the purpose of drug trafficking, which included establishing in the police force special teams dealing with children, young persons and women. It nonetheless noted that the Government provided no information on the adoption of legislation to prohibit the use, procuring or offering of a child for illicit activities, particularly drug production and trafficking.

The Committee notes with *regret* that, once again, the Government's report provides no information in this regard. It reminds the Government that according to *Article 3(c)* of the Convention, the use, procuring or offering of a person under 18 years of age for illicit activities and, in particular, for the production and trafficking of drugs as defined in relevant international treaties, are among the worst forms of child labour and that, pursuant to *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. **The Committee urges the Government to take the necessary measures as soon as possible to prohibit by law the use, procuring or offering of a child for illicit activities, particularly the production and trafficking of drugs. It requests the Government to provide information on all progress made in this respect in its next report.**

*Article 5. Monitoring mechanisms. Trafficking and commercial sexual exploitation.* The Committee previously noted that according to comments from the ITUC, very few controls are carried out at borders, which makes it easy to transport children from Ciudad del Este or from Pedro Juan Caballero to Foz de Iguazú in Brazil, or from Encarnación and Puerto Falcón to Posadas and Clorinda in Argentina. The ITUC indicated that Argentine customs officers regularly apprehend minors who have crossed the border with Paraguay without being intercepted and either have no identity documents or have documents belonging to someone else. The ITUC also indicated that a number of Paraguayan officials from the Migration and Identification Department and the Immigration Department consider that they lack the authority to intervene in cases of trafficking and believe that the offence of human trafficking can be committed only in the country of destination of the victims. The ITUC also asserts that few cases of human trafficking are reported and even fewer instances of prosecution, due to the lack of awareness of the phenomenon among the public, and particularly among the police. Lastly, the ITUC asserted that the police lacks personnel specializing in investigations into the commercial sexual exploitation of children and that 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 nonetheless noted that one of the objectives of the ILO-IPEC project "Combating the worst forms of child labour through horizontal cooperation in South America 2009-13" is to strengthen the labour inspectorate and step up action by other law enforcers such as prosecutors, judges and the labour courts.

The Committee notes the information submitted by the Government representative at the Conference Committee on the Application of Standards to the effect that officials of the Ministry of the Interior have been trained to detect cases of commercial sexual exploitation, and to identify the offenders and the assistance to be provided to victims. The Government's report also indicates that in the context of the ILO-IPEC project "Combating the worst forms of child labour through horizontal cooperation in South America 2009-13", the Government of Paraguay has cooperated with Brazil to improve its telephone helpline system "FONOAYUDA" for reporting offences related to commercial sexual exploitation. **Referring to the conclusions of the Conference Committee on the Application of Standards, the Committee strongly encourages the Government to pursue its efforts to build the capacity of law enforcement agencies, particularly the police, the judiciary and customs officials, to combat the trafficking and commercial sexual exploitation of children, and requests it to continue to provide information on the measures taken and the results obtained.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from becoming engaged in the worst forms of child labour, removing them therefrom and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee noted previously that a unit has been created within the National Committee for Childhood and Adolescence (SNNA) for the purpose of assisting child victims of trafficking pending their social integration. Furthermore, in order to prevent the trafficking of children and assist child victims of trafficking, SNNA regional offices have been created in the border departments of Alto Paraná, Ciudad del Este and Encarnación. The Committee also noted that two programmes have been launched with European Union support and

in collaboration with ILO–IPEC. The first – *Alas Abiertas* – is aimed at eliminating the trafficking and commercial sexual exploitation of children in the department of Encarnación and is carried out by the NGOs BECA and CECTEC. The second is aimed at eliminating the internal trafficking of children through the rehabilitation of child victims of trafficking and is implemented by the NGOs *Luna Nueva* and INECIP.

The Committee notes that at the Conference Committee on the Application of Standards, the Government representative stated that nationwide consultations have been conducted with a view to elaborating a second National Plan for the prevention of the commercial sexual exploitation of children and young persons. According to the Government’s report, this document is currently being reviewed and will shortly be submitted for approval by the National Council for Children and Adolescents. The Government states that, in addition, the SNNA has renewed its campaign to combat human trafficking and the commercial sexual exploitation of children and adolescents, with the support of ILO–IPEC. The Committee also takes due note of the information sent by the Government concerning the implementation of the BECA, CECTEC, *Luna Nueva* and INECIP programmes. ***The Committee requests the Government to pursue its efforts to withdraw child victims from trafficking and commercial sexual exploitation and to ensure their rehabilitation and social integration. It also requests the Government to provide information on the measures taken and the results obtained in the context of the National Plan to prevent the commercial sexual exploitation of children and adolescents.***

*Clause (d). Children at special risk.* 1. *Children working in domestic service – the “criadazgo” system.* The Committee previously noted a communication from the ITUC indicating that according to a study carried out between 2000 and 2001, more than 38,000 children between the ages of 5 and 17 years worked in domestic service in the houses of others. The study also indicated that another group of children who are very vulnerable to exploitation – those engaged under the “criadazgo” system, live and work in the houses of others in exchange for food and board and education. The ITUC also indicated that a study conducted in 2002 by the Documentation and Studies Centre shows that nearly 60 per cent of children working in domestic service and children 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 also noted that according to a study on child domestic work in urban and rural areas in Paraguay, carried out in 2005 in cooperation with ILO–IPEC, 11 per cent of children between 10 and 17 years of age worked in remunerated domestic service and while one third of these were employed as paid domestic workers, the other two-thirds were employed under the “criadazgo” system.

The Committee notes that at the Conference Committee on the Application of Standards, the Government representative stated that the Government was planning to take specific measures within the National Committee for the Prevention and Elimination of Child Labour and the Protection of the Work of Young Persons (CONAETI) in order to protect children and adolescents working for others, and was committed to implementing strategies to remedy the use of children in domestic work. It nonetheless observes that the Government’s report provides no information in this regard. It further notes that, in its conclusions, the Conference Committee on the Application of Standards underlined the seriousness of the “criadazgo” system, deeming it a violation of the Convention. ***Consequently, the Committee once again urges the Government to take effective and time-bound measures to protect children working as domestic servants or under the “criadazgo” system against the worst forms of child labour. It requests the Government to provide detailed information on progress made in this regard, in terms of the number of children under 18 years of age who have been prevented from engagement in, or withdrawn from, the worst forms of child labour in the domestic work sector.***

2. *Street children.* Further to its previous comments, the Committee takes note of the CNT’s assertion that many children work in the streets in order to meet the needs of their families. The Committee notes the information sent by the Government to the effect that the ABRAZO programme has benefited another 2,730 children in 2011, making a total of 4,530 children under 14 years of age to have benefited from the programme. It also notes with *interest* that, out of this total, more than 3,000 children have stopped working in the streets. The Government’s report also indicates that a public policy proposal for social development (2010–20) was adopted in 2010, and that one of its priority objectives is to ensure that care is provided for 6,000 street children by 2013. Lastly, the Committee takes due note of the PAINAC programme, implemented by the SNNA, which aims to reduce the number of children and adolescents with no family links who live in the streets, and to set up emergency protection arrangements. According to the Government, the programme reached out to 463 children and young persons between 2009 and July 2011. ***While welcoming the measures adopted by the Government, the Committee requests the Government to strengthen its efforts to protect street children engaged in the worst forms of child labour and to continue to provide information on results obtained under the ABRAZO and PAINAC programmes.***

***Furthermore, in accordance with the recommendation of the Conference Committee on the Application of Standards, the Committee strongly encourages the Government to continue to avail itself of ILO technical assistance.***

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

## Peru

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2002)**

The Committee notes the comments of 29 August 2011 from the Single Confederation of Workers of Peru (CUT) and the Government's report.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* Further to its previous comments, the Committee takes due note of the information provided by the Government to the effect that as part of the ILO–IPEC regional project on the elimination of child labour in Latin America (2006–10), a document on the policy and national strategy for the prevention and elimination of child labour (2011–21) has been elaborated and awaits adoption. The Committee further notes that the Government has taken a number of measures that contribute directly or indirectly to the eradication of child labour, such as the JUNTOS programme, which aims to promote schooling for children aged from 6 to 14 years from poor homes in rural areas by awarding cash benefits to families contingent on school attendance by the children. It takes due note of the information sent by the Government that 780,393 children and young people between the ages of 6 and 14 years benefited from this programme and that 98.9 per cent of these children have attended school regularly. The Committee also notes that, according to the Government, the labour inspectorate visited 3,723 workplaces that employ children and young people and sanctioned 168 of them between January 2007 and March 2011. The Government's report further indicates that 10,066 children and young people were withdrawn from worst forms of child labour and hazardous work. Lastly, the Committee notes the study on the extent and characteristics of child labour (2007–08) attached to the Government's report on the Worst Forms of Child Labour Convention, 1999 (No. 182). It observes that according to the results of a survey on child labour conducted in 2007 which are reproduced in the abovementioned study, 33 per cent of children between the ages of 5 and 11 years and 48.5 per cent of 12–13 year-olds carry on an economic activity. Of these children, 68.7 per cent of the 5–11 age group and 69.3 of the 12–13 age group are engaged in hazardous work.

While taking due note of the measures adopted by the Government to eliminate child labour, the Committee must express **concern** at the significant number of children under 14 years of age who are engaged in economic activity, particularly hazardous work. **The Committee strongly encourages the Government to strengthen its efforts to progressively eliminate child labour and requests it to send information on the measures adopted and results obtained through the implementation of the National Strategy for the Prevention and Elimination of Child Labour (2011–21). It also requests the Government to provide information on the application of the Convention in practice, including recent statistics on the employment of children and young persons, extracts from labour inspection reports showing the number and nature of offences reported and the penalties imposed.**

*Article 2(1).* 1. *Scope of application.* The Committee notes that, according to the CUT, most children under the age of 14 who carry on an economic activity work in the informal economy, in particular as itinerant traders, shoe shiners, in markets or as domestic workers.

The Committee observes that according to sections 3 and 4 of the General Labour Inspection Act of 2006, labour inspectors are responsible for supervising child labour wherever it occurs including in private homes. The Committee notes from information in a 2011 report on the worst forms of child labour in Peru, available on the website of the High Commissioner for Refugees, 70 labour inspectors are specialized in the supervision of child labour and 100 inspectors received training in this area in 2010. The report nonetheless states that inspectors often lack the resources they need to carry out effective inspections. **The Committee requests the Government to continue to take measures to adapt and strengthen the labour inspectorate so as to improve inspectors' capacity to identify instances of child labour in the informal sector and to guarantee the protection afforded by the Convention to children under 14 years of age carrying on an activity in the informal sector. It requests the Government to provide information on the measures taken in this regard and on the results obtained.**

2. *Minimum age of admission to employment or work.* In its previous comments, the Committee noted that section 51(2) of the Children and Young Persons Code allows permission to work to be granted exceptionally to young persons aged 12 years and over. The Government indicated that permission for children aged from 12–14 to undertake paid work is at the discretion of the administrative authority, which seldom grants it. In view of the Government's statement that there are no regulations on light work but that in practice a significant number of children under the age of 14 years work, the Committee asked the Government to take the necessary steps to ensure that no child under the age of 14 years may be allowed to work.

The Committee notes that, according the Government, a Bill to amend the Children and Young Persons Code is currently under examination by a Special Committee of the Congress of the Republic set up to revise the Children and Young Persons Code, and that it sets the minimum age for admission to employment or work at 15 years. **The Committee expresses the firm hope that the Bill to amend the Children and Young Persons Code will be adopted at the earliest possible date so as to guarantee that no child under the age of 14 years may be allowed to work. It requests the Government to provide information on all progress made in this respect.**

*Article 3(1) and (2).* *Minimum age of admission to hazardous work and determining hazardous types of work.* Further to its previous comments, the Committee notes the adoption of Supreme Decree No. 003-2010-MIMDES of

20 April 2010 approving a detailed list of occupations and processes that are hazardous or harmful to the health and morals of young persons. It observes that the list sets out 29 types of work deemed to be hazardous by their nature or the conditions in which they are carried out, including work in mines and domestic work other than for the family. It observes that Decree No. 003-2010-MIMDES was adopted pursuant to the 2001 Children and Young Persons Code and notes with *satisfaction* that section 3 of the Decree provides that the ban on hazardous work applies to children and young persons, defined as anyone under the age of 18 years pursuant to section 1 of the Children and Young Persons Code.

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments, the Committee noted that under section 57 of the 2001 Children and Young Persons Code, night work by young persons between 15 and 18 years of age may be permitted on an exceptional basis by a judge if it does not exceed four hours per night. The Government indicated that the Bill to amend the Children and Young Persons Code would amend section 57 of the Code so that exceptions to the ban on night work laid down in this provision may be authorized by a magistrate or else by the competent authority for young persons aged 16 years and over, instead of 15 years and over, on condition that the work does not exceed four hours per night during the period from 7.00 p.m. to 7.00 a.m.

The Committee notes that according to section B.8 of Supreme Decree No. 003-2010-MIMDES of 20 April 2010 approving the list of hazardous types of work, night work by children and young persons between 7 p.m. and 7 a.m. which has not previously been authorized by a judge, is prohibited. It observes, however, that the draft revision of the Children and Young Persons Code has still not been adopted. It reminds the Government that according *Article 3(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: (a) that their health, safety and morals are fully guaranteed; and (b) that they have received adequate specific training in the relevant branch of activity. *The Committee expresses the firm hope that the Bill to amend the Children and Young Persons Code will be adopted as soon as possible so as to guarantee that only children and young persons over the age of 16 years may be authorized to carry on night work between 7 p.m. and 7 a.m. for a limited period of time and that the conditions laid down in Article 3(3) of the Convention are respected. It requests the Government to provide information on all progress made in this respect.*

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)**

*Articles 3, clauses (a) and (b), and 7(1) of the Convention. Sale and trafficking of children; forced labour; use, procuring or offering of a child for prostitution; and penalties.* In its previous comments the Committee noted that the Penal Code prohibits the sale and trafficking of children for the purpose of labour exploitation or for sexual exploitation (section 153), and provides for prison sentences ranging from 12 to 25 years where the victim is under 18 years of age. It also noted the Penal Code prohibits and penalizes incitement to prostitution, procuring and sex tourism and provides for heavier penalties where the victim is under 18 years of age. The Committee further noted that two studies produced by ILO-IPEC in 2007, entitled “The demand side of the commercial sexual exploitation of children: a qualitative study in South America (Chile, Columbia, Paraguay and Peru)” and “Unforgivable: a study on the commercial sexual exploitation of children and young persons in Peru (Cajamarca, Cuzco, Iquitos and Lima)” that commercial sexual exploitation of children of both sexes exists in Peru, particularly in the bars and nightclubs of the old city centre of Lima. This worst form of child labour likewise exists in the tourist centres of Cuzco, Iquitos and Cajamarca.

The Committee takes note of the information provided by the Government to the effect that the number of reported instances of children and young persons being trafficked for the purpose of commercial sexual exploitation fell by 17 per cent between 2008 and 2009. It notes that the Ministry of the Interior set up a telephone hotline in 2010 for victims of trafficking and the calls are referred to the National Directorate for Criminal Investigations. The Government’s report indicates that between 2009 and June 2010, there were 212 instances of the sale and trafficking of children were reported and that 91 per cent of the victims were girls between 14 and 17 years of age. It notes, however, that the Government provides no information on the number of convictions and penalties handed down as a result of these reports. The Committee notes that according to the 2011 Trafficking in Persons Report-Peru, which is available on the website of the United Nations High Commissioner for Refugees, boys and girls are victims of sex trafficking and forced labour in Peru. The department of Madre de Dios and the cities of Cuzco and Lima were identified as some of the main destinations for victims of commercial sexual exploitation. It also notes that forced child labour exists particularly in informal goldmines, among begging rings in urban areas and in cocaine production and transportation. The Committee further notes that according to information in the abovementioned report, although the Government has made efforts to combat the sale and trafficking of persons for the purpose of commercial sexual exploitation, its efforts are inadequate in combating human trafficking for the purpose of forced labour. The report indicates that no convictions were recorded in 2010 despite an increase in the number of cases of forced labour in the country. Lastly, the Committee notes the allegations of the involvement of state officials referred to in the same report.

While noting the existence of legislative provisions that prohibit and punish the sale and trafficking of children and the use, procuring and offering of a child for the purposes of prostitution, the Committee expresses *deep concern* at the extent of the sale, trafficking and commercial sexual exploitation of children and young persons under 18 years of age. *It accordingly urges the Government to strengthen its efforts to secure the elimination of these worst forms of child*

**labour in practice by ensuring that thorough investigations are conducted and completed and that persons committing such offences, including state officials suspected of complicity, are prosecuted, and that convictions are followed by effective and sufficiently dissuasive penalties. It requests the Government to provide detailed information on the number of offences reported, investigations conducted, prosecutions, convictions and penalties imposed pursuant to the Penal Code, specifying whether the penalties applied under section 153 were for the sale and trafficking of children for the purpose of sexual exploitation or forced labour.**

*Clause (d). Hazardous work.* 1. *Child labour in mines.* In its previous comments, the Committee noted the ITUC's allegation that artisanal mines abandoned by large producers are being worked by families of Peruvian workers. Children work from the age of 5 and help their mothers to find rocks containing gold deposits. When they are older, they work with their fathers and sometimes dive into flooded shafts to extract ore. The children handle mercury, which is toxic, in extracting the gold from the rocks. They also transport ore outside the mines, carrying very heavy loads of stone and rock on their backs. The mines are located in unhealthy places and the children are therefore exposed to serious injury and harm. They breathe contaminated air and are exposed to soil and water contaminated with metals and chemicals. The mining industry is mostly concentrated in the regions of Madre de Dios, Puno, Ayacucho, Arequipa and La Libertad. The Committee also noted that according to an ILO-IPEC study of 2007 on girls in mining, both boys and girls are in practice engaged in hazardous types of work in small artisanal mines, with girls being frequently involved in extraction, transport and processing work. It also noted that according to information in a document on the National Plan for the Prevention and Elimination of Child Labour (2005–10) (PNPETI), an estimated 50,000 children work in artisanal mines in Peru.

The Committee takes due note of the adoption of the Supreme Decree No. 003-2010-MIMDES of 20 April 2010 approving a detailed list of occupations and processes that are hazardous or harmful to the health and morals of young persons and prohibiting mine work for children and young persons under 18 years of age. It also notes General Directive No. 001-2011-MTPE/2/16 laying down general guidelines for the inspection of child labour. It further notes the information in the Government's report to the effect that 4,003 inspection orders were issued between January 2007 and April 2011 concerning child labour. It nonetheless observes that the Government's report does not specify whether such inspection applied to mine work. While noting the adoption of new legislative measures to prohibit mine work for children and young persons under the age of 18 years, the Committee must express its *concern* at the situation of the thousands of children engaged in hazardous work in mines in practice. **The Committee urges the Government to take the necessary steps to ensure that these children enjoy in practice the protection laid down in national legislation, by strengthening the capacity of the labour inspectorate so as to secure the inspection of mining sites. It requests the Government to provide statistical information on the number and nature of offences reported, investigations undertaken, prosecutions, convictions and sanctions applied pursuant to Supreme Decree No. 003-2010-MIMDES of 20 April 2010.**

2. *Child domestic work.* The Committee previously noted that according to the ITUC, parents send their children to cities to work as domestic servants in order to help their families. As a rule, the children receive no pay, although the employer provides board and lodging. The ITUC reports that child servants work at least 12 hours a day and are at the disposal of their employers 24 hours a day. Many work with no rest and without so much as a day's leave. Very many children are victims of abuse and exploitation, such as insults and corporal punishment. There is also sexual abuse, albeit to a lesser extent. The ITUC also indicated that nationwide the number of domestic servants under the age of 18 years is estimated to be 110,000. The Committee also noted that a 2007 ILO-IPEC study on approaches to prevention and the vulnerability of children engaged in domestic work in families that live in rural and urban areas found that domestic work by children is widespread in the country.

The Committee notes the information from the Government to the effect that 3,641 domestic workers in Lima received training on their rights as workers in the course of 2010. Furthermore, it notes with *interest* that according to Supreme Decree No. 003-2010-MIMDES of 20 April 2010 approving a detailed list of occupations and processes that are hazardous or harmful to the health and morals of young persons, domestic work by children and young persons under 18 years of age in the homes of others is treated as hazardous work. **The Committee requests the Government to pursue its efforts to protect children engaged as domestic workers from hazardous work, and encourages it to take measures to strengthen the capacity of the child labour inspectorate to enforce Supreme Decree No. 003-2010-MIMDES of 20 April 2010 in practice. It requests the Government to provide information on the number of inspection visits carried out, offences reported and penalties imposed, in its next report.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such forms of labour and ensuring their rehabilitation and social integration.* 1. *Trafficking and commercial sexual exploitation of children.* In its previous comments, the Committee noted that a National Plan to Combat Forced Labour was produced in 2007 and applies to trafficking in persons.

The Committee notes the information contained in the Government's report indicating that a campaign for the prevention of human trafficking was launched in November 2009 and that in the course of it, the Ministry for Women and Social Development conducted a campaign entitled "More checks, fewer roads to exploitation", which aims to prevent the trafficking of children and young persons through the supervision of overland transport. The Government's report further indicates that the National Police Force has launched a plan of police operations to prevent and punish human trafficking, which involves the inspection of strategic locations. To this end, patrols are organized in cooperation with representatives of the Public Prosecutor and the local authorities in order to provide assistance to children and young persons in situations

that put them at risk. According to the Government, children and young persons removed from these worst forms of child labour are placed in shelters run by the National Police Force, the Ministry for Women and Social Development and the judiciary. ***The Committee strongly encourages the Government to continue to take immediate and effective measures to remove child victims from trafficking and commercial sexual exploitation and ensure their rehabilitation and social integration. It requests the Government to provide information on the number of children removed from these worst forms of child labour following implementation of the plan of police operations organized by the National Police Force, together with information on the social integration measures afforded to such children.***

2. *Children working in mines.* The Committee noted previously that according to the ITUC, in Peru there is no specific policy on the elimination of child labour in mines. It observed that the elimination of this worst form of child labour was one of the PNEPTI's objectives and asked the Government to provide information on the impact of measures adopted in this regard.

The Committee notes the information sent by the Government to the effect that a multisectoral working party has been created for the prevention and elimination of child labour in the informal mining sector and it consists of representatives of various Government ministries. The Committee also notes the results obtained in the course of implementing the PNEPTI and, in particular, that between 2006 and 2010, 10,066 children and young persons were withdrawn from hazardous work. The Committee also notes from information in a 2011 report on the worst forms of child labour, available on the website of the United Nations High Commissioner for Refugees, that inspections were carried out in the mining sector in 2010, during which 13 children were removed from work and channelled to the social services. ***The Committee requests the Government to step up its efforts to remove children carrying on hazardous work in mines from this worst form of child labour. It requests the Government to continue to provide information on the number of children removed from hazardous work in mines following inspection visits, together with information on the measures taken to ensure their rehabilitation and social integration.***

*Clause (d). Children at special risk. Child domestic workers.* In its previous comments the Committee noted that, according to the ITUC, there are no programmes designed to help children working as domestic servants and that there are very few or no shelters that have the means to provide care for such children.

The Committee notes the information provided by the Government to the effect that the Regional Directorate for Labour and Employment Promotion of Metropolitan Lima organized training workshops for domestic workers to alert them to their rights and the rights of children and young persons employed as domestic servants. It also notes that the Government has implemented various programmes to combat poverty ("Juntos", "Trabaja Peru" and "Jóvenes a la Obra"), which indirectly assist children and young persons working as domestic servants. It nonetheless notes that there appears to be no programme designed specifically to provide care for such children. ***The Committee strongly encourages the Government to take effective and time-bound measures to protect children working as domestic workers from the worst forms of child labour, and to provide information made in this regard in terms of the number of children under 18 years who have been prevented or removed from the worst forms of child labour in the domestic sector.***

*Part V of the report form. Application of the Convention in practice.* Further to its previous comments, the Committee notes the 2007–08 ILO–IPEC study on the extent and characteristics of child labour, appended to the Government's report. It notes that according to the results of a child labour survey conducted in 2007 by the National Statistics Institute, the results of which are reproduced in the study, 3.3 million children aged between 5 and 17 years, i.e. nearly 42 per cent of children and young persons in that age group, are engaged in economic activity. Furthermore, the Committee notes with *concern* that 70 per cent of children and young persons who are economically active carry on hazardous work. ***The Committee urges the Government to strengthen its efforts to ensure the elimination of the worst forms of child labour, including trafficking and commercial sexual exploitation and hazardous work in practice. It requests the Government to provide information on the nature and extent of, and trends in, these worst forms of child labour, indicating the number of children protected by the measures giving effect to the Convention, the number and nature of the offences reported, investigations undertaken, prosecutions, convictions and penalties imposed. To the extent possible all this information should be disaggregated by age and sex.***

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

## Philippines

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 2(1) of the Convention. Scope of application. Children working on their own account or in the informal economy.* The Committee previously noted that the provisions regulating the minimum age of employment (section 139 of the Labour Code, section 4 of the Republic Act No. 9231, Amending R.A. 7610 and sections 1 and 4 of Order No. 18) did not appear to apply to persons working outside of a formal labour relationship. The Committee also noted the information from the Labour Force Survey of 2005 that there were approximately 155,000 self-employed working children aged 5–17. In this regard, it requested the Government to provide information on the manner in which self-employed children benefit from protection provided for in the Convention.

The Committee notes the information in the Government's report that the Department of Labour and Employment issued a memorandum to all regional directors of the Department directing them to consistently conduct monitoring visits to informal sector activities in their region, in order to address child labour. The Committee also notes the information from ILO-IPEC on the *Philippine Time-bound Programme (PTBP)* phase II, that all regional offices implement a "Workers in the Informal Sector Augmentation Programme", and that 5 per cent of this programme's funding is earmarked for child labour amounting to 11.6 million Philippine pesos (PHP) (approximately US\$265,476). The Committee further notes that a survey in four provinces entitled "Baseline Survey for the ILO-IPEC *PTBP* Phase 2" was completed in January 2011, which identified 9,350 children for withdrawal, prevention and protection from child labour through the *PTBP*. This survey indicates that in the province of Quezon, the majority of children identified were self-employed, while in the province of Masbate, 45 per cent of the children identified were self-employed. The survey also indicates that many children in the country are engaged in selling goods in the informal economy. ***In this regard, the Committee urges the Government to strengthen its efforts to ensure that children working in the informal economy or on a self-employed basis benefit from the protection of the Convention, including by taking specific measures to expand the reach and strengthen the capacity of the labour inspectorate to monitor child labour in the informal sector. It requests the Government to provide information on the measures taken and on the results achieved.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted that schooling is compulsory for children aged 6–12 years. The Committee also noted that the Government was implementing several measures to keep children in school and that school drop-out rates had decreased at both the elementary and secondary levels. However, it also noted the Government's indication in its report of 20 March 2009 to the Committee on the Rights of the Child (CRC/C/PHL/3–4, paragraph 211) that serious concern remained about the increasing number of children who are not able to go to school, estimated at 4.2 million children.

The Committee notes the information in the Government's report that it is implementing various programmes to facilitate children's participation in, and completion of, school. The Government indicates that to keep students in the education system it implements initiatives called "Alternative Delivery Modes", which offer students an additional option to formal schooling, making schooling more inclusive and effective. These Alternative Delivery Modes include the Drop-out Reduction Programme and the Off-school Approach, designed to prevent drop outs and improve school completion. The Government also indicates that the Department of Education is taking several measures to improve the curriculum and integrate socially marginalized groups into the education system. Moreover, the Government indicates that it is implementing a project entitled "Tracking system for students at-risk for dropping out", which intends to establish country-wide indicators to track and address such at-risk students. In addition, the Committee notes the information from ILO-IPEC on the *PTBP* that the Department of Social Welfare and Development is implementing a Conditional Cash Transfer (CCT) programme, for which children's attendance in school is one of the conditions. The coverage of the CCT programme has recently been expanded from 1 million to 2.3 million beneficiaries.

The Committee notes the Government's statement that these initiatives contribute to increasing the number of children under the age of 15 who complete basic education. Nonetheless, the Committee must emphasize the necessity of linking the age of admission to employment (15 years) to the age limit for compulsory education (12 years). If compulsory schooling comes to an end before a young person is legally entitled to work, there may be an enforced period of inactivity. The Committee therefore considers it desirable to ensure that compulsory education is up to the minimum age for employment, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee requests the Government to take the necessary measures to raise the age of completion of compulsory schooling to 15 years. It also urges the Government to pursue its efforts to increase school enrolment and attendance rates among children under 15 years of age, and to continue to provide information on the results achieved in this regard.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that phase II of the *PTBP* for the years 2009–13, aiming to work towards a 75 per cent reduction in child labour, focused on agriculture, mining, fishing and domestic labour. However, it also noted, that according to the 2001 survey on children, out of 4 million economically active children aged 5–17 years, 246,000 children were between the ages of 5–9 years, and 1.9 million were between the ages 10–14 years. Moreover, the Committee noted that 2.3 million children were found to be working in the agricultural sector.

The Committee notes the information in the Government's report that the Department of Labour and Employment, through its Bureau of Working Conditions, regularly conducts training for labour inspectors aimed at enhancing their capacity to enforce labour standards, including child labour laws and policies. The Government indicates that five such training sessions were held in 2010. The Government also indicates that, to reduce child labour in agriculture, it is implementing an Integrated Services for Migratory Sugar Workers Project, which aims to improve the socio-economic conditions of these workers and their families by, inter alia, facilitating access to social protection. The Government further indicates that the Philippine Labour and Employment Plan for 2011–16 recognizes that children remain vulnerable as they continue to work and engage in hazardous occupations. To address this, the Government has committed to take several measures to prevent and eliminate child labour, including by strengthening strategic partnerships, improving access of child labourers and their families to integrated services and establishing a child labour knowledge management

system. Moreover, the Committee notes the information from ILO–IPEC on the *PTBP* phase II that the National Statistics Office is undertaking preparations for a National Survey on Working Children in 2011.

The Committee takes due note of the measures taken by the Government to combat child labour, but must once again express its *concern* at the high number of children under the age of 15 years working in the Philippines, particularly in the agricultural sector. ***It urges the Government to strengthen its efforts, within the framework of the PTBP phase II as well as through the abovementioned national measures and the labour inspectorate, to prevent and eliminate child labour. It requests the Government to provide information on progress made in this regard. It also requests the Government to provide information from the National Survey on Working Children, once it is completed, particularly with regard to the number of children under the minimum age engaged in economic activity.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Sale and trafficking of children.* In its previous comments, the Committee noted that the sale and trafficking of children under 18 years for labour and sexual exploitation is prohibited by several legislative provisions. However, the Committee noted the allegation of the International Trade Union Confederation (ITUC) that many children are easy targets for trafficking due to 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 further indicated that despite training to police and prosecutors on child trafficking, the number of successful prosecutions of trafficking to date was disappointing. Moreover, the Committee noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 22 October 2009, expressed concern at the high number of women and children who continued to be trafficked from, through and within the country for purposes of sexual exploitation and labour, as well as at the low number of prosecutions and convictions of traffickers (CRC/C/PHL/CO/3-4, paragraph 78).

The Committee notes the information from the Government that the Department of Labour and Employment (DOLE) has issued Administrative Order No. 65 of 2011 to create the Steering Committee Against Trafficking in Persons to serve as an advisory body on policies and programmes to prevent labour-related trafficking of local and overseas Filipino Workers. This Steering Committee will seek to ensure compliance with the Anti-Trafficking in Persons Act No. 9208 of 2003. The Committee also notes the Government's statement that it is imperative to foster and coordinate efforts between concerned government agencies, local governments and other partners, to ensure the effective prevention of the trafficking of children. In this regard, the Government indicates that it conducted orientation seminars for local officials throughout 2011 to raise awareness on the laws governing overseas recruitment and trafficking. The Government also indicates that it has proposed further orientations in regions where illegal recruitment and human trafficking are prevalent. The Committee further notes the Government's indication that the DOLE has included, in the proposed Revised Rules and Regulations Governing Recruitment and Placement of Local Employment, a provision requiring recruitment and placement agencies to commit to not engaging in the recruitment or placement of children as provided by legislation prohibiting child trafficking.

The Committee takes due note of measures taken by the Government to combat trafficking in children but observes that this remains an issue of concern in practice. ***The Committee accordingly requests the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions of persons who engage in the sale and trafficking of children are carried out. It further requests the Government to provide statistical information on the number of prosecutions, convictions and penalties imposed. Finally, it requests the Government to take the necessary measures to ensure the adoption of the provision of the Revised Rules and Regulations Governing Recruitment and Placement of Local Employment requiring agencies not to engage in the placement or recruitment of children, as prohibited by Acts Nos 9208 and 9231.***

2. *Compulsory recruitment of children for use in armed conflict.* The Committee previously noted that, pursuant to Act No. 7610, the compulsory recruitment of children under 18 years to serve in the Armed Forces of the Philippines (civilian units or other armed groups) is prohibited. However, the Committee noted the ITUC's comments of 30 August 2006, that numerous children under 18 years continued to take part in armed conflicts in the country: the New People's Army included 9,000 to 10,000 regular child soldiers, and children were reportedly being recruited in the armed opposition groups, in particular the Moro Islamic Liberation Front (MILF). The Committee further noted the signature of an action plan by the MILF in July 2009, with concrete and time-bound steps to prevent the recruitment of children and promote their reintegration into civilian life. However, the Committee also noted that the CRC, in its concluding observations of 22 October 2009, expressed concern at the continued reports on the recruitment of children by armed groups to serve as combatants, spies, guards, cooks or medics (CRC/C/PHL/CO/3-4, paragraph 69). The CRC expressed further concern that children continued to join armed groups mainly due to poverty, indoctrination, manipulation, neglect or absence of opportunities, and at the lack of effective implementation of the legislation prohibiting the recruitment and use of children in hostilities, including no prosecutions for the recruitment or use of children in armed conflict (CRC/C/OPAC/CO/1 of 15 July 2008, paragraph 20).

The Committee notes the information in the Annual report of the Special Representative of the Secretary-General for children and armed conflict (SRSG) of 21 July 2011 that, pursuant to the action plan signed by the United Nations and the

MILF in 2009, child protection efforts had been translated into concrete action by the MILF (A/HRC/18/38 paragraph 13). The Committee also notes the information on the website of the SRSG that the process of identifying child soldiers began in August 2010, and that by April 2011, approximately 600 children from the MILF had been registered by trained community members with the support of UNICEF. Efforts would be made to ensure that these children have access to basic services such as education, health and community programmes to prevent recruitment. The Committee further notes the information from the Annual report of the SRSG that, in April 2011, the SRSG met with high-level representatives of the Government Peace Panel of the National Democratic Front of the Philippines (NDFP–NPA) to support the negotiation and development of an action plan with the NDFP–NPA on the recruitment and use of children within its ranks. This report indicates that NDFP–NPA representatives agreed to continue the talks and to start negotiations on the provisions of an action plan (A/HRC/18/38, paragraph 46).

Lastly, the Committee notes that the SRSG has identified the Philippines as a country where the implementation of action plans has been delayed due to a lack of funding and where the reintegration of children formerly associated with armed forces and groups continues to be hampered by the lack of economic opportunities in already poor regions (A/HRC/18/38, paragraphs 18 and 19). ***The Committee requests the Government to strengthen its efforts to ensure that the practice of forced or compulsory recruitment of children under 18 years of age in armed conflict is eliminated within the country. In this regard, it urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are imposed. The Committee also requests the Government to pursue and support efforts to ensure that children under 18 years are released from the ranks of all armed groups within the country, and that these children are rehabilitated and reintegrated into their communities.***

*Article 3(d) and Article 4(1). Hazardous work and child domestic work.* The Committee previously noted that children under 18 years of age are prohibited to perform the types of hazardous work listed in Department Order No. 4 of 1999 (section 3). However, it 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. In this regard, the Committee 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, as 83 per cent of child domestic workers lived in their employers’ home, and were given little time off. The ITUC underlined that the Domestic Workers’ Bill (Batas Kasambahay), would be a vital step in addressing the abuse and exploitation of child domestic workers in the Philippines. The Committee noted the Government’s indication that the Domestic Workers’ Bill was under deliberation.

The Committee notes with *interest* the information in the Government’s report that the Domestic Workers’ Bill has been approved on its third and final reading in the Senate, and that this Bill sets the minimum age requirement for domestic workers at 18 years of age. The Committee also notes the Government’s statement that through the ABK 2 Initiative Project (a project implemented by World Vision during 2007–11 to combat child labour through education), a total of 4,948 children in domestic labour were assisted. Lastly, the Committee notes that, within the framework of the second phase of the ILO–IPEC assisted *Philippine Time-bound Programme (PTBP)* (for the years 2009–13), targeted beneficiaries include child domestic workers. ***The Committee requests the Government to take measures to ensure, in the very near future, the adoption of the Domestic Workers’ Bill providing a minimum age of 18 years for domestic work. It also requests the Government to pursue its efforts, within the framework of the ABK 2 Initiative and the PTBP, to protect persons under 18 years from domestic work in the form of forced labour or hazardous domestic work, and to provide information on the results achieved.***

*Articles 5 and 7(1). Monitoring mechanisms and penalties.* The Committee previously noted the establishment of the Inter-Agency Quick Action Team under the Sagip Batang Mangagagawa (SBM), an inter-agency mechanism to monitor and rescue children from the worst forms of child labour.

The Committee notes the information in the Government’s report that the SBM Quick Action Teams conducted a total of 845 rescue operations and rescued a total of 2,980 child labourers from hazardous and exploitative work between 2003 and the first half of 2011. Moreover, the Government states that, through inspections, the DOLE removed two child labourers from a sugar cane farm in Batangas Province. The Committee also notes the Government’s indication that charges have been filed against two persons with relation to the trafficking of 17 women and 1 minor in Cagayan de Oro City. The Government’s report also contains information regarding the conviction of two persons for engaging a child in prostitution in two cases involving four children (both boys and girls). The Government indicates that one of the perpetrators was given a penalty of 10 to 12 years imprisonment for each offence. The Committee further notes the Government’s indication that since 2003, the DOLE has permanently closed 26 establishments which had employed 113 children for prostitution or obscene performances. ***Taking due note of the significant number of children removed from the worst forms of child labour, the Committee urges the Government to ensure that all persons found to be engaging such children in these worst forms are penalized with sufficiently effective and dissuasive penalties. In this regard, the Committee requests the Government to provide information on the number of investigations, prosecutions, convictions and penal sanctions applied for all cases involving child trafficking, the commercial sexual exploitation of children and the engagement of children in hazardous activities.***

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

## Romania

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1975)**

*Article 2(1) of the Convention. Scope of application.* The Committee noted previously that section 2 of the Labour Code stipulates that the Code applies only to persons employed under a work contract. It also noted that following instructions from the Government, the labour inspectorate supervises the working conditions only of persons hired under an individual work contract and has no authority as regards the work of the self-employed. The Committee recalled that the Convention applies not only to work performed under an employment contract, but to all types of employment or work, including self-employment.

The Committee notes the information in the Government's report that children involved in intolerable and hazardous work in the formal and informal sectors are identified, in various branches of activity, by professional bodies such as the labour inspectorate, social welfare and child protection, education, health and the police. The Committee also notes the Government's indication that Act No. 52/2011 of April 2011 regulates casual work done by day labourers in various sectors, including agriculture, hunting and fishing, cinematographic and audiovisual performances and productions, and cleaning and maintenance activities. The Government indicates that according to section 4(3) of the Act, no one under the age of 16 years may be engaged as a day labourer. ***The Committee requests the Government to provide information on the number of children engaged in intolerable and hazardous work or in casual work, in the informal economy, who have been identified and withdrawn by the labour inspectorate and other competent professional bodies. It also requests the Government to provide a copy of Act No. 52/2011 with its next report.***

*Article 3(1) and (2). Determination of types of hazardous work.* The Committee noted previously that a National Guidance Committee had drafted a decision on work hazardous to children, and took note of the Government's statement that all those activities or types of work not covered by the draft were to be considered as light work able to be performed by young persons between 15 and 18 years of age. The Committee requested the Government to provide a copy of the decision on work hazardous for children as soon as it was adopted.

The Committee notes with **satisfaction** that Government Order No. 867/2009 on the prohibition of hazardous work for children has been adopted and been sent to Office. The Order bars children under 18 years of age from intolerable and hazardous work, which, by reason of its nature or the conditions in which it is performed, is liable to harm their safety, health, development or morals. The Committee also notes the detailed list of hazardous tasks appended to Order No. 867/2009, which sets out a full range of types of hazardous work prohibited for children under 18 years of age in a number of categories: work in which children are exposed to agents that are harmful to safety and health, such as physical, biological or chemical substances; work in which children are exposed to processes or activities that are harmful to safety and health, such as the handling of machinery, work with ferocious animals, construction work or work involving risk of accident; work in which children are exposed to conditions harmful to safety, health and morals, such as night work, underground work, work in cemeteries or work involving the production or sale of alcoholic beverages; and work preventing participation in some form of education.

*Article 9(3). Keeping of registers.* The Committee noted previously that Decision No. 161/2006 set forth the procedure for setting up a general register of employees and keeping it up to date.

The Committee notes the information provided by the Government to the effect that Decision No. 161/2006 has been amended and supplemented by Government Order No. 37/2010. Under the Order, employers must transmit to the Territorial Labour Inspectorate information on the identity of each employee, the date of their employment, the duties/occupations they perform and the type of individual work contract. Furthermore, employers are required to transmit the employment register electronically to the Territorial Labour Inspectorate in the district where the headquarters or domicile of the employer is located, at the latest one working day before employment of the employee begins. ***The Committee requests the Government to provide a copy of Order No. 37/2010, together with a copy of the model employment register to be kept by employers pursuant to the Order.***

*Part V of the report form. Application of the Convention in practice.* Further to its previous comments, the Committee notes the information sent by the Government to the effect that during the period from 1 June 2009 to 31 December 2010, labour inspectors carried out 133,843 inspections to detect and combat undeclared work. As a result of these visits, 14,947 employers were penalized for employing undeclared labour, including 147 penalized for using the labour of young persons between 15 and 18 years of age without any legal form of employment. The labour inspectors thus identified 29,251 cases of persons working with no legal form of employment, including 196 young people between 15 and 18 years of age. Furthermore, the Government indicates that during the period under consideration, the Territorial Labour Inspectorates filed 53 complaints with the criminal prosecution authorities for breach of the statutory age of admission to employment. Of these, 40 gave rise to criminal investigations and for the other 13 criminal charges were not pressed. ***The Committee requests the Government to continue to provide information on the manner in which the Convention is applied, including statistical data on the employment of children and young persons, extracts from reports by the inspection services, and the number and nature of offences involving children and young people. To the extent possible, the statistics provided should be disaggregated by age and sex.***

## Saudi Arabia

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Clause (a). Worst forms of child labour. All forms of slavery or practices similar to slavery. Forced or compulsory labour.* The Committee previously observed that Order No. 1/738 of 4 July 2004 prohibits child labour and the exploitation of children. It also observed that this regulation does not explicitly prohibit the forced or compulsory labour of children under 18 years. It noted that Ministerial Order No. 244 of 20/7/1430 (2009) on human trafficking, prohibits trafficking for the purpose of forced labour, but observed that this provision does not appear to prohibit forced labour that occurs independently of human trafficking. Referring to its comments made in its 2008 observation under the Forced Labour Convention, 1930 (No. 29), the Committee noted that migrant domestic workers are vulnerable to exploitation in their working conditions, such as the retention of their passports by their employers, which in turn deprives them of their freedom of movement to leave the country or change their employment. In this regard, the Committee noted that the Committee on the Elimination of Discrimination against Women, in its concluding observations of 8 April 2008, expressed concern regarding the economic and sexual exploitation and ill-treatment of young migrant girls employed as domestic servants (CEDAW/C/SAU/CO/2, paragraph 23).

The Committee notes the Government's reference to section 61(1) of the Labour Code which prohibits employers from using workers to exact labour without the payment of wages. In this regard, the Committee once again refers to its comments made under Convention No. 29 in 2009, where it noted that section 239 of the Labour Code limits the penalties for this offence to monetary fines. Moreover, the Committee notes that section 7 of the Labour Code excludes domestic workers from its scope of application. ***The Committee therefore requests the Government to take the necessary measures to ensure that persons who commit offences with regard to the forced or compulsory labour of children not linked to trafficking are prosecuted and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to provide information on the number of prosecutions, convictions and penalties applied for cases involving the forced labour of children under the age of 18, particularly with regard to children engaged in domestic work.***

*Clause (b). Use, procuring or offering of a child for prostitution and pornography.* The Committee previously noted the Government's information that the use, procuring or offering of a child for prostitution or for pornographic performances was prohibited by the Holy Koran and the Prophet's Sunna, but observed that this did not appear to be contained in legislation. It also observed that Order No. 1/738 of 2004 prohibits child labour exploitation, but does not specifically prohibit the use, procuring or offering of children under 18 years for prostitution and pornography. However, the Committee noted the Government's indication that draft regulations on child protection, containing provisions for the protection of children from maltreatment and neglect, including sexual, psychological and physical exploitation were being examined in the Majilis El Shoura. The Committee expressed the firm hope that these regulations would include provisions specifically prohibiting the commercial sexual exploitation of children.

The Committee notes with **concern** an absence of information on this point in the Government's report. ***The Committee accordingly urges the Government to take the necessary measures to ensure that legislation specifically prohibiting the use, procuring or offering of children under 18 years for prostitution and for the production of pornography or pornographic performances is adopted in the near future.***

*Clause (d). Hazardous work. Domestic and agricultural workers.* The Committee previously noted that agricultural workers and domestic workers do not benefit from the protection laid down in the Labour Code.

The Committee notes the Government's statement that the exclusion of agricultural workers and domestic workers from the provisions of the Labour Code does not justify or authorize exploitation of workers in these sectors. The Government states that the reason for such exclusions is the difficulty of applying the Labour Code to agricultural and domestic work. The Committee also notes the Government's indication that the Ministerial Order No. 2839 of 1 October 2006 on hazardous types of work does not apply to the categories excluded by the Labour Code. However, the Government states that it pays attention to ensuring that children under the age of 18 avoid engaging in work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. ***Recalling that the prohibition on hazardous work applies to persons under 18 years of age working in all sectors, including in domestic work and in agriculture, the Committee requests the Government to take effective and time-bound measures to ensure that children working in these sectors do not engage in hazardous work. It requests the Government to provide information on the specific measures taken in this regard, and on the results achieved.***

*Articles 5 and 7(1). Monitoring mechanisms and penalties. 1. Trafficking.* The Committee previously noted that sections 3 and 4 of Order No. 244 provide sufficiently dissuasive penalties for the offence of trafficking a person under 18. However, the Committee noted the information in the UNICEF report entitled "Preventing child trafficking in the Gulf countries, Yemen and Afghanistan" (UNICEF Trafficking Report), released in 2007, that a UNICEF rapid assessment survey estimated that tens of thousands of children, particularly boys from Yemen, are trafficked to Saudi Arabia for the purpose of labour exploitation each year. The Committee also noted that Saudi Arabia is a destination country for Nigerian, Pakistani, Afghan, Chadian and Sudanese children trafficked for the purpose of labour exploitation. The Committee requested information on the application of Order No. 244 in practice.

The Committee notes the Government's statement that, due to the recent promulgation of Order No. 244 in 2009, there have been no infringements detected of this law and no trials for perpetrators of human trafficking. It also notes the Government's statement that it intends to take measures to prosecute persons found in violation of child trafficking, regardless of their nationality. However, noting previous information that the trafficking of persons under 18 does occur in Saudi Arabia, the Committee expresses its *deep concern* regarding the lack of detection of cases of child trafficking by law enforcement bodies. ***The Committee therefore urges the Government to take immediate measures to strengthen the relevant monitoring mechanisms to ensure that thorough investigations and robust prosecutions of offenders of child trafficking are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the progress made in this regard in its next report, including the number of violations detected, prosecutions, convictions and penalties applied in connection with cases of trafficking of persons under 18 years of age.***

2. *Child begging.* The Committee previously noted that the penalties provided in Order No. 1/738 for the offence of hiring children for the purpose of begging were not sufficiently effective and dissuasive.

The Committee notes the Government's statement that Order No. 1/738 does not impose sufficiently effective and dissuasive penalties for the offence of hiring children for the purpose of begging. However, the Government states that using a child for the purpose of begging should be considered to be an act of human trafficking under Order No. 244. In this regard, the Committee notes the Government's indication that this issue is under examination by the competent bodies, due to the dangerous nature of the phenomenon. The Government states that a regulation is currently being examined which would guarantee the adoption of measures to ensure that persons who employ, import, or expose children under 18 to begging shall be prosecuted, and that sanctions shall be imposed. The Committee recalls that, pursuant to *Article 7(1)*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***It accordingly urges the Government to take the necessary measures to ensure that, through the examination of this issue by the competent bodies, regulations are adopted containing sufficiently effective and dissuasive penalties for persons who use, procure or offer children under 18 years for the purpose of begging. It requests the Government to provide a copy of the provisions adopted for this purpose with its next report, as well as information on prosecutions carried out in this regard and penalties imposed.***

3. *Employing children under 18 years as camel jockeys.* The Committee previously noted that, according to the Royal Decree No. 13000 of 17 April 2002, a camel owner who employs a jockey under 18 years of age to participate in camel racing will not, in case of winning a race, receive the prize. While the Committee noted the Government's statement that a camel owner who employs a person under 18 is punished whether or not he wins the race, it observed that this did not appear to be specified in the text of the Royal Decree No. 13000. Moreover, the Committee observed that the penalties provided for in the Royal Decree No. 13000 did not appear to be sufficiently effective and dissuasive. It drew the Government's attention to its observation of 2006 made on the application by Qatar of Convention No. 182, in respect of the prohibition and elimination of the use of children under 18 years for camel racing as well as the use of robot jockeys.

The Committee notes the Government's statement that participants under 18 are prohibited from engaging in camel racing. The Government also states that measures are being taken so as to eliminate any violations of children's rights in this regard. The Government states that each jockey is required to furnish official documents attesting to their age (national ID, passport or residence permit), after which they will be issued a "jockey card", with a photo stamped with the particular festival's seal. The Government states that, before a race, the competent committees inspect the jockey card, matching the photo to the name on the ID. The Government also states that, pursuant to rules on animal care, robot jockeys are prohibited from races which are supervised by the National Guard. The Government also states that it endeavours to put a limit on any of the excesses which may occur in private races not supervised by the National Guard. ***The Committee requests the Government to provide a copy of the instructions or regulations outlining the procedure for identification checks, the issuance of "jockey cards", and the verification of such cards prior to the race. It also requests the Government to provide information on the concrete measures taken to ensure that children under the age of 18 are not engaged as camel jockeys in private races that are not supervised by the national guard. Lastly, it requests the Government to provide information on the penalties imposed on persons found to be engaging children in camel racing, in addition to the preventive measures taken.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Measures taken to prevent the engagement of children in the worst forms of child labour and to provide direct assistance for their removal as well as for their rehabilitation and social integration.* 1. *Trafficking of children for labour or sexual exploitation.* The Committee previously noted that there were reported cases of children trafficked from Bangladesh to the Middle East to work as camel jockeys, in addition to women under the age of 18 who were trafficked from Indonesia for the purpose of commercial sexual exploitation. The Committee noted the Government's information that numerous efforts were being deployed by the Government to eliminate the trafficking of children, including the adoption of new legislation on trafficking in persons. In this regard, the Committee requested a copy of Order No. 244.

The Committee notes that section 15 of Order No. 244 states that measures shall be adopted for victims of trafficking during investigations and prosecutions. These measures include informing the victim of his/her legal rights; referring the victim to a physician if he/she appears to be in need of medical or psychological care; admitting the victim to

a medical, psychological and social rehabilitation centre if necessitated by his/her condition or age; admitting the victim to a specialized centre if he/she needs shelter; and providing police protection if necessary. The Committee also notes the Government's statement that, pursuant to Order No. 244, a committee to combat human trafficking crimes was established. The mandate of the committee to combat human trafficking crimes includes undertaking research, collecting information and undertaking informational campaigns as well as social and economic initiatives to prohibit and combat human trafficking. The Government further indicates that the committee to combat human trafficking crimes shall develop a policy which encourages the active search for victims, and the provision of training related to the identification of victims. ***The Committee requests the Government to provide information on the effective and time-bound measures taken to prevent the trafficking of children taken by the committee to combat human trafficking crimes, as well as on the policy developed to facilitate the identification of victims of trafficking. It further requests the Government to provide information on the number of child victims of trafficking for the purpose of commercial sexual exploitation or camel racing who have been identified and admitted to a shelter or a medical, psychological and social rehabilitation centre, pursuant to Order No. 244.***

2. *Street children and children engaged in begging.* In its previous comments, the Committee noted the information in the UNICEF Trafficking Report that it is officially estimated that there are over 83,000 children selling small goods and begging on the streets of major cities in Saudi Arabia. It also noted that according to a UNICEF report entitled "Trafficking in children and child involvement in beggary in Saudi Arabia", the Ministry of Social Affairs established the Office for Combating Beggary, and that these offices employ social workers and inspectors, who cooperate with law enforcement agencies to undertake daily raids in areas where beggars are found, and arrest them. Once arrested, children under 15 are sent to the Shelter Centre in Jeddah. However, this UNICEF report indicated that the majority of persons involved in begging are foreign nationals, and if found to be undocumented or illegal residents, these children are deported within a period of two weeks from their arrest. The report also noted that there is no effort made to distinguish between trafficked and non-trafficked children. This UNICEF report further indicated that these children were not provided with psychological or legal assistance, and that there were few services for the rehabilitation and social integration of these children.

The Committee notes the Government's statement that the Ministry of Social Affairs has set up a Centre for Foreign Child Beggars in Mecca. The Government indicates that this Centre will welcome children who have been arrested by the competent bodies and provide them with social, health and psychological services until their parents can be identified by the competent authorities. Moreover, the Government indicates that work is underway to rent buildings for the establishment of similar centres in the governorates of Jeddah and Medina. The Committee also notes the Government's indication that several civil society institutions are represented in the Centre For Foreign Child Beggars, under the authority of the Charity Association, and that the Charity Association provides children with the necessary services until they have been reunited with their families or repatriated. The Committee further notes the Government's statement that it endeavours to distinguish between children who are trafficked and those that are not, in its handling of children engaged in begging. With regard to foreign children, the Government indicates that the police appoint investigators to carry out searches for their families. After their parents have been identified, the Government indicates that coordination is ensured with the repatriation units at the Passport Department to complete the procedures for their travel. The Government indicates that those children that cannot be identified are released and provided with guidance. ***Noting the significant number of children engaged in begging in Saudi Arabia, as well the number of children trafficked for this purpose, the Committee urges the Government to pursue its efforts to provide appropriate services to these children for their rehabilitation and social integration. It requests the Government to provide information on the number of children that have been provided services through the Centre For Foreign Child Beggars in Mecca, as well as those in Jeddah and Medina, once established. It also requests the Government to provide information on the number of child victims of begging who have been provided with support for their repatriation and family reunification, as well as on the support provided to children whose parents are not identified.***

*Parts IV and V of the report form. Labour inspectorate and the application of the Convention in practice.* The Committee previously noted the information available in the UNICEF Trafficking Report that while trafficking of children remains a significant issue in Saudi Arabia, there is a severe lack of data on this topic.

The Committee notes the Government's indication that it will take measures to complete available data on child trafficking, if the phenomenon is present in the country. It also notes the Government's statement that labour inspectors did not detect, during inspections, any cases which would require intervention and notification. ***The Committee once again expresses its concern at the lack of data available on the trafficking of children, and it urges the Government to take the necessary measures to ensure that sufficient data on the worst forms of child labour, including child trafficking, the exploitation of children in commercial sexual exploitation and in begging, is made available. To the extent possible, all data provided should be disaggregated by sex and by age.***

## Senegal

### Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* In its previous comments the Committee noted that, according to a joint report by ILO–IPEC, UNICEF and the World Bank, entitled “Understanding Children’s Work and Youth Employment in Senegal”, of February 2010, in 2005 the number of children aged between 5 and 14 years who were economically active was estimated at more than 455,000, i.e. more than 15 per cent of children in this age group. The percentage is much higher in rural areas (21 per cent) than in urban areas (5 per cent). Agriculture is the sector that employs the largest number of children: 80 per cent of working children between the ages of 5 and 14 years are to be found in agriculture, and nearly 85 per cent of these are unpaid family workers. The report also indicates that child domestic labour is common and that nearly 22 per cent of children at work are involved in this activity in urban areas. Furthermore, children in the 5–14 age group employed as paid domestic servants have an average working week of 52 hours. The average working week for all economic activities engaged in by children aged from 5–14 years is 27 hours. The study also shows that more than 160,000 young persons aged between 15 and 17 years are compelled to engage in hazardous work.

The Committee notes that the Government once again states that it will send the Office information on any developments in the measures to combat child labour and particularly the impact of the programmes under way. However, the Committee observes with *regret* that the Government has, for a number of years, been stating that it will provide such information. ***Expressing deep concern at the situation of the many children under 15 years of age who work and at the number of hours devoted to this work, the Committee therefore urges the Government once again to strengthen its efforts to combat child labour, paying particular attention to children who are engaged in hazardous work including domestic work. It once again requests the Government to provide information in its next report on the number of children prevented from entering the labour market prematurely and the number of children withdrawn from work in the context of the action programmes under way.***

*Article 2(1). 1. Scope of application.* In its previous comments the Committee noted that although the national legislation excludes all forms of self-employment by children, in practice poverty has facilitated the development of such activities among children (shoeshiners, street vendors), who engage in them illegally. It noted the allegations of 1 September 2008 submitted by the National Confederation of Workers of Senegal (CNTS) to the effect that even though children working on their own account can be regarded as traders, the minimum age is not respected in the informal sector. A number of activities in this area have been carried out by the Government in collaboration with ILO–IPEC with a view to withdrawing self-employed children from work.

The Committee notes the Government’s statement that it affirms its political will to combat child labour, and to focus in particular on the case of children who work on their own account. The Government states that it will inform the Committee of any measures taken to this end and report on the results obtained. ***The Committee once again requests the Government to intensify its efforts to ensure that children under the age of 15 years who work on their own account are withdrawn from this work. It requests the Government to provide information on the measures taken to this end and on the results obtained in its next report.***

*2. Minimum age of admission to employment or work.* The Committee noted previously that section L.145 of the Labour Code allows waivers from the minimum age of admission to employment by order of the Minister in charge of labour, taking account of local circumstances and the tasks to be performed. It noted the Government’s statement that the question of reform of the legislation is still under study.

The Committee notes that, according to the Government, the revision of the legislation is still under way. A study has begun to examine the consistency of domestic legislation with ILO fundamental standards, including those that concern child labour, and once it has been completed, a second phase will be devoted to amending the legislation in the light of the Convention’s requirements. The Government states, however, that time will be needed as the work cannot be done in the immediate future because the necessary financial resources are lacking.

The Committee reminds the Government that, according to *Article 2(1)* of the Convention, no one under the minimum age of admission to employment or work specified upon ratification of the Convention (15 years) shall be admitted to employment or work in any occupation, except for light work such as that authorized by *Article 7* of the Convention. It also reminds the Government that *Article 2(2)* of the Convention allows the minimum age to be raised, but not to be lowered once it has been declared. ***Noting that the Government has been referring since 2006 to the revision of its legislation, the Committee once again urges it to take the necessary steps to ensure that the legislation is amended at the earliest possible date to bring it into line with the Convention by only allowing exceptions to the minimum age for admission to employment or work, such as the one provided for by section L.145 of the Labour Code, in the specific cases set out by the Convention.***

*Article 3(3). Admission to hazardous work 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 on child labour provides that the minimum age for admission to hazardous work is 18 years. It noted, however, that according to Order No. 3750/MFPTEOP/DTSS of 6 June 2003 establishing the nature of hazardous tasks prohibited for children and young people (Order No. 3750), some

tasks listed as hazardous may be carried out by persons under the age of 16. Thus, pursuant to section 7 of Order No. 3750, work in underground mining and quarrying is authorized for boys under the age of 16 years for light work such as sorting and loading ore, the handling and haulage of small wagons within the weight limits set by section 6 of the same Order, and the overseeing of handling of ventilation equipment. Furthermore, children of 16 years of age are allowed to perform the following tasks: work using circular saws provided that authorization in writing has been obtained from the labour inspector (section 14); the operation of vertical wheels, widgets and pulleys (section 15); operation of steam valves (section 18); work on mobile platforms (section 20); and the performance of perilous feats in public performances in theatres, cinemas, cafes, circuses and cabarets (section 21). The Committee reminded the Government that, according to *Article 3(3)* of the Convention, hazardous work, such as the tasks provided for in Order No. 3750 of 6 June 2003, may be performed by young persons of over 16 years of age on the condition that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee also noted that the Government would undertake to amend all the provisions that are inconsistent with the Convention in the course of the current legislative reform, and to take account of the Committee's comments.

The Committee notes with *regret* the information provided by the Government to the effect that the legislative reform is still under way and that for financial reasons, there has been no noteworthy progress since the last report. ***Noting that the Government has been referring to the legislative reform since 2006, the Committee once again urges it to take the necessary steps to ensure that the legislation is amended at the earliest possible date so as to ensure that children under the age of 16 may not be employed in work in underground mining and quarrying. It also requests the Government once again to take the necessary measures in the context of the present legislative revision, to ensure that the conditions set in Article 3(3) of the Convention are fully guaranteed for young persons aged between 16 and 18 years engaged in the work provided for in Order No. 3750 of 6 June 2003. It requests the Government to provide information on progress made in this regard in its next report.***

***The Committee encourages the Government, in the course of revising the relevant legislation, to take account of the comments the Committee has been making on the discrepancies between the national legislation and the Convention. It requests the Government to provide information on progress made in this matter and invites it to seek technical assistance from the ILO if necessary.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

The Committee notes the communication of 31 August 2011 from the International Trade Union Confederation (ITUC), and the Government's reply, dated 17 November 2011.

*Articles 3, clause (a), and 7(1) of the Convention. Sale and trafficking of children for economic exploitation; forced labour and penalties. Begging.* In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations on the second periodic report of Senegal of October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the practices in Koranic schools run by *marabouts* who use *talibé* children on a large scale for economic gain by sending them to agricultural fields or to the streets for begging and other illicit work to earn money, thereby preventing them from having access to health, education and good living conditions. It noted the comments of the National Federation of Independent Trade Unions of Senegal (UNSA) indicating that the situation of street children is more worrying than ever because begging is on the rise, particularly in the country's large urban areas. It observed that, according to the joint report of November 2007 of ILO-IPEC, UNICEF and the World Bank entitled "Child begging in the Dakar region", in Dakar alone around 7,600 children are affected by the widespread phenomenon of begging. *Talibés* account for most of the child beggars (90 per cent). The Committee expressed its deep concern at the extent of the phenomenon of the use of *talibé* children for purely economic purposes in Senegal.

The Committee notes the comments of the ITUC indicating that the number of *talibé* children compelled to beg, consisting mainly of boys between the ages of 4 and 12 years, was estimated at 50,000 in 2010. The ITUC observes that most of these children live in isolated rural areas of Senegal or are victims of trafficking from neighbouring countries, including Mali and Guinea-Bissau. It emphasizes that these children in practice receive very little education and are extremely vulnerable, because they depend totally on their Koranic teacher or *marabout*. They live in unhealthy conditions and in poverty, and are the victims of physical and psychological abuse if they do not succeed in earning their financial quota through begging. With regard to the causes of the phenomenon, the ITUC explains that poverty alone cannot explain this form of exploitation, as the evidence tends to show that certain *marabouts* earn more through children begging than the income necessary to maintain their *daaras* (Koranic schools). The ITUC adds that there are no records of arrests, prosecutions or convictions of *marabouts* for compelling *talibés* to beg up to August 2010, when the Prime Minister announced the adoption of a Decree prohibiting begging in public places. Following this measure, seven Koranic teachers are reported to have been arrested and convicted to prison sentences under Act No. 02/2005 of 29 April 2005 to combat the trafficking of persons and similar practices and to protect victims. Nevertheless, these sentences are reported never to have been imposed. Indeed, the ITUC indicates that branch associations of Koranic teachers are reported to have condemned the application of Act No. 02/2005 and threatened to withdraw their support from the President in the elections in February 2012. In October 2010, the President therefore reversed the decision of the Government. Finally, the ITUC emphasizes the existence of ambiguity in the national legislation in Senegal in relation to the prohibition of

begging, as section 245 of the Penal Code does not prohibit “the act of seeking alms on days, in places and under conditions established by religious traditions”.

The Committee notes that, in its reply to the ITUC’s allegations, the Government indicates that the Penal Code does not contain any ambiguity concerning the prohibition of begging in general, and particularly by children, and that Act No. 02/2005 is an integral part of the Penal Code. With regard to the application of the Act, the Government indicates that the issue of the publication of information on the prosecutions initiated will be examined with the Ministry of Justice with a view to determining its feasibility.

The Committee nevertheless notes with *concern* that, although section 3 of Act No. 02/2005 prohibits the organization, for economic gain, of begging by others or the employment, procuring or deceiving of someone with a view to causing that person to beg, or the exertion of pressure on a person to beg or to continue begging, section 245 of the Penal Code provides that “the act of seeking alms on days, in places and under conditions established by religious traditions does not constitute the act of begging”. It also observes that, from an initial reading of these two provisions in conjunction, it would appear that the act of organizing begging by *talibé* children cannot be criminalized as it does not constitute an act of begging according to section 245 of the Penal Code. The Committee further notes that the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, in her report of 28 December 2010 submitted to the Human Rights Council following her mission to Senegal (A/HRC/16/57/Add.3), noted the inconsistency between section 3 of Act No. 02/2005 and section 245 of the Penal Code (paragraph 31). The Committee also notes that the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Family, in its concluding observations of 3 December 2010 (CMW/C/SEN/CO/1, paragraph 26), noted with concern that more than half of the children who are forced to beg in the Dakar region come from neighbouring countries and that the Government of Senegal has not taken any practical steps to end regional trafficking in children for the purpose of begging.

The Committee must once again express its *deep concern* at the large number of *talibé* children used for purely economic ends and the failure to give effect to Act No. 02/2005 in respect of Koranic teachers who make use of begging by *talibé* children for economic purposes, a situation which has led to the release of the seven *marabouts* convicted in 2010. The Committee reminds the Government that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour and that, in accordance with *Article 7(1)* of the Convention, all the necessary measures shall be taken to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of sufficiently effective and dissuasive penal sanctions. ***The Committee therefore urges the Government to take immediate and effective measures, in law and practice, to ensure that persons engaged in the sale and trafficking of talibé children under 18 years of age for the purposes of economic exploitation, or who make use of these children for begging for purely economic purposes, are prosecuted effectively and that sufficiently effective and dissuasive sanctions are applied to them. In this respect, the Committee requests the Government to take the necessary measures to harmonize the national legislation so as to guarantee that the use of begging by talibé children for economic exploitation will be criminalized under section 245 of the Penal Code and under Act No. 02/2005. It requests the Government to provide information on the measures adopted in this respect, and on the number of investigations conducted, prosecutions, convictions and penal sanctions imposed on such persons.***

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Talibé children.* In its previous comments, the Committee noted the comments by UNSAS indicating that the measures taken in respect of *talibé* children were still inadequate. The Committee also noted that a partnership for the removal and reintegration of street children (PARRER) had been established in February 2007 and is made up of members of the Senegalese Administration, NGOs, the private sector, development partners, religious organizations, civil society and the media.

The Committee notes the ITUC’s comments indicating that the Government has adopted measures to promote a programme of modern *daaras* administered or regulated by the State. It further notes that the Government established the Inspectorate for *daaras* in 2008 to undertake the programme for the modernization of *daaras* and the integration of modern *daaras* into the public education system. It further notes that the Ministry of Education signed an agreement with PARRER for the development of a harmonized school programme for Koranic schools. This programme, financed by the PARRER, was launched in January 2011. Furthermore, at the beginning of the 2000s, the Government began to recruit specialized inspectors with the function of inspecting modern *daaras*.

In its reply to the ITUC’s comments, the Government indicates that it is engaged in improving the management and framework for the system of teaching in *daaras*. It adds that, within the framework of the Inspectorate of *daaras*, a number of actions are envisaged, particularly with a view to training Koranic teachers and *talibés* in the occupation of their choosing. It also plans to include certain actions in its strategy for the prevention of begging by children, such as the implementation of social protection measures in the areas of origin of migrant children, the establishment of programmes of conditional transfers for vulnerable families, support for the creation of income-generating activities for *marabouts* and the broadening of the teaching curriculum in Koranic schools with a view to facilitating the reintegration of young *talibés* into active life.

The Committee notes that, according to the information contained in the report of the United Nations Special Rapporteur of 28 December 2010, the Care, Information and Counselling Centre for Children in Difficulties (the GINDDI Centre) in the Ministry of Education, has been responsible since 2003 for taking children off the streets and reintegrating

them, and for providing psychological support and social assistance to girls and boys who are victims of trafficking (paragraph 68). Accordingly, in 2009, some 896 street children and child *talibés* were given refuge in the GINDDI Centre. However, the United Nations Special Rapporteur noted the absence of formal, harmonized procedures for assisting and supporting at-risk children, and a lack of social services at the community level (paragraph 67). *The Committee requests the Government to intensify its efforts to protect talibé children under 18 years of age from forced or compulsory labour, such as begging. It requests the Government to provide information on the measures adopted, particularly in the context of the programme financed by PARRER, and the results achieved, with an indication of the number of talibé children who have been removed from the worst forms of child labour and who have benefited from rehabilitation and social integration measures in the GINDDI Centre. It also requests the Government to continue providing information on the measures adopted or envisaged in the context of the process of the modernization of the daaras system.*

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

*[The Government is asked to supply full particulars to the Conference at its 101st Session and to reply in detail to the present comments in 2012.]*

## Sierra Leone

### **Minimum Age (Industry) Convention (Revised), 1937 (No. 59)** (ratification: 1961)

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

In its previous comments, the Committee had taken note of the draft Employment Act prepared with the ILO's technical assistance. The Committee noted the information provided by the Government that section 34(4) of the draft Employment Act provides that "no child under the age of 18 years may work or be employed to perform any work that is likely to jeopardize his/her health, safety, or physical, mental, spiritual, moral or social development, or to interfere with his/her education. No employer shall continue to employ such a child after being notified in writing by a labour officer that the employment or work is injurious to health or dangerous". The Committee observed that this section 34(4) of the draft Employment Act gives effect to *Article 5 of the Convention*. *It once again expresses the hope that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on this point. The Committee requests the Government to communicate the text of the new Employment Act as soon as it is adopted.*

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

## South Africa

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 3(1) and (3) of the Convention. Minimum age and determination of hazardous work.* The Committee previously noted that, through assistance from the ILO-IPEC project "Towards the elimination of the worst forms of child labour", the Government had drafted regulations on child labour in South Africa, and it expressed the firm hope that these draft regulations would soon be adopted.

The Committee notes with *satisfaction* the adoption of the "Regulations on hazardous work by children in South Africa", on 15 January 2010, which include the Health and Safety of Children at Work Regulations (pursuant to the Occupational Health and Safety Act) and the Basic Conditions of Employment Act Regulations on Hazardous Work by Children. In this regard, it notes that, pursuant to sections 4–10 of the Health and Safety of Children at Work Regulations, no child worker may be allowed to work in jobs with respiratory hazards, in elevated positions, involving the lifting of heavy weights, in a hot or cold environment, in a noisy environment, involving power tools or cutting and grinding equipment. The Committee further notes that these Regulations define a child as a person under 18 years of age (pursuant to section 1(b)) and define a child worker as a child who is employed by or works for an employer for remuneration or works under the direction of an employer or another person (pursuant to section 1(c)).

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the adoption of Children's Act No. 38 of 2005, but observed that only certain sections of the Children's Act had come into force. It noted that the Act would not come fully into effect until after the finalization and adoption of the Children's Amendment Bill and its regulations. The Committee expressed the firm hope that the Children's Act, along with the Children's Amendment Bill, would soon be adopted.

The Committee notes that the Children's Act, 2005, as amended in 2007, came into force on 1 April 2010. The Committee notes with *satisfaction* that section 284 of the Children's Act prohibits the trafficking of children or allowing a child to be trafficked. Section 1 of the Children's Act defines a child as a person under the age of 18, and defines

trafficking to include the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children within or across the borders of the country.

*Article 7(1) and Part V of the report form. Penalties and the application of the Convention in practice.* The Committee previously noted the Government's statement that the South African Police Services and the Department of Social Development were developing systems for compiling data related to the trafficking of children and the commercial sexual exploitation of children. It requested the Government to provide information from this data, as well as information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied under the Criminal Law (Sexual Offences and Related Matters) of 2007 with regard to the worst forms of child labour.

The Committee notes the information in the Government report that through inspections, no child victims of trafficking, child slavery, commercial sexual exploitation and hazardous work have been identified. However, the Committee also notes the information in the Government's report that four cases of child trafficking were reported in the North West Province in 2010. The Committee further notes the Government's statement in its report to Committee on the Elimination of Discrimination Against Women (CEDAW) of 24 March 2010 that law enforcement agencies and research institutions have identified South Africa as one of the countries in the region that is used by organized traffickers of human beings as a destination, transit and country of origin of victims, including child victims (CEDAW/C/ZAF/2-4, paragraphs 6.6 and 6.9). In addition, the Committee notes that CEDAW, in its concluding observations of 5 April 2011, expressed concern that statistics on the number of women and girls who are victims of trafficking for sexual and economic exploitation are not available and at the Government's failure to address the root causes of trafficking and prostitution (CEDAW/C/ZAF/CO/4, paragraph 27). ***The Committee, therefore, requests the Government to strengthen its efforts to combat the trafficking and commercial sexual exploitation of persons under the age of 18, and to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of perpetrators of these offences are carried out. It also requests the Government to take the necessary measures to ensure that sufficient data on the worst forms of child labour, particularly trafficking and commercial sexual exploitation, is made available and to provide this information in its next report. To the extent possible, all information provided should be disaggregated by sex and age.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour. Child victims of trafficking.* The Committee previously requested the Government to provide information the measures taken for the removal and rehabilitation of child victims of trafficking.

The Committee notes the information in the Government's report that two child victims of trafficking have been repatriated to Lesotho, and that the Department of Social Development is experiencing challenges with regard to the repatriation of two children to Mozambique. The Government indicates that these children are currently in temporary safe care. The Committee also notes the Government's reference to several provisions in the Children's Act providing for assistance to child victims of trafficking. In this regard, the Committee notes that section 286 of the Children's Act states that the Director-General of Foreign Affairs must facilitate the return to South Africa of a child victim of trafficking who is a citizen or permanent resident of the country, including by issuing the relevant travel documents, and, where necessary, funding an adult to escort the child for this return. Moreover, section 289 of the Children's Act states that a child victim of trafficking found in South Africa must be referred to a designated social worker for investigation, and must be placed in temporary care during this investigation. Such a child may then be assisted in applying for asylum, and may be authorized to stay in the country for care and protection. Section 290 of the Children's Act states that a child may not be returned to his or her country of origin without consideration being given to the availability of care in this country, the safety of the child, and the possibility that the child may be subject to harm or once again become a victim of trafficking. ***The Committee requests the Government to provide information on the number of children who have benefited from the support provided for in sections 286, 289 and 290 of the Children's Act, particularly the number of child victims of trafficking who have received care as well as assistance with regard to their repatriation.***

*Clause (d). Identify and reach out to children at special risk. Child orphans and other vulnerable children of HIV/AIDS (OVCs).* The Committee previously noted the Government's statement that the Department of Social Development, in collaboration with the National Action Committee for Children affected by HIV/AIDS, had developed and implemented a second National Plan of Action (2009–12) for orphans and other vulnerable children of HIV/AIDS. The Committee also noted that there were an estimated 1.4 million HIV/AIDS orphans in South Africa.

The Committee notes the information in the Government's country progress report to the United Nations General Assembly Special Session on the declaration of Commitment to HIV/AIDS of 2010 that there are between 1.5 to 3 million child orphans in the country with one or both parents deceased. However, this report indicates that approximately 75 per cent of South Africa's OVCs received some form of support, through child support grants, foster care grants and care dependency grants, and that the school attendance rate of orphans between the ages of 10–14 was only one per cent lower than the attendance rate of non-orphans. While appreciating the measures taken by the Government to protect orphans and other vulnerable children, the Committee expresses its ***concern*** at the increasing number of children orphaned in South Africa as a result of HIV/AIDS. ***Recalling that OVCs are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to strengthen its efforts, within the framework of the National Plan of Action (2009–12) for orphans and other vulnerable children of HIV/AIDS to ensure that such children are protected***

*from these worst forms. It requests the Government to provide information on the effective and time-bound measures taken in this regard, and on the results achieved.*

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

## Spain

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (b). Sale and trafficking of children; use, procuring or offering of a child for prostitution, the production of pornography or pornographic performances.* Further to its previous comments, the Committee takes due note of the adoption of the Organic Law No. 5/2010 of 22 June 2010, amending the Penal Code. It notes with **satisfaction** that a new provision punishes persons involved in the sale and trafficking of children and young people under 18 years of age for purposes of forced labour or sexual exploitation on Spanish territory or bound for Spain, to prison sentences of from five to eight years (section 177bis). It also notes that section 187 now imposes a harsher sentence on persons promoting or facilitating the prostitution of persons under 18 years of age, as well as on the clients of this prostitution (one to five years' imprisonment), and provides for a harsher sentence when the victim is under 13 years of age (four to six years' imprisonment). Furthermore, it notes that, under section 189, as amended, persons using under-age children for the production of pornography or for pornographic performances, or who produce, sell, distribute, offer or facilitate the production, sale or distribution of pornography involving minors shall be punished by a prison sentence ranging from one to five years and from five to nine years when the victim is under 13 years of age. **The Committee requests the Government to provide information on the application of sections 177bis, 187 and 189 of the Penal Code in practice, by providing, in particular, statistics on the number of prosecutions, convictions and penalties imposed under these provisions.**

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from being employed in the worst forms of child labour, removing them from such labour and ensuring their rehabilitation and social integration. Trafficking and sexual exploitation for commercial purposes.* Following its previous comments, the Committee takes due note of the information provided by the Government on the adoption of the third National Plan to combat the sexual exploitation of children and young persons (2010–13). It notes that this third National Plan takes up the main proposals that emerged from the evaluation of the second National Plan (2006–09), and takes account of the legislative amendments introduced into the Penal Code with respect to the sale and trafficking of children, child prostitution and pornography. It observes that this Plan provides for awareness-raising campaigns on the subject of sexual exploitation and sex tourism involving children, the improvement of detection systems and offender reporting systems, and the introduction of specific mechanisms to take care of the victims. The Committee also notes the Government's indication that, since its adoption by the Council of Ministers in December 2008, the Comprehensive Plan against the trafficking of persons for sexual and commercial exploitation has become the major planning tool for dealing with trafficking for sexual commercial purposes. **The Committee encourages the Government to pursue its efforts and requests it to continue providing information on the implementation of the third National Plan to combat the sexual exploitation of children and young persons, with respect to the number of children who have effectively been withdrawn from these worst types of labour and who have benefitted from rehabilitation measures and social integration.**

*Clause (d). Children at special risk. 1. Children of migrant families.* Further to its previous comments, the Committee notes that, according to the Government, action programmes to provide educational support to families in a situation of social vulnerability and exclusion – including migrant families with school-age children – are considered to be a priority. Furthermore, the Committee notes that the Committee on the Rights of the Child, in its concluding observations on 3 November 2010 (CRC/C/ESP/CO/3-4, paragraph 25), welcomed the approval of a Strategic Plan for Citizenship and Integration (2007–10), aimed at guaranteeing access to migrant students to mandatory education and which facilitates integration in the educational system. **The Committee requests the Government to provide information on the measures taken and results obtained within the framework of the Strategic Plan for Citizenship and Integration to guarantee the access of migrant children to compulsory schooling and facilitate their integration in the educational system.**

*2. Roma children.* Further to its previous comments, the Committee takes due note of the adoption of the Plan of Action for the Development of the Gypsy Community (2010–12). It notes that various measures aimed at improving children's access to education and retaining children in the school system are envisaged under this National Action Plan. The Committee nevertheless notes that the Committee on the Elimination of Racial Discrimination, in its concluding observations on 8 April 2011 (CERD/C/ESP/CO/18-20, paragraph 16), noted with satisfaction that the Government was continuing to adopt measures to improve the general situation of gypsies, but it was concerned by the difficulties still facing gypsy girls with regard to education. **The Committee requests the Government to provide information on the measures taken and the results obtained, within the framework of the Plan of Action for the Development of the Gypsy Community, to guarantee the access to education of Roma children, paying particular attention to girls.**

*Parts IV and V of the report form. Application of the Convention in practice.* Further to its previous comments, the Committee notes the statistics contained in the Government's report on the inspection activities relating to child labour which took place between 2009 and 2010. It notes that almost 700,000 inspection visits were made, and 38 offences for

violations of the provisions on minimum age and 26 offences for violations of the provisions on the types of work prohibited to under-age children for reasons of occupational safety and health were reported during these two years. The Committee also notes that during the joint visits conducted by the labour inspection services at the provincial level and the national security forces between 2009 and 2010, 12 persons under 18 years of age were found to be the victims of sexual exploitation or forced labour.

## Sri Lanka

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 2(2) of the Convention. Minimum age for admission to employment or work.* The Committee had previously noted the Government's information that the Ministry of Labour Relations and Foreign Employment was considering the possibility of extending the age for admission to employment to 16 years and that steps were being taken to consult relevant organizations/parties concerned. **The Committee requests the Government to indicate whether any amendment raising the minimum age for employment to 16 years has been made. In this regard, the Committee would like to draw the Government's attention to the provisions of paragraph 2 of Article 2 of the Convention, which provides that any Member having ratified this Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age that it had previously specified. The Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office, in case any amendment to the national legislation raising the minimum age for admission to employment or work to 16 years has been made.**

*Article 2(3). Compulsory education.* The Committee had previously noted with interest the Government's indication regarding its proposal to extend compulsory schooling up to the end of senior secondary level or completion of grade 11, the year at which students normally attain 16 years of age. It had requested the Government to provide information on any developments in this regard.

The Committee notes the Government's information that the Ministry of Education has taken steps to submit a Bill to the Parliament in respect of extending compulsory schooling up to 16 years of age. **The Committee expresses the firm hope that the Bill extending compulsory schooling up to 16 years will be adopted in the near future. It requests the Government to provide information on any progress made in this regard. It also requests the Government to supply a copy of the bill, once it has been adopted.**

*Article 3(2). Determination of hazardous work.* The Committee had previously noted the Government's indication that a revised list of types of hazardous work prohibited to children under 18 years will be adopted by Parliament very soon. The Committee notes with **satisfaction** that the Regulation concerning the list of types of hazardous works prohibited to children under 18 years was adopted by Parliament and came into force on 20 August 2010.

*Part V of the report form. Application of the Convention in practice.* The Committee notes the Government's indication that the Child Activity Survey conducted by the Department of Census and Statistics has been completed, and the report is yet to be published. It further notes from the Government's report that according to the Women and Children's Affairs Division, Department of Labour, in 2010, 179 complaints on child labour were received, out of which 17 cases were filed in the courts, two cases were settled, and ten cases were being heard. Likewise, during the first six months of 2011, 81 complaints were received, out of which six cases were filed in the court and are being heard. It also notes that in 2010, nine cases of child labour were reported with the National Child Protection Authority, and investigations are pending for three cases. The Committee observes that, while several complaints on child labour were registered at the Department of Labour, only very few cases have been subject to prosecution. **In this regard, the Committee requests the Government to take the necessary measures to ensure the effective enforcement of the provisions of the Convention, and accordingly requests the Government to strengthen its efforts to ensure that persons found to be in breach of the provisions giving effect to the Convention are prosecuted and that adequate penalties are imposed. The Committee also requests the Government to continue providing information on the number and nature of violations detected, involving children, as well as the convictions and penalties imposed for such violations. It further requests the Government to supply a copy of the Child Activity Survey report, once it has been published.**

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution.* The Committee previously noted that 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. It also noted the Government's information that prosecutions on the commercial sexual exploitation of children are carried out by the Department of Police and the National Child Protection Authority (NCPA) of Sri Lanka. It requested the Government to provide information on the penalties applied to offenders with regard to cases of commercial sexual exploitation of children.

The Committee notes the Government's information that in 2010, 37 cases of sexual exploitation of children were registered with the NCPA, out of which, 20 cases were brought before the court, and investigations were pending in seven cases. The Committee notes that according to the report of 27 June 2011 on trafficking of persons in Sri Lanka, available

on the website of the United Nations High Commissioner for Refugees, in 2009, the NCPA estimated that approximately 1000 children were subjected to commercial sexual exploitation within Sri Lanka although some NGOs believed the actual number to be between 10,000 and 15,000. Moreover, the Committee notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 19 October 2010 (CRC/C/LKA/CO/3-4, paragraph 69) expressed concern that in spite of the magnitude of child sexual exploitation and notably high incidence of exploitation of approximately 40,000 children in prostitution, there are no comprehensive data available on child sexual exploitation and no central body to monitor the investigation and prosecution of child sexual exploitation cases. The Committee expresses its *deep concern* at the high number of children involved in commercial sexual exploitation. ***It accordingly urges the Government to strengthen its efforts to combat the commercial sexual exploitation of children and to ensure that thorough investigations and robust prosecutions of persons who commit this offence are carried out and sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information with regard to the number of prosecutions, convictions and penalties imposed on offenders in cases related to the commercial sexual exploitation of children.***

*Clause (d) and Article 4(1). Hazardous work.* The Committee previously noted that section 20A of the Employment of Women, Young Persons, and Children Act (EWYPC Act of 2006), as amended by the Employment of Women, Young Persons, and Children (Amendment) Act No. 24 of 2006 (EWYPC Amendment Act of 2006), prohibits the employment of children under the age of 18 years in any hazardous occupation. It also noted that section 20A further provides that hazardous occupations in which persons under 18 years are prohibited from working shall be prescribed by the Minister. Subsequently, it noted the Government's indication that the list of types of hazardous work was being revised by a tripartite steering committee, and would come into force as Regulations under section 20A of the EWYPC Act of 2006 after adoption by the Parliament. The Committee expressed the firm hope that the list containing the types of hazardous work prohibited to children under 18 years would be adopted in the near future.

The Committee notes with *satisfaction* that the Hazardous Occupations Regulation containing the list of types of hazardous works under section 20A of the EWYPC Act of 2006 has been adopted and came into force on 20 August 2010. This Regulation contains a comprehensive list of 49 types of work prohibited to persons under the age of 18 years including: work involving the manufacture and use of pesticides and other dangerous chemicals; production, transport and sale of alcohol and tobacco; work involving slaughter of animals or cutting or chopping flesh of animals; work related to dangerous machines; work involving fishing in deep waters and diving; mining, quarrying or underground work; manufacture, transport or sale of explosives and fireworks; work related to manufacturing and smelting of metals, glass and brass; work involving use or handling of radioactive materials; work at dangerous heights; work involving lifting and carrying of heavy loads; work related to tanning of leather; work related to felling, collecting, chopping or logging of wood; work involving collection or disposal of garbage or sewage or scavenging of garbage; work related to spinning, weaving, and dying in the textile industry and manufacture of garments; work related to road construction; work related to the production of rubber sheets and latex; work near or around a kiln for the manufacture of tiles and bricks; night work; work on a vessel; work in clubs, bars, casinos, hotels, restaurants and eating houses; work involving acrobatic performances and other dangerous physical performances or handling of dangerous animals; and work involving the accompanying of tourists whether as guides or otherwise. ***The Committee requests the Government to provide information on the application in practice of section 20A of the EWYPC Act of 2006.***

*Article 6. Programmes of action to eliminate the worst forms of child labour. Commercial sexual exploitation of children.* The Committee previously noted the Government's indication that it had developed a two-year National Action Plan to Combat Child Sex Tourism, 2006, led by UNICEF and the Sri Lanka Tourist Board. It also noted that within the framework of this project, several awareness-raising programmes were implemented in 2007 for hotel staff in high-risk areas, tourist van drivers and service providers, school children, teachers and tourist police officers. The Committee requested the Government to provide information on the impact of this National Action Plan to Combat Child Sex Tourism.

The Committee notes the Government's information that the impact of the programmes conducted within the National Action Plan to Combat Child Sex Tourism has not yet been evaluated. The Committee notes that the CRC, in its concluding observations of 19 October 2011, (CRC/C/LKA/CO/3-4, paragraph 71), expressed concern that Sri Lanka remains a common destination for child sex tourism, with a high number of boys being sexually exploited by tourists. The CRC also expressed concern that the police lack the necessary technical expertise to combat child sex tourism and that the Cyber-Watch programme to monitor the internet for child pornography and crimes related to child sex tourism was discontinued and the Cyber Crimes Unit closed due to lack of funding. The Committee expresses *deep concern* at the situation of children involved in child sex tourism. ***The Committee urges the Government to strengthen its efforts to combat child sex tourism. It requests the Government to take the necessary measures to enhance the functioning of the police in tracking and identifying children involved in child sex tourism and to ensure that perpetrators are brought to justice. The Committee requests the Government to provide information on the concrete measures taken in this regard. The Committee finally requests the Government to provide information on the impact of the National Action Plan to Combat Child Sex Tourism, once its evaluation has been completed.***

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

## Sudan

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery.*

1. *Abduction and the exaction of forced labour.* The Committee previously noted the various legal provisions in Sudan which prohibit the forced labour of children (and abductions for that purpose), including article 30(1) of the Constitution of the Transitional Sudan Republic of 2005, section 32 of the Child Act of 2004, and section 312 of the Penal Code. The Committee also noted, in its previous comments under the Forced Labour Convention, 1930 (No. 29), the International Trade Union Confederation's (ITUC) allegations regarding cases of abduction of women and children by the Janjaweed militia, including some cases of sexual slavery. The Committee further noted the information contained in the ITUC's 2005 communication that the signing of a Comprehensive Peace Agreement (CPA) in January 2005 (and the adoption of the interim Constitution) provided a historic opportunity for the new Government of Sudan to resolve the problem of abductions, but that this would not automatically lead to an end of abductions and the exaction of forced labour. In this regard, the Committee noted, in 2009, that, according to the Report of Activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC), submitted with the Government's report, that the CEAWC had successfully identified and resolved 11,237 of the 14,000 cases of abduction and reunified 3,398 abductees with their families. However, it noted the information from the Secretary-General of the United Nations (UN), in a Security Council report on Children and Armed Conflict in the Sudan, of 10 February 2009, that there had been many instances of child abductions reported in southern Sudan and Darfur in 2007, as well as continuing concerns about incidents of abductions in 2008 (S/2009/84, paragraphs 35–37).

The Committee notes that the Conference Committee, in its conclusions adopted in June 2010 on the application of Convention No. 29 by Sudan, observed that there was no up-to-date information available on the activities of the CEAWC with regard to the number of victims identified or reunited with their families since 2008. In addition, the Committee refers to its comments under Convention No. 29 in 2010, where the Committee noted the Government's repeated statement that abductions have stopped completely, but observed with concern that this statement is in contradiction with other reliable sources of information.

The Committee notes that the Committee on the Rights of the Child (CRC) in its concluding observations of 10 October 2010, expressed concern over the abduction of children for the purpose of forced labour (CRC/C/SDN/CO/3-4, paragraph 78). The Committee also notes the information in the UN Secretary-General's Security Council report on children and armed conflict in Sudan of 5 July 2011 that while, within the three states of Darfur, allegations of the abduction of children have declined, there remain reports of this practice. Moreover, the Committee notes the information in the 13th periodic report of the UN High Commissioner for Human Rights on the situation of human rights in Sudan of August 2011 that the Human Rights Component of the UN Mission in Sudan continued to receive reports of abductions, including of children (paragraphs 30 and 31). The Committee must once again observe that, while there appear to have been tangible steps to combat the forced labour of children, including the decline of reported abductions of children in the Darfur region, there is no verifiable evidence that the forced labour of children has been eradicated. Therefore, although the national legislation appears to prohibit abductions and the exaction of forced labour, these practices remain an issue of concern. In this regard, the Committee once again reminds the Government that, by virtue of *Article 3(a)* of the Convention, forced labour is considered to be one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***It strongly urges the Government to strengthen its efforts to improve the situation and to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children under 18 years, as a matter of urgency. It also requests the Government to provide information on the measures taken to remove children from situations of abduction and forced labour and to provide for their rehabilitation and social integration, and to continue providing information on the results achieved.***

2. *Forced recruitment of children for use in armed conflict.* In its previous comments, the Committee noted that the Government armed forces, including the paramilitary Popular Defence Forces (PDF), the Government-backed militias, the Sudan People's Liberation Army (SPLA) and other armed groups, including tribal groups not allied to government or armed opposition groups, had forcibly recruited child soldiers in the north and the south of Sudan. The Committee observed that recruitment took place predominantly in Western and Southern Upper Nile, Eastern Equatoria and the Nuba Mountains, and that by 2004, an estimated 17,000 children remained in the government, SPLA and militia forces. However, the Committee noted that section 9(24) of the Sixth Protocol of the CPA of 2005 requires "the demobilization of all child soldiers in the span of six months as from the date on which the Comprehensive Peace Agreement is signed". Section 9(1)(10) of the Protocol considers the conscription of children a violation of the provisions of the Agreement. The Committee also noted that the Sudan Armed Forces Act was adopted in December 2007, which fixes the minimum age of recruitment at 18 years and criminalizes the recruitment of anyone under 18. Nonetheless, the Committee noted that the UN Secretary-General in his report on children and armed conflict in the Sudan of 10 February 2009, indicated that UN field monitors reported, inter alia, the recruitment and use of children by the SPLA, the presence of 55 uniformed children aged 14 to 16 years among Sudan Armed Force (SAF) and the recruitment and use of 487 children by various armed

forces and groups operating in all three Darfur states (S/2009/84, paragraphs 9–17). The Committee, therefore, urged the Government to take immediate measures to end, in practice, the forcible recruitment of children into armed forces.

The Committee notes that section 43 of the Child Act of 2010, adopted in February 2010, prohibits the enlistment, appointment or employment of children in armed conflicts, in armed groups or their employment in armed operations. However, the Committee notes with **concern** an absence of information in the Government's report on measures taken to apply this provision, or the provisions of the Sudan Armed Forces Act with regard to the forcible recruitment of children in armed conflict.

The Committee notes the statement in the UN Secretary-General's report on children and armed conflict in Sudan of 5 July 2011, that the recruitment and use of children by SPLA was verified in the three transitional areas (Abyei, Southern Kordofan and Blue Nile States) during the period covered by this report (between January 2009 to February 2011), including approximately 800 children observed at the SPLA division headquarters in Samari, Blue Nile State (S/2011/413, paragraph 15). This report also indicates that, over the same period, 501 children (including six girls) were verified as being associated with at least ten armed forces and armed groups in Darfur (S/2011/413, paragraph 17). This report indicates that this represents a decline in the number of children associated with armed groups in Darfur, which may be partially due to ongoing intense advocacy with the armed forces and armed groups to raise awareness, resulting in commitments to end the recruitment and use of child soldiers. However, this report also indicates that the monitoring of the recruitment of children in armed groups continued to be seriously hampered by difficulties related to security, access to non-Government-controlled areas and movement restrictions imposed by the Government (S/2011/413, paragraph 17).

While noting the apparent decline of the number of children associated with armed groups in the Darfur region, the Committee must once again express its **concern** that children are still being recruited and forced to join illegal armed groups or the national armed forces in practice. It expresses its **serious concern** with regard to the persistence of this practice, especially as it leads to other violations of the rights of children, in the form of abductions, murders and sexual violence. In this regard, the Committee refers to the UN Secretary-General's call to the Government to take steps as a matter of urgency to address the continued presence of children in SAF and its associated forces (S/2011/413, paragraph 83). ***The Committee urges the Government to adopt, as a matter of urgency, immediate and effective measures, in collaboration with the UN bodies operating in the country, to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and the armed forces. It also urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of any persons, including members of the Government's armed forces, who forcibly recruit children under 18 years for use in armed conflict, are carried out, and that sufficiently effective and dissuasive sanctions are imposed on offenders in practice. The Committee requests the Government to provide information on the concrete measures taken in this regard, and on the results achieved.***

*Article 7(1). Forced labour. Penalties.* The Committee previously noted that the Penal Code of 2003 and the Child Act of 2004 contained various provisions which provide for sufficiently effective and dissuasive penalties of imprisonment and fines for anyone who commits the offence of the forced labour of children. However, the Committee also noted the ITUC's allegation that the impunity enjoyed by those responsible for abductions and the exaction of forced labour – 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. In this regard, the Committee noted the Government's statement of November 2005 that all of the tribes concerned, including the Dinka Chiefs Committee, have requested the CEAWC not to resort to legal action unless the amicable efforts of the tribes are not successful, due to the following reasons: that legal action is very long and expensive; that it may threaten the life of young abductees; and that it will not build peace among the tribes concerned. 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, had the effect of ensuring impunity for perpetrators instead of punishing them. It requested the Government to take the necessary measures to ensure that sufficient penalties are applied to persons who engage children under 18 in forced labour, and to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

The Committee notes with **concern** an absence of information in the Government's report on the application of the relevant penalties in practice. Referring to its comments made under Convention No. 29, the Committee notes the Government's view that there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation.

However, the Committee notes that the CRC, in its concluding observations of 10 October 2010, expressed concern at the de facto impunity enjoyed by perpetrators of the abduction of children for the purpose of forced labour (CRC/C/SDN/CO/3-4, paragraph 78). In this regard, referring to its comments made under Convention No. 29, the Committee reiterates that the failure to apply penal sanctions with respect to perpetrators of the forced labour of children is contrary to this Convention and may have the effect of creating an environment of impunity for abductors who exploit forced labour. The Committee once again reminds the Government that, by virtue of *Article 7(1)* of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***The Committee once again requests the Government to take the necessary measures to ensure the protection of children under 18 years of***

*age against abductions for the exaction of forced labour, including by ensuring that sufficiently effective and dissuasive penalties are imposed in practice on persons who commit this offence. It also requests the Government to provide information, in its next report on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied in this regard.*

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Child soldiers.* The Committee previously noted that the UN Secretary-General, in his report on children and armed conflict in the Sudan of 10 February 2009, indicated that during the reporting period (1 August 2007 to 30 December 2008), almost 600 children formerly associated with armed forces and groups, under the CPA, as well as 12,000 other vulnerable children, were supported through reintegration programmes across the Sudan. It noted that the National Council for Disarmament, Demobilization and Reintegration (DDR) Coordination and the Northern Sudan DDR Commission were established by the CPA in February 2006, and that the reintegration of approximately 300 children had begun. However, although the CPA (signed in January 2005) had called for the immediate and unconditional release of all children from various fighting forces and groups within six months, the Secretary-General pointed out that children continued to be recruited and used by all parties to the conflict (S/2009/84, paragraphs 56–60).

The Committee notes that section 44 of the Child Act of 2010 provides that the competent body responsible for the demobilization and reintegration shall design programmes to help with the demobilizing of children in coordination with other bodies (military and security institutions, as well as armed groups), and endeavour to reintegrate these children socially and economically. The Committee also notes the Government's indication that, through the Northern Sudan DDR Commission, efforts were deployed to provide psychological and social support as well as education and skills training to children. The Government indicates that several training programmes were organized for employees for the purpose of tracking children who were kidnapped and to ensure their reintegration. The Government also indicates that 78 specialists from the Ministry of Social Affairs and the Ministry of Education were trained on child protection, conflict resolution, social and psychological rehabilitation, as well as on the participation of community in the reintegration and rehabilitation process.

The Committee further notes the information in the UN Secretary-General's report on children and armed conflict in Sudan of 5 July 2011 that, following consistent advocacy efforts by the UN, the first demobilization of 88 children from SPLA in Kurmuk, Blue Nile State, was carried out on 14 May 2009. This was followed by the demobilization of an additional 140 children by 30 December 2010 (S/2011/413, paragraph 22). This report also indicates that, from February 2009 to February 2011, the Northern Sudan DDR Commission, with the support of the UN, registered 1,041 former child soldiers in Darfur. However, this report also indicated cases involving the re-recruitment of children (S/2011/413, paragraph 20). In this regard, the report of the UN Secretary-General states that the re-recruitment of children who have been separated from armed forces or groups is a real risk that can be addressed only through the provision of support for the long-term reintegration of children (S/2011/413, paragraph 89). ***The Committee therefore strongly urges the Government to continue to take, in collaboration with the UN, effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration, with particular attention to children at risk of re-recruitment. In this regard, it requests the Government to supply information on the number of children under 18 years of age who have been removed from armed forces, rehabilitated and reintegrated into their communities as a result of the ongoing disarmament, demobilization and reintegration efforts.***

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

## Suriname

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2006)**

*Article 1 of the Convention. Measures taken to secure the prohibition and elimination of the worst forms of child labour.* Following its previous comments, Committee notes with *interest* the Government's statement that it is preparing draft legislation for accession to the Minimum Age Convention, 1973 (No. 138). ***The Committee encourages the Government to pursue its efforts in this regard, and to continue to provide information on progress made towards the ratification of Convention No. 138.***

*Article 3. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.* The Committee previously noted the Government's indication that Title XIV of the Criminal Code concerning sexual offences was amended in July 2009, and it requested a copy of the Code, as amended.

In this regard, the Committee with notes *satisfaction* that Act No. 122 of 29 July 2009, relating to further amendments to the Criminal Code on sexual offences, amends the Criminal Code to prohibit committing an immoral act with a person under 18 in exchange for payment (pursuant to sections 300 and 303a). The Committee further notes that section 303 of the amended Criminal Code prohibits inducing a person under 18 to commit immoral acts by, inter alia, the promising of money or property. In addition, the Committee notes that section 293 of the amended Criminal Code states that it is an offence to produce, distribute, exhibit, import, export, or possess images of sexual acts by persons under 18.

*Article 4(1). Determination of hazardous work.* The Committee previously noted the Government's indication that the Preparatory Working Group of the National Commission on Child Labour had formulated the draft Decree containing a list of types of hazardous work prohibited to children under 18 years of age. The Committee requested the Government to take measures to ensure the adoption of the draft Decree.

The Committee notes the Government's statement that the State Decree on Hazardous Labour for Young Persons has been adopted. The Government states that this Decree contains a list of hazardous forms of work that are, or may be, hazardous for children and young persons. The Government states that this list will be reviewed periodically. ***The Committee requests the Government to provide a copy of the State Decree on Hazardous Labour for Young Persons, with its next report.***

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

## Swaziland

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 2002)***

The Committee notes the comments made by the Swaziland Federation of Trade Unions (SFTU) in a communication dated 30 August 2011, as well as the Government's report.

*Article 1 of the Convention. National policy.* The Committee had previously noted the Government's indication that the draft Employment Bill had been submitted to the Cabinet for approval. It had also noted that a draft National Action Programme on the Elimination of the Worst Forms of Child Labour was elaborated.

The Committee notes the allegations made by the SFTU that there is no national policy or an action programme for the elimination of the worst forms of child labour and that there is no political will on the part of the Government to address the legislative as well as policy issues concerning child labour.

The Committee notes the Government's information in its report that the National Action Programme on the Elimination of the Worst Forms of Child Labour is being considered by the Labour Advisory Board and will soon be submitted to Cabinet for adoption. It also notes the Government's statement that the draft Employment Bill was withdrawn from the Parliament as the social partners felt it necessary to incorporate further issues that had been left out. ***The Committee requests the Government to take the necessary measures to ensure that the draft Employment Bill will be adopted in the near future, taking into consideration the comments made by the Committee. It also expresses the firm hope that the National Action Programme on the Elimination of the Worst Forms of Child Labour will be adopted without delay. It requests the Government to provide information on any progress made in this regard.***

*Article 2(1). Scope of application. Informal sector, including family undertakings.* The Committee had previously noted that, pursuant to section 2 of the Employment Act, domestic employment, agricultural undertakings and family undertakings were not included in the definition of "undertaking" and therefore not covered by the minimum age provisions of section 97. It had further noted the Government's statement that the excluded categories of works would be considered while drafting the Employment Bill.

The Committee notes that according to section 11(1) of the draft Employment Bill a person may not employ a child under the age of 15 years, except in a family business, which in relation to the child means a business carried on only by a parent or guardian of the child. The Committee observes that the draft Employment Bill exempts family undertakings from the minimum age provisions. The Committee therefore reminds the Government that the Convention applies to all branches of economic activity and that it covers all types of work, including work in family undertakings, with the exception of light work, which can only be carried out under the conditions laid down in *Article 7* of the Convention. The Committee also recalls that the Government has not availed itself of the possibilities of exclusion of limited categories of employment or work as envisaged in *Article 4* of the Convention.

Moreover, the Committee notes that according to a report entitled "2010 Findings on the Worst Forms of Child Labour-Swaziland" available on the website of the United Nations High Commissioner for Refugees, children are employed to pick cotton, harvest sugar cane and are engaged in herding in remote locations and domestic service. This report also indicates that children work as porters, transporting heavy loads in self-made carts, collecting fees and calling out routes while climbing in and out of moving vehicles. The Committee therefore observes that, in practice, children appear to be engaged in child labour in a wide range of activities in the informal sector. ***The Committee therefore requests the Government to take the necessary measures to ensure that children working in the informal sector, including in family undertakings, are entitled in law and in practice to the protection afforded by the Convention. In this regard, it requests the Government to take measures to adapt and strengthen the labour inspection services to effectively monitor children working in the informal sector.***

*Article 2(3). Age of completion of compulsory education.* The Committee had previously noted that according to article 29(6) of the Constitution of 2005, every Swazi child shall have the right to free education in public schools at least up to the end of primary school. However, the Committee had noted with concern that the primary schooling finishes at the age of 12 years while the minimum age for admission to employment is 15 years in Swaziland. Moreover, the Committee had also noted the concerns expressed by the Committee on the Rights of the Child at the high rates of repetition and school drop-outs, as well as the extremely low completion rates in schools.

The Committee notes the Government's indication that it has enacted the Free Primary Education Act of 2010 which contains provisions requiring parents to send their children to school until the completion of primary schooling. It also notes the Government's statement that the concerns raised by the Committee with regard to linking the school-leaving age with the minimum age for admission to employment which is 15 years will be considered in due course. The Committee notes that according to the UNICEF statistics for 2009, the net primary school enrolment rates for boys and girls were 82 per cent and 84 per cent respectively, while at the secondary level the net enrolment rates for boys and girls were 31 per cent and 26 per cent respectively. Moreover, the Committee notes that according to the "World Data on Education-Swaziland, seventh edition, 2010–11" compiled and published by UNESCO, of those who enter the education system, only about half of them complete primary education, and many take as long as 10 years to do so, due to high repetition rates. Both the repetition and drop-out rates are particularly high in the first four grades, and by fourth grade, nearly 20 per cent of pupils have dropped out. The Committee expresses its *deep concern* at the high drop-out rates and low completion rates at the primary level and at the low enrolment rates at the secondary level. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to extend compulsory education up to the minimum age for admission to employment which is 15 years in Swaziland. It also requests the Government to take the necessary measures to increase the school enrolment rates at the secondary level for children up to the age of 15 years as well as to reduce the drop-out rates at the primary level. It requests the Government to provide information on any developments made in this regard.***

*Article 3(2). Determination of hazardous work.* Following its previous comments, the Committee notes the Government's statement that once the draft Employment Bill has been adopted, measures will be taken in consultation with the social partners to develop a list of types of hazardous work prohibited to children and young persons as envisaged by section 10(2) of the draft Employment Bill. The Committee reminds the Government that, under the terms of *Article 3(2)* of the Convention, the types of hazardous work prohibited to children under 18 years of age shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee therefore requests the Government to take the necessary measures, without delay, to determine the types of hazardous work prohibited to children under 18 years of age pursuant to section 10(2) of the draft Employment Bill. It requests the Government to provide information on any developments made in this regard.***

*Article 7. Light work.* The Committee notes that the restriction on working hours and night work as provided under section 11(2) of the draft Employment Bill, applies to children working in family undertakings. However, the draft Employment Bill does not appear to set a minimum age for light work, including work in family undertakings. The Committee notes that according to the joint ILO–IPEC, UNICEF and World Bank Report on Understanding Children's Work in Swaziland, 9.3 per cent of children between the ages of 5 to 14 years are engaged in child labour. The Committee recalls that *Article 7(1)* of the Convention provides that national laws or regulations may permit persons from the age of 13 to engage in light work, which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalls that according to *Article 7(3)* of the Convention, the competent authority shall determine the activities in which light work may be permitted and shall prescribe the number of hours during which, and the conditions in which such employment or work may be undertaken. ***Noting that national legislation does not regulate light work and that a significant number of children under the minimum age are engaged in child labour, the Committee requests the Government to envisage the possibility of adopting provisions within the framework of the draft Employment Bill to regulate and determine the light work activities performed by children between 13 and 15 years of age in accordance with Article 7 of the Convention.***

*Part V of the report form. Application of the Convention in practice.* The Committee had previously noted the Government's indication that the labour inspection management was in the process of being computerized and that the data on child labour would be compiled and kept thereafter. The Committee notes the absence of information on this point in the Government's report. ***The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in practice, including available statistical data on the employment of children and young persons, extracts from inspection services reports, and information on the number and nature of contraventions reported. It also requests the Government to supply a copy of the data compiled and kept on child labour, if any, by the new labour inspection management system.***

## Switzerland

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

*Article 3 of the Convention. Worst forms of child labour. Clause (b). Use or procuring of a child for prostitution.* In its previous comments, the Committee noted that section 187 of the Penal Code penalizes any person who commits a sexual act with a child under 16 years of age. It noted that the Federal Council, in its report and message of 20 September 1999, indicates that section 187 establishes the age of sexual consent at 16 years, and that young persons between 16 and 18 years of age may engage in prostitution, provided that they do so of their own free will. The Committee also noted that section 195 of the Penal Code punishes any person who induces a young person (namely, a

person who has not yet reached the age of 18 years) to engage in prostitution. The Committee considered that section 195 of the Penal Code covers the prohibition on procuring a child under 18 years of age for prostitution, in accordance with the Convention. However, it observed that, as regards the use of a child under 18 years of age for prostitution, Swiss penal law is not fully in conformity with the Convention inasmuch as section 187 of the Penal Code only punishes those who have committed acts of a sexual nature with children under 16 years of age. The Committee emphasized that it is necessary to make a distinction between the age of sexual consent and the freedom to engage in prostitution. It considered that, even though the national legislation (section 187 of the Penal Code) recognizes that a child of over 16 years of age may lawfully consent to a sexual act, the age of consent does not affect the obligation to prohibit this worst form of child labour. It also considered that the act of engaging in a sexual act with a child under 18 years of age for remuneration constitutes the use of a child for prostitution, whether or not the child consents.

The Committee noted the Government's indication that the issue of extending the culpability of persons who have recourse to the prostitution of young persons under 16 years of age to those who have recourse to the prostitution of young persons between the ages of 16 and 18 years was under discussion and that parliamentary interventions had already been submitted on the subject, in which the Federal Council considered that the prostitution of young persons under 18 years of age could be prejudicial to their sexual development, traumatize them and result in their psychological and social destabilization.

The Committee notes the Government's indication that on 16 June 2010 the Federal Council signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). The amendments to the Swiss Penal Code which are needed to implement this Convention include the need to criminalize the use of persons between 16 and 18 years of age for prostitution. A draft report on the implementation and ratification of the Convention is being drawn up by the Federal Office of Justice. The consultation procedure should be opened as soon as possible after the summer break so that the message can be submitted to the Federal Assembly in 2012. The Committee also notes the Government's statement that in principle it is for the cantons to issue police regulations regarding the locations, hours and practice of prostitution. Some cantons are in the process of, or have already made their legislation more stringent and established penalties for operators of studios and escort services employing young persons between 16 and 18 years of age. However, their approach is not to criminalize clients for the use of persons under 18 years of age for prostitution but rather to impose certain obligations on the operators of studios and escort services. Other cantons have passed legislation on prostitution by providing that any person working as a prostitute must register with the authorities. If the authority receives information that a minor is engaging in prostitution, it is obliged to contact the parent or guardian concerned.

However, the Committee observes that, despite the fact that the Committee has been raising this issue for a number of years, the Swiss Penal Code has still not been amended so as to give full effect to the prohibition laid down in *Article 3, clause (b)*, of the Convention. ***Therefore, in view of the fact that, under the terms of Article 3(b) of the Convention, the use of a child under 18 years of age for prostitution is considered one of the worst forms of child labour which, under the terms of Article 1, must be prohibited as a matter of urgency, the Committee urges the Government to take the necessary measures to amend the Penal Code in such a way that the use of a child between 16 and 18 years of age for prostitution is prohibited as soon as possible. It again requests the Government to provide information in its next report on any further developments in this regard.***

*Clause (b). Use, procuring or offering of a child for the production of pornography.* The Committee previously noted that sections 135 and 197 of the Penal Code establish penalties for the use, procuring or offering of a child for the production of pornography. It noted the Government's indication that the term "child" used in section 197(3) of the Penal Code, which prohibits the manufacture of pornography involving children, applies to children under 16 years of age. However, the Committee noted the Government's indication that section 182 of the Penal Code may also be used to penalize the use of minors over 16 years of age for the production of pornography. It asked the Government to provide information on the application of section 182 so that it can assess whether this provision can be enforced effectively and thus prohibit the use, procuring or offering of a young person between the ages of 16 and 18 years for the production of pornography.

The Committee once again notes the Government's indication that statistics on criminal convictions do not make it possible to differentiate offences in terms of the type of trafficking or the ages of the victims. However, the Committee observes that, in any case, section 182 of the Penal Code provides that any person who engages in trafficking of a human being for sexual exploitation commits a criminal offence. It observes once again that this provision does not prohibit the use of a person under 18 years of age for commercial sexual exploitation, regardless of whether or not this person has been the victim of trafficking. The Committee, therefore, observes that there do not appear to be any provisions that prohibit the use, procuring or offering of a child between 16 and 18 years of age for the production of pornography. The Committee notes the Government's indication that the amendments to the Swiss Penal Code which are needed to implement the Lanzarote Convention include extending the scope of section 197 of the Penal Code to protect young persons between 16 and 18 years of age from sexual exploitation. ***The Committee requests the Government to take the necessary measures as matter of urgency to ensure that the use, procuring or offering of all children under 18 years of age for the production of pornography is prohibited in national law.***

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

## Syrian Arab Republic

### Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

*Article 3(3) of the Convention. Admission to hazardous work as from 16 years of age. Agricultural work.* The Committee previously noted that section 2 of Order No. 972 (of the Ministry of Social Affairs and Labour) of 7 May 2006 specifies a list of tiring jobs in the agricultural sector in which it is prohibited to employ children. This list includes: (1) all forms of irrigation except for drip irrigation; (2) crop harvesting and cutting fodder; (3) driving agricultural machinery, operating and maintaining water pumps by diesel engines; (4) working with and sprinkling agricultural pesticides, using chemical fertilizers and pruning; (5) carrying, pulling and transporting loads; (6) cultivating soil through the use of a manual plough; and (7) dispersing seeds in an area exceeding 2,500 square metres. However, the Committee noted that, pursuant to section 1, Order No. 972 only prohibits these listed activities for children under 15 years of age. In this regard, the Committee recalled that *Article 3(3)* of the Convention permits the performance of hazardous work, under very specific conditions, only from the age of 16 years.

The Committee takes note of the information in the Government's report on measures it intends to take to protect children working in agriculture. The Government indicates that it aims to establish a centre in 2011 for the rehabilitation of children in the agricultural region of the governorate of Dayr az-Zawr, through the National Programme for the Elimination of the Worst Forms of Child Labour.

Nonetheless, the Committee observes that the authorized age to perform hazardous work in the agriculture sector remains at 15 years of age, pursuant to Order No. 972. In this regard, the Committee once again recalls that by virtue of *Article 3(3)* of the Convention, national laws or regulations or the competent authority may, after consultations 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 health, safety and morals of the young persons are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee urges the Government to take the necessary measures to ensure that no child under the age of 16 is permitted to engage in hazardous work in the agricultural sector. In this regard, the Committee requests the Government to take the necessary measures to amend Order No. 972 to prohibit hazardous types of agricultural activities to all children under 16 years of age.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the information in the Government's report that, in collaboration with the ILO and UNICEF, it has undertaken an analytical study on the situation of child labour in the country. The Government indicates that a database is being developed, and measures are being taken to monitor the cases identified. The Committee also notes the statistical information from the 2006 "Multiple Indicator Cluster Survey 3 of the Syrian Arab Republic" that 5.4 per cent of all children between the ages of 5 and 14 are engaged in economic activity. This survey indicates that boys are much more likely than girls to engage in economic activity under the minimum age, with 10.3 per cent of boys aged 12 years, 14.9 per cent of boys aged 13 years and 22.9 per cent of boys aged 14 years engaged in economic activity. This survey further indicates that boys between the age of 5 and 14 who engage only in economic activity (and do not attend school) work an average of 30.8 hours per week. Moreover, the Committee notes the statement by the UNICEF country representative of 7 November 2010 that child labour is a serious issue in Syria (in a document available from the Integrated Regional Information Networks operated by the UN Office for the Coordination of Humanitarian Affairs). ***The Committee must express its concern over the number and situation of children under the minimum age of 15 years who are engaged in economic activity and it urges the Government to strengthen its efforts to improve the situation. The Committee also requests the Government to provide information from the analytical study on child labour in the Syrian Arab Republic, once it is available, including up-to-date statistical information on the number of children and young persons who are engaged in economic activity.***

## United Republic of Tanzania

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

*Article 3 of the Convention. Worst forms of child labour. Clause (c). Use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs.* The Committee previously noted the Government's statement that efforts would be made to bring about a prohibition on the use, procuring or offering of a child for illicit activities, in particular the production and trafficking of drugs.

The Committee notes with *interest* that according to section 5(1)(a) of the draft Law of the Child (Child Labour) Regulations drawn up pursuant to section 157 of the Law of the Child Act No.21 of 2009 (Law of the Child Act), no child below the age of 18 years shall be employed in the worst forms of child labour, which include illicit activities. The Committee notes, however, that the draft Child Labour Regulations do not appear to establish penalties for the offences covered under section 5(1)(a) of the draft Child Labour Regulations. ***The Committee therefore requests the Government to take the necessary measures to establish sufficiently effective and dissuasive penalties for the offences related to the use, procuring or offering of a child for illicit activities, including the production and trafficking of drugs. The Committee expresses the firm hope that the draft Child Labour Regulations will be adopted in the near future.***

*Articles 3(d) and 4(1). Prohibition and determination of hazardous work.* The Committee previously noted the Government's statement that the process of adopting a list of types of hazardous work prohibited to children under 18 years was under way.

The Committee notes the Government's indication that the Ministry of Labour and Employment consulted with the stakeholders in July 2011 on the proposed regulation concerning the list of hazardous types of work. This proposed regulation will be submitted to the Labour, Economic and Social Council for comments and finally to the Attorney-General before it is finalized. The Committee also notes that according to section 82(1) of the Law of the Child Act, it is prohibited to employ or engage a child under 18 years in hazardous work which includes: going to sea; mining and quarrying; carrying heavy loads; manufacturing industries where chemicals are produced or used; work in places where machines are used; and work in bars, hotels and places of entertainment. ***The Committee expresses the firm hope that the Government will take the necessary measures, without delay, to adopt the regulation determining the list of types of hazardous work prohibited to children under 18 years of age. It requests the Government to provide a copy of the regulation, once it has been adopted.***

*Article 6. Programmes of action for the elimination of the worst forms of child labour.* The Committee notes the Government's information that within the ILO–Brazil Partnership Programme for the Promotion of South–South Cooperation, the Government of the United Republic of Tanzania has developed a National Action Plan for the Elimination of the Worst Forms of Child Labour. This project is intended to increase awareness and knowledge among stakeholders and the public at large on the adverse impact of child labour. ***The Committee requests the Government to provide information on the implementation of the National Action Plan for the Elimination of the Worst Forms of Child Labour, and its impact on eliminating the worst forms of child labour.***

*Article 7(1). Penalties.* Noting that most of the monetary penalties mentioned in the Penal Code and the Employment and Labour Relations Act of 2004, were very low, the Committee had requested the Government to indicate the measures taken to review the monetary penalties prescribed for the offences mentioned under *clauses (a)–(d)* of *Article 3* of the Convention.

The Committee notes with *interest* that sections 78, 79, 80, and 83 of the Law of the Child Act establishes penalties ranging from 100,000 shillings to 500 million shillings, in addition to imprisonment for the offences related to hazardous work, forced labour, prostitution and the sexual exploitation of children. ***The Committee requests the Government to provide information on the application of these penalties in practice, including for trafficking in children under the Anti-Trafficking in Persons Act of 2008.***

*Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education.* Following its previous comments, the Committee takes due note of the Government's statement that at the primary level, a total of 8,441,553 children were enrolled in 2009, and a total of 8,419,305 children were enrolled in 2010. The Committee also notes the Government's indication that in 2011, 1,556,685 children were enrolled at the secondary level. According to the statistics provided by UNESCO, in 2009, 97 per cent of girls and 96 per cent of boys were enrolled in the primary school level and 102 per cent (gross intake rate to last grade of primary) of children completed a full course of primary schooling.

*Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking in children.* The Committee previously noted that according to the provisions under Part IV of the Anti-Trafficking in Persons Act of 2008, the Government shall secure the protection, assistance and rehabilitation of child victims of trafficking and establish or designate centres for the protection and assistance of trafficking in persons (sections 19 and 20).

The Committee notes the Government's information that there are focal points in every police station to handle child victims of trafficking. Moreover, there are centres run by NGOs for the protection and assistance of child victims of trafficking. The Committee notes the information available in the ILO–IPEC report of 2010 on the project entitled "Support for the *Time-bound Programme* on the Worst Forms of Child Labour-Phase II" (ILO-*TBP* report of 2010) that Parliament has established an Anti-Human Trafficking Fund in order to finance the Anti-Trafficking Committee which focuses on providing protection and assistance to victims of trafficking. ***The Committee requests the Government to provide information on the measures taken by the Anti-Trafficking Committee for the removal of child victims of trafficking for sexual and labour exploitation as well as the measures taken for their rehabilitation and social integration, and the results achieved. It also requests the Government to indicate the number of child victims of trafficking who have been rehabilitated in the centres run by the NGOs.***

*Clause (d). Identify and reach out to children at special risk. Child orphans of HIV/AIDS.* The Committee previously noted that according to the information contained in the Epidemiological Factsheet on HIV/AIDS (UNAIDS) of October 2008, over 970,000 children aged below 17 years were HIV/AIDS orphans in the United Republic of Tanzania.

The Committee notes the Government's information that it has created a conducive environment for the civil society organizations, private sector, and workers' and employers' organizations to actively participate in the fight against HIV/AIDS, to deal with the problem of child labour as well as to participate in the provision of education and vocational training to child victims and orphans of HIV/AIDS. The Committee also notes that according to the information available in the ILO-*TBP* report of 2010, the project has provided training and orientation to social partners and implementing

agencies on the use of the ILO Handbook on Mainstreaming HIV/AIDS issues into child labour initiatives, together with a Training Manual on Child Labour and HIV/AIDS. The Committee notes, however, that according to the Epidemiological Factsheet on HIV/AIDS (UNAIDS), of 2009, more than 1,300,000 children aged below 17 years are HIV/AIDS orphans in the United Republic of Tanzania. The Committee expresses its *deep concern* at the high number of children orphaned by HIV/AIDS. **Considering that children orphaned by HIV/AIDS are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to ensure that children orphaned by HIV/AIDS are prevented from being engaged in the worst forms of child labour, in particular by increasing their access to education and vocational training. The Committee requests the Government to provide information on the measures taken in this regard, and on the results achieved.**

## Thailand

### **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 (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously requested a copy of section 287 of the Penal Code. In this regard, the Committee noted that section 287 of the Penal Code prohibits, inter alia, producing or making any document, drawing, print, picture, photograph, film or tape which is "obscene". However, the Committee noted the information in a document entitled "UNICEF urges quick government action on child pornography" of 11 October 2010, available on the UNICEF website, that reports indicate the open display and sale in the country of graphic sexual videos involving children. In this document, UNICEF urged the Thai authorities to bring to bear "the full force of the law" on those found to be producing, distributing or selling videos or any other material related to the sexual exploitation of children, and urged the Government to investigate where and how such videos are produced. Therefore, while noting that the production of child pornography appears to be prohibited in law, the Committee noted with concern that this worst form of child labour continues to be a problem in practice. **The Committee accordingly urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions are carried out in practice for persons who use, procure or offer persons under 18 years of age for the production of pornography or pornographic performances. The Committee further requests the Government to provide information on whether the involvement of children in non-recorded pornographic performances (such as live performances) is prohibited in law.**

*Clause (c). Use, procuring or offering of a child for illicit activities, in particular, for the production and trafficking of drugs.* In its previous comments, the Committee noted that while the production, importation, exportation, possession or consumption of narcotics is prohibited under the Narcotics Act of 1979, the use procuring or offering of a child under 18 years of age for this purpose did not appear to be prohibited. It also observed that, according to a rapid assessment conducted by ILO-IPEC in 2002, children as young as 10 years of age participate in drug trafficking, and the majority of these are children are between 12 and 16 years and are used to buy or sell drugs.

The Committee noted the Government's statement that, on this point, it was in the process of collecting information from relevant agencies. The Committee reminded the Government that pursuant to *Article 3(c)* of the Convention, the involvement of a person under 18 in illicit activities constitutes one of the worst forms of child labour, and that pursuant to *Article 1* of the Convention member States are required to take "immediate" measures to prohibit these worst forms as a matter of urgency. **Observing that Thailand ratified the Convention in 2001, and that the use of children in the production and trafficking of drugs appears to be a problem in practice, the Committee urges the Government to take immediate measures to explicitly prohibit the use of children in the illicit activities in legislation as a matter of urgency.**

*Article 5. Monitoring mechanisms. Trafficking.* The Committee previously noted that the Royal Thai Police was in the process of establishing a specific unit responsible for combating trafficking of children and women (Division on the Suppression of Offences against Children, Youth and Women), and it requested information on the measures taken by this Division with regard to combating the trafficking of children.

The Committee noted the information in the Government's report that the Division on the Suppression of Offences against Children, Youth and Women has formed teams for the investigation of particular persons and locations suspected to be linked to human trafficking and the use of child labour. It has assigned police officers (at deputy commander or commander levels) to monitor and accelerate the investigation of human trafficking cases, while coordinating with other relevant agencies. The Government indicated that the Division on the Suppression of Offences against Children, Youth and Women has formed campaign teams to sensitize communities, villages and factories and has launched a campaign against human trafficking, in conjunction with other government agencies and private sector organizations. The Committee also noted the information in the Government's report that it had engaged in capacity building for officials to improve their understanding of the phenomenon and to ensure the efficiency of their anti-trafficking efforts. The Committee further noted the information in the ILO-IPEC Technical Progress Report on the second phase of the ILO-IPEC "Project to combat trafficking in children and women in the Mekong subregion" (TICW II Project) of 30 January 2008 (TICW II TPR) that "Operational Guidelines on identification of victims of trafficking in labour cases" had been developed, as a collaboration between the Ministry of Social Development and Human Security (MSDHS) and the Ministry of Labour as a coordinated response to cases of trafficking for the purpose of labour exploitation. The ILO-IPEC Technical Progress Report for the project "Support for national action to combat child labour and its worst forms in Thailand" of 10 September 2010 (ILO-IPEC TPR 2010) indicated that training was provided to labour inspectors and other key stakeholders on these Operational Guidelines in 2009. Nonetheless, the Committee noted the information in the UNODC report entitled "Global Report on Trafficking in Persons" of 2009 (UNODC Report) that the vast majority of foreign victims of trafficking identified between October 2006 and December 2007 were minors (76 per cent of trafficking victims) and that Thailand remained a source country of trafficking victims. **The Committee therefore strongly urges the Government to redouble its efforts to strengthen the capacity of law enforcement officials responsible for the monitoring of trafficking in children, including those in the Division on the Suppression of Offences against Children, Youth and Women and border control officials, to ensure the effective implementation of the Anti-Trafficking in Persons Act. The Committee requests the Government to continue to provide information on measures taken in this regard.**

*Article 6. Programmes of action to eliminate the worst forms of child labour.* 1. *The ILO–IPEC TICW project and the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women (NPA on Trafficking in Children and Women 2003–07).* The Committee previously noted the launching of the TICW Project in 2000 and noted that within the TICW II Project (2003–08), the National Committee on Combating Trafficking in Children and Women launched the NPA on Trafficking in Children and Women 2003–07. It requested information on the concrete impact of measures taken through these initiatives.

The Committee noted the information in the Government’s report that the implementation of the TICW II Project resulted in interventions in Phayao, Chiang Mai, Chiang Rai, Mukdaharn, and Bangkok. The Government indicated that the Chiang Mai Coordination Centre for the Protection of Children’s and Women’s Rights (Chiang Mai Coordination Centre) (under the MSDHS), developed a database on persons at risk for trafficking, as well as the destination sites of vulnerable persons, and that this information was used by partnering agencies in the implementation of initiatives. The Government indicated that 306 community watchdog volunteers were trained in 124 villages in the Phayao Province, and efforts were made to include awareness raising on trafficking in a secondary school curricula. In this regard, the Committee noted the information from ILO–IPEC that within the context of the TICW II Project, the action programmes implemented included “Integrated hill tribe community development project for the prevention of trafficking in children and women (phase II)”, “Programme for the prevention of trafficking in children and women in Chiang Rai province”, “Strengthening the capacity of Ban Mae Chan School to launch a prevention programme on trafficking”, and “Trafficking in children and women for forced labour and sexual exploitation in Chiang Mai”. The Committee further noted the information in the Government’s report that combating the trafficking in persons was a top priority for the Government, and specific policies announced in this regard included capacity building, intelligence exchange between countries and awareness-raising campaigns. ***Observing that the NPA on Trafficking in Children and Women 2003–07 ended in 2007, and the TICW II Project concluded in 2008, the Committee urges the Government to take the necessary measures to ensure that comprehensive national efforts are undertaken to combat the sale and trafficking of persons under the age of 18. It requests the Government to provide information on any ongoing or envisaged national plans of action addressing this phenomenon, and on the implementation of these programmes.***

2. *Child commercial sexual exploitation.* The Committee previously noted that the Office of the National Commission on Women’s Affairs estimated that there were between 22,500 and 40,000 children under 18 years of age in prostitution (representing approximately 15–20 per cent of the overall number of prostitutes) in the country, and that these estimates did not include foreign children in prostitution. The Committee further noted that the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2004–09) included initiatives to address child prostitution, and requested information on the concrete measures taken in this regard.

The Committee noted the Government’s statement that it was in the process of collecting information from relevant agencies on this point. It also noted the information in the Government’s report that a National Plan for the Elimination of the Worst Forms of Child Labour (2009–14) was adopted in 2008. The Committee observed that although the commercial sexual exploitation of persons under 18 is prohibited by law, it remained an issue of serious concern in practice. ***The Committee accordingly urges the Government to take comprehensive measures, including within the framework of the National Plan for the Elimination of the Worst Forms of Child Labour (2009–14), to combat this worst form of child labour. It requests the Government to provide information on the concrete results achieved in combating the commercial sexual exploitation of children.***

*Article 7(1) of the Convention and Part V of the report form. Penalties and the application of the Convention in practice.*

1. *Child victims of trafficking and commercial sexual exploitation.* The Committee previously noted that the enforcement of the existing penalties for the offences of child trafficking and child commercial exploitation were very ineffective. However, it noted the Government’s indication 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. It welcomed the Government’s efforts to develop a more comprehensive system of data collection and analysis of these offences, and requested that the Government provide statistical information on the trafficking and commercial sexual exploitation of children.

2. *Trafficking.* The Committee noted the information in the Government’s report that the Division on the Suppression of Offences against Children, Youth and Women undertook the collection and management of basic data. The Committee also noted the information in the Government’s report that interviews conducted by the police to determine whether foreign children were victims of trafficking revealed 112 suspected child victims of this worst form of child labour. However, the Committee observed that the trafficking of children remained a much broader phenomenon, noting the information in the UNODC Report that between October 2006 and December 2007, 416 child victims of trafficking were detected. Moreover, the Committee noted an absence of information on the number of persons investigated and prosecuted as a result of the identification of child victims of trafficking. ***The Committee urges the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons who traffic in children for the purpose of labour or sexual exploitation are carried out. It requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied in this regard, as well as any additional information from the Division on the Suppression of Offences against Children, Youth and Women on the prevalence of the trafficking of children. To the extent possible, all information provided should be disaggregated by sex and age.***

3. *Commercial sexual exploitation.* The Committee noted the information in the Government’s report from the Division on the Suppression of Offences against Children, Youth and Women that in 2006 two child victims of commercial sexual exploitation were reported, in addition to two offenders. The Government also indicated that there were no reported victims or offenders in 2007, and that in 2008, 23 child victims and 16 offenders were recorded. The Committee observed an absence of information on the penalties applied to these offenders, and observed that these figures appear to represent only a fraction of the number of children engaged in prostitution (with previous Government estimates indicating that tens of thousands of persons under 18 are victims of this worst form of child labour). In this regard, the Committee noted the information in the ILO–IPEC TPR 2010 that, within the framework of the ILO Project “Support for national action to combat child labour and its worst forms in Thailand”, a study had been conducted (by the Khon Kaen University) on the commercial sexual exploitation of children in three provinces in the Northeast of Thailand including Nong Khai, Udon Thani and Khon Kaen (which are major source areas for girls and women in prostitution within Thailand). ***The Committee requests the Government to provide information from the study conducted on the commercial sexual exploitation of children in Nong Khai, Udon Thani and Khon Kaen, with its next report. It also strongly urges the Government to redouble its efforts to ensure that persons who engage in the use, procuring or offering of persons under 18 for the purpose of commercial sexual exploitation are prosecuted and that sufficiently effective***

and dissuasive penalties are applied in practice. In this respect, the Committee requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied with regard to the commercial sexual exploitation of persons under 18 years.

Article 7(2). *Effective and time-bound measures. Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking.* 1. *Services for child victims of trafficking.* The Committee previously noted the various measures adopted by the MSDHS to assist child victims of trafficking, and noted that 3,062 foreign trafficking victims had been protected in Thai shelters and repatriated to their home countries.

The Committee noted the information in the Government's report that the specific policies to combat trafficking announced include measures to protect victims, such as the provision of assistance to those at risk of trafficking, the establishment of a fund to assist victims of trafficking and campaigns to eliminate discriminatory attitudes against victims of trafficking to facilitate their reintegration into communities. The Committee also noted the Government's statement that the Baan Kred Trakarn Protection and Occupational Development Centre was established, and a learning centre was developed as part of its holistic assistance to victims of trafficking. Services provided to trafficked women and children through these centres included the provision of basic necessities, education, vocational training and assistance with psychological recovery. The Government also indicated that the four Protection and Development Centres in Ranong, Pratumthani, Songkhla and Chaing Rai provide assistance, protection and rehabilitation services to victims. The Government further indicated that the Division on the Suppression of Offences against Children, Youth and Women coordinated with agencies involved in the rehabilitation and repatriation of trafficking victims. Lastly, the Committee noted the information in the Government's report that the National Policy and Plan for the Elimination of the Worst Forms of Child Labour (2009–14) included measures to integrate children back into society by preparing their families and communities for their return, to repatriate children in a manner consistent with their needs and safety, and to follow-up on their reintegration, following rehabilitation. **The Committee takes due note of the measures implemented by the Government, and requests it to pursue its efforts to provide direct assistance to child victims of trafficking, with a view to ensuring that victims of trafficking under the age of 18 receive appropriate services for their rehabilitation and social reintegration with child participation.**

2. *Measures aimed at securing compensation for victims of trafficking.* The Committee previously noted that the Government had taken a number of measures aimed at securing justice and compensation for victims of trafficking, including children. It noted that the Prevention and Suppression of Human Trafficking Act provides for the possibility for victims of trafficking to claim compensation from the offenders and the provision of funds amounting to 500 million baht for their rehabilitation, occupational training and development. The Government also indicated that the Accused Act, BE 2544 (2001) states that children who are deceived into trafficking, prostitution, or forced labour, shall receive compensation.

The Committee noted the Government's statement that it was in the process of collecting information from relevant agencies on this point. **The Committee therefore once again requests the Government to indicate in its next report the number of former child victims of trafficking who have received compensation either from the offenders or through funds set up by the Government under the Accused Act BE 2544 (2001) or the Prevention and Suppression of Human Trafficking Act.**

Article 8. *International cooperation and assistance. Regional cooperation and bilateral agreements.* The Committee previously noted several measures taken by the Government to combat trafficking at the regional level, including meetings of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). The Committee requested information on measures taken in this regard and on the concrete measures adopted under bilateral MOUs for the elimination of the interstate trafficking of children.

The Committee noted the statement in the Government's report that, pursuant to the MOU of the COMMIT signed in 2004, and following the review of the first Subregional Plan of Action (2005–07), member countries endorsed the Subregional Plan of Action for 2008–10. This subregional action plan focused on several particular areas, including training and capacity building, multi-sectoral and bilateral partnerships, re-enforcing legal frameworks, law enforcement, victim identification, protection and reintegration and cooperation with the tourism sector. The Committee also noted the information in the Government's report that the Government had signed an agreement with the Government of Viet Nam on bilateral cooperation for eliminating trafficking in persons on 24 March 2008, and that pursuant to this agreement, the two Governments had developed an Action Plan for 2008–09. The Committee further noted that, pursuant to MOUs to combat human trafficking with the governments of Cambodia (signed in 2003) and Laos (signed in 2005), cooperation projects had been formulated and some measures implemented, including a workshop on human trafficking for Laos–Thai border officials. The Government also indicated that it was in the process of initiating similar bilateral MOUs with the Governments of Myanmar, China and Japan. The Government further indicated that within the framework of the TICW II Project, technical assistance and support was provided for combating trafficking efforts related to the MOUs between Thailand and its neighbouring countries. **Noting that cross-border trafficking remains an issue of concern in practice, the Committee urges the Government to pursue its international cooperation efforts with regard to combating the trafficking of persons under 18. It requests the Government to continue to provide information on the concrete measures implemented in this regard, and on the results achieved.**

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

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

## The former Yugoslav Republic of Macedonia

### Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

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 requested a copy of the Criminal Code, as amended in September 2009.

The Committee notes with *satisfaction* that section 418-a of the Criminal Code, as amended in 2009, prohibits the trafficking of persons, and that section 418-d prohibits the trafficking of juveniles. It notes that section 122(22) of the Criminal Code defines a juvenile as a person under 18 years of age.

*Article 4(1). Determination of types of hazardous work.* The Committee previously noted that section 173(1) of the Labour Relations Law states that an employee under the age of 18 must not be ordered by the employer to carry out hard manual labour, works carried out underground or underwater, works connected with sources of ionizing radiations and other works which can have a harmful and dangerous impact on the health and development of the employee or works which are beyond their physical and psychological capacity. Section 173(2) states that the works referred to in section 173(1) shall be determined by the Minister in charge of labour affairs in coordination with the Minister in charge of health affairs. The Committee requested the Government to provide information on any determinations made on types of work deemed harmful, pursuant to section 173(2) of the Labour Relations Law.

The Committee notes the information in the Government's report that a draft regulation defining the activities prohibited for workers under 18 years of age has been developed and is in the process of being enacted. The Committee notes the Government's indication that the regulation contains a detailed list of jobs that are prohibited for persons under the age of 18. This list includes jobs that involve harmful biological or chemical materials (such as toxic, flammable, carcinogenic and explosive substances, lead and asbestos); jobs involving excess dust; jobs involving the slaughtering of animals; jobs in structures or facilities under construction; jobs with high-voltage related risks; and jobs at heights exceeding 1.5 metres. The Committee further notes that this draft regulation prohibits many activities for persons under the age of 18, including activities involving lifting and moving heavy loads which put undue strain on the limbs; activities in which a worker is on his feet for longer than four hours per shift; activities that are performed in strenuous positions; activities in extreme temperatures; and activities with high noise levels. ***The Committee urges the Government to take the necessary measures to ensure that this draft regulation, containing the list of types of work prohibited to persons under the age of 18, is enacted in the near future. It requests the Government to provide a copy of this regulation, once adopted.***

*Article 5. Monitoring mechanisms. Trafficking.* The Committee previously noted the information in the 2009 UNODC Global Report on Trafficking in Persons that the central police service operates a section dealing with trafficking and the smuggling of migrants, within the department for organized crime. It also noted that, in conjunction with the International Organization for Migration (IOM), the Government was providing training to law enforcement officials.

The Committee notes the information in the Government's report that, with the support of the IOM, two specialized training sessions were held on the subject of combating the trafficking of children in 2010. The Government indicates that 51 professionals participated in these training sessions, including inspectors from the Ministry of the Interior, social workers and labour inspectors from the Ministry of Labour and Social Policy, as well as public prosecutors and judges. However, the Committee also notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 23 June 2010, expressed concern that children are trafficked for various purposes to, from and within the borders of the country (CRC/C/MKD/CO/2, paragraph 75). ***The Committee, therefore, requests the Government to pursue its efforts with regard to strengthening the capacity of the relevant law enforcement bodies to ensure the effective monitoring and elimination of the trafficking of persons under the age of 18. It requests the Government to provide information on the measures taken in this regard, and on the results achieved.***

*Article 6. Programmes of Action. Action Plan for Combating Trafficking in Children.* The Committee previously noted that the Sub-group on Combating the Trafficking in Children (within the National Committee on Human Trafficking) had adopted the Action Plan for Combating Trafficking in Children. The Committee also noted that, in conjunction with UNICEF, the Government had published an updated Action Plan to Combat Trafficking of Children for the period 2009 to 2012, and it requested information on measures taken in this regard.

The Committee notes the detailed information provided by the Government on the implementation of the Action Plan to Combat Trafficking of Children during 2010 and 2011 and notes the Government's indication that the Ministry of Labour and Social Policy pursued activities with regard to preventing human trafficking and protecting child victims of trafficking. In this regard, the Committee notes the Government's indication that a comparative analysis on the subject of unaccompanied minors was carried out, to examine existing legislation, practices and mechanisms for protecting this vulnerable group. The Government also indicates that a National Helpline operates on a 24-hour basis and has received 247 calls related to human trafficking. In addition, the Committee notes the Government's indication that the Prevention and Education Programme was implemented in 2010 and 2011, aimed at raising awareness, particularly among vulnerable populations, about human trafficking. Within this programme, in 2010, 2,000 educational leaflets were distributed, 15 workshops were held in primary and secondary schools to inform students about human trafficking and 200 high school students were trained to be peer educators on the topic. In 2011, the Government indicates that five workshops were held on human trafficking prevention for 170 students and that 1,250 copies of various preventive materials were distributed. ***Taking due note of the measures taken by the Government, the Committee requests it to continue its efforts to prevent and eliminate the trafficking of persons under 18 years of age, and to provide information on the results achieved in this regard.***

*Article 7(2). Effective and time-bound measures. Clause (b). Providing direct assistance for the removal of children from the worst forms of child labour, as well as for their rehabilitation and social integration. Trafficking.* The Committee previously noted that, in 2007, the Government adopted Standard Operational Procedures for the treatment of trafficking victims, aimed at providing aid and protection to victims based on an institutionalised cooperative

framework. It also noted that in 2005, the National Referral Mechanism (NRM) for victims of trafficking was established as a joint project of the National Committee on Human Trafficking and the Ministry of Labour and Social Policy.

The Committee notes the Government's statement that activities related to the NRM have been implemented in coordination with the Centres for Social Workers, which include designated social workers in 30 cities and towns throughout the country. It also notes the information in the Government's report that, through the Coordinative Office of the NRM for human trafficking victims, trained staff are available 24 hours a day in order to provide assistance to victims identified by the police and non-governmental organizations. The Committee notes with *interest* the Government's indication that this assistance includes an initial assessment of the victim's needs, the organization of appropriate assistance including crisis intervention, psychological and social support, medical assistance and the provision of food and clothing, as well as the subsequent referral of each victim to a shelter for trafficking victims. Further measures taken through the NRM include the issuing of the necessary paperwork for the identified victims, the appointment of a special guardian for minors, an assessment of the possibility of returning to their family and the development and implementation of a customized re-socialization and a reintegration programme for child victims of trafficking. The Committee further notes the information in the Government's report that between 2006 and 2010, 89 child victims of trafficking including eight such victims in 2009 and ten in 2010 were identified. The Government indicates that in 2010, the NRM Office was active in 15 cases involving minors, out of which ten minors were identified as victims of trafficking. All ten victims were provided services in shelters. In addition, it notes the Government's indication that a legal representative is available to provide legal advice and representation on behalf of victims of trafficking in court appearances, and that these services were provided to ten presumed child victims of trafficking in 2010.

Lastly, the Committee notes the information in the Government's report that it has launched the Child Victims of Trafficking Centre, which aims to provide temporary accommodation to victims, to provide for their privacy and physical safety, and to provide an opportunity for such victims to recover physically, psychologically and socially. A child victim of trafficking may stay in the Centre for six months and that, during this time, social workers seek to find a long-term solution for the accommodation of the child. The Government states that, with the support of the ILO, training was provided the staff of this Centre.

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

## Togo

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1984)**

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

The Committee noted the adoption of Act No. 2006-010 of 13 December 2006 issuing the Labour Code (the Labour Code of 2006) which repeals the Labour Code of 8 May 1974, as well as the adoption of Order No. 1464/MTEFP/DGTLs of 12 November 2007 determining the types of work prohibited for children, which repeals Order No. 15/MTAS-FP of 6 December 1958.

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* Further to its previous comments, the Committee noted the information provided by the Government to the effect that a national policy for the protection of children and a five-year strategic plan (2008–13) were prepared in 2008 to serve as a reference framework for the preparation and implementation of child protection programmes. Among the expected results at the halfway stage of the implementation of the five-year strategic plan, the Committee observed that it is envisaged that 25,000 children and their parents in situations of extreme vulnerability will benefit from support and social assistance measures, with the strengthening of the capacities of 40 social centres and 14 education, activation and training centres for underprivileged young persons outside the school system. It is also expected that by 2013 a total of 2,400 children at risk between the ages of 12–17 years will benefit from a national programme of training, integration and assistance for the commencement of occupational activities. The Committee further noted that the Government is currently participating in a project to combat child labour through education implemented with the support of ILO–IPEC. It noted from the information provided by the Government in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that various action programmes have been adopted in the context of this project, including the implementation of measures to prevent the use of children as porters and for the removal and reintegration of 625 child porters from the markets of the city of Lomé and the protection and integration into the school system of 200 children removed from domestic work in the city of Lomé, as well as strengthening the capacities of community structures for the removal and social reintegration of 1,800 children engaged in hazardous agricultural work. According to the technical progress report for the project of September 2010, a total of 3,063 children have been prevented from working through the provision of educational services and 719 children were removed from work between the months of March and August 2010.

While taking due note of the measures adopted by the Government for the abolition of child labour, the Committee noted that, according to UNICEF statistics for the years 1999–2008, 29 per cent of children between the ages of 5 and 14 years are engaged in work in Togo. According to the report of the quantitative survey undertaken in four economic regions of the country (Maritime, Plateau, Central and Lomé) in 2009–10 by the General Directorate of National Statistics and Accounting, which was attached to the Government's report under Convention No. 182, children principally work in the agricultural sector, household work and the urban informal economy. Moreover, the majority of children working in these three sectors are between 5–14 years of age. *Expressing its concern at the number of children who work and whose age is lower than the minimum age for admission to employment or work, the Committee requests the Government to continue its efforts to combat child labour, affording particular attention to children engaged in work in agriculture and the informal economy. It requests the Government to continue providing information on the number of children between the ages of 5–14 years who are prevented from prematurely entering the labour market and on the number of children removed from work in the context of the current action programmes.*

*Article 2(1). 1. Scope of application.* With reference to its previous comments, the Committee noted with satisfaction that section 150 of the Labour Code of 2006 provides that children under 15 years of age may not be employed in any enterprise or perform any type of work, even on their own account. **The Committee requests the Government to provide information on the measures adopted or envisaged, including strengthening the capacities of the labour inspection services, with a view to ensuring the protection afforded by the Labour Code of 2006 to children who work on their own account or in the informal sector.**

*2. Minimum age for admission to employment or work.* The Committee noted that, under section 150 of the Labour Code of 2006, the minimum age for admission to employment or work is set at 15 years, unless derogations are envisaged by order of the Minister responsible for labour. It noted the Government's indication that, in accordance with section 150 of the Labour Code, an order derogating from the minimum age for admission to employment has been prepared and is awaiting approval by the National Council for Labour and Labour Laws, which includes membership by employers' and workers' organizations. **The Committee requests the Government to provide additional information on the nature of the exceptions covered by the Order derogating from the application of section 150 of the Labour Code of 2006 and requests it to provide a copy of the Order as soon as possible.**

*Article 2(2). Raising the minimum age initially specified.* The Committee noted that Togo initially specified a minimum age for admission to employment or work of 14 years when it ratified the Convention. It noted with interest that section 150 of the Labour Code of 2006 provides that, "subject to the provisions respecting apprenticeship, children of either sex may not be employed in any enterprise or perform any type of work, even on their own account, before the age of fifteen (15) years". It drew the Government's attention to the fact that *Article 2(2)* of the Convention envisages the possibility for a State which decides to raise the minimum age for admission to employment or work initially specified to notify the Director-General of the International Labour Office by a further declaration with a view to harmonizing the age established in the national legislation with that envisaged at the international level.

*Article 3(3). Admission to hazardous work from the age of 16 years.* Further to its previous comments, the Committee noted that certain provisions of Order No. 1464 authorize the employment of children from the age of 16 years on work likely to harm their health, safety or morals. For example, under section 9 of Order No. 1464, children may be engaged to operate vertical wheels, winches and pulleys from the age of 16 years, and section 11 authorizes the employment of young girls of 16 years of age on the external displays of shops and boutiques. The Committee also noted that section 12 authorizes children over 15 years of age to carry, drag or push loads of a weight of up to 140 kgs for boys of 15 years of age employed in transport by wheelbarrow. It also observed that no protection measures are envisaged relating to the performance of these types of work. The Committee reminded the Government that, under the terms of *Article 3(3)* of the Convention, national laws or regulations may, after consultation with employers' and workers' organizations, authorize the performance of hazardous types of work as from the age 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 instruction or vocational training* in the relevant branch of activity. **The Committee therefore requests the Government to provide information on the measures adopted to ensure that the conditions set out in Article 3(3) of the Convention are fully guaranteed for young persons between 16–18 years of age engaged in the types of work covered by Order No. 1464. It also requests the Government to take the necessary measures to ensure that the legislation is in conformity with the Convention by guaranteeing that in no case may the performance of hazardous types of work be authorized for children under 16 years of age.**

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

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

The Committee noted the communication of the International Trade Union Confederation (ITUC) of 24 August 2010 and the Government's report. It also noted the adoption of Act No. 2006-010 of 13 December 2006, issuing the Labour Code (the Labour Code of 2006), which repeals the Labour Code of 8 May 1974, and the adoption of Act No. 2007-017 of 6 July 2007 issuing the Children's Code (the Children's Code of 2007).

*Article 3 of the Convention. The worst forms of child labour. Clause (a). Sale and trafficking of children.* In its previous comments, the Committee noted that there was no provision in the current legislation prohibiting this worst form of child labour. It noted that Togo had prepared on 23 January 2003 a preliminary draft of a Bill to define the trafficking of children, which was awaiting adoption by the Council of Ministers, and that a draft Children's Code had been forwarded to Parliament in 2002.

The Committee noted with satisfaction the adoption of Act No. 2005-009 on the trafficking of children of 3 August 2005 (the Act on the trafficking of children). It observed that, by virtue of section 3 of this Act, the term "trafficking" is defined as the process by which any child is recruited or abducted, transported, accommodated or hosted, both within and outside the national territory, by one or more persons, for the purposes of her or his exploitation. Under the terms of section 2, the term "child" is defined as any person under the age of 18 years. The Committee also noted that those who engage in or are accomplices to the trafficking of children are liable to a sentence of imprisonment of five years (section 10) and that the penalty is doubled in cases where acts of the trafficking of children result in the death or disappearance of the victim (section 11). Section 11 also envisages the existence of aggravating circumstances which may result in the person committing the offence serving a penal sentence of ten years of imprisonment. This is the case, among others, where the victim of the trafficking is under 15 years of age at the time of the offence or where the child has been subjected to the worst forms of child labour. The Committee also noted that, under the terms of section 264(a) of the Children's Code of 2007, the sale and trafficking of children are considered to be one of the worst forms of child labour.

However, the Committee noted the allegations made by the ITUC to the effect that internal and international trafficking of children for domestic work exists in Togo. The internal trafficking affects children from poor and rural communities who are directed towards domestic work in towns, and particularly Lomé, or in fertile agricultural regions. Trans-border trafficking takes place, both from and towards Togo, from Nigeria, Gabon, Côte d'Ivoire, Burkina Faso, Niger, Benin and Ghana.

The Committee further noted the findings of the qualitative survey of the worst forms of child labour undertaken in 2009–10 by the General Directorate of Statistics and Accounting among 2,500 households in four economic regions of the country (Maritime, Plateau, Centrale and Lomé), which are appended to the Government's report. It observed that, according to

the report of the discussion by the central region group, girls who are victims of trafficking are used for prostitution and domestic work, while boys are used as manual workers in plantations and quarries. The Committee noted the information provided in the United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons of February 2009, indicating that, according to the Ministry of Labour of Togo, 1,758 victims of trafficking were identified in 2003 and 1,301 in 2004, most of whom were children. It noted that, according to the report, the number of investigations for trafficking in persons fell from 21 in 2005 (the year of the adoption of the Act on the trafficking of children) to nine in 2007. It observed that, of the nine persons investigated in 2007, six men were convicted of trafficking in persons, one for trafficking for sexual exploitation and the five others for trafficking for the purpose of slavery. The sentences received by these persons did not however exceed one year of imprisonment. The Committee also observed that, according to the indications contained in the report entitled “Trafficking in Persons Report 2010 – Togo” published on the website of the Office of the United Nations High Commissioner for Refugees, certain traffickers appear to obtain their release through the corruption of state officials. While taking due note of the measures adopted by the Government to combat the trafficking of children, the Committee expressed concern at the fall in the number of investigations conducted following the adoption of the Act on child trafficking, and with regard to the allegations of corruption from which certain traffickers benefit to evade justice. **The Committee therefore requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of persons engaged in the sale and trafficking of children under 18 years of age are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to provide information on the number of investigations conducted, prosecutions carried out and convictions obtained under Act No. 2005-009 on the trafficking of children.**

*Clauses (a) and (d). Forced or compulsory labour and hazardous types of work. Child domestic work.* The Committee noted the ITUC’s communication reporting conditions of work which are hazardous and/or similar to forced labour encountered by many children engaged as domestic workers. According to the ITUC’s allegations, there are thousands of child domestic workers in Togo, the large majority of whom are girls from poor and rural areas of the country, and who perform various potentially hazardous household tasks in private homes and may also be called upon to sell products in the street or in markets on behalf of their employers. These children work very long days (ten hours or more), frequently have no rest days and receive no or very little remuneration. They live in the house of their employers, are dependent upon the latter, and are isolated from their families, which makes them vulnerable to abuse and forced labour. Child domestic workers are also regularly subjected to verbal and physical violence and to sexual abuse, and are often deprived of education opportunities. The ITUC’s communication also refers to a survey carried out in Togo between 2007 and 2008 of 61 girl domestic workers, which shows that the average age at which they enter into domestic service is nine.

The Committee noted that section 151(1) of the 2006 Labour Code prohibits forced labour, which is defined as one of the worst forms of child labour. It further noted that, in accordance with Order No. 1464/MTEFP/DGTLs of 12 November 2007 (Order No. 1464) determining the types of work prohibited for children, domestic work is considered to be a hazardous type of work prohibited for children under 18 years of age.

The Committee observed that, although the national legislation is in conformity with the Convention on this point, child domestic work performed under conditions similar to forced labour or under hazardous conditions remains a concern in practice. It reminded the Government that, under the terms of *Article 3(a) and (d)* of the Convention, work or employment of children under 18 years of age under conditions similar to slavery or under hazardous conditions are some of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. **The Committee therefore requests the Government to take immediate and effective measures to ensure that children under 18 years of age engaged in domestic work under conditions similar to slavery or under hazardous conditions benefit from the protection afforded by the national legislation. In this respect, it requests the Government to provide information on the application of the provisions respecting this worst form of child labour, including statistics on the number and nature of the violations reported, investigations conducted, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.**

*Article 6. Programmes of action to eliminate the worst forms of child labour. Trafficking of children and child domestic work.* The Committee noted the conclusions of the ITUC which recommends, inter alia, the implementation of measures to assist children engaged in domestic work to leave their work and to facilitate their rehabilitation. The Committee noted the information provided in the Government’s report indicating that, in the context of the ILO–IPEC project to combat child labour through education, two workshops were organized in June 2009 with a view to the preparation of a plan of action on the trafficking of children and a plan of action to combat domestic work. According to the technical progress report of the project of September 2010, these sectoral action plans would have been adopted in December 2009. The Committee also noted that, in the context of this ILO–IPEC project, 126 children were prevented from entering domestic work and 22 were removed from this worst form of child labour between March and August 2010. All of them benefited from rehabilitation measures through education services. The Committee further noted that between June and September 2010, workshops were conducted for the training of labour inspectors on the issue of child domestic work. **The Committee requests the Government to provide information on the measures taken and the results achieved in the context of the plan of action on the trafficking of children and the plan of action to combat domestic work in terms of the identification, removal and reintegration of children under 18 years of age. It requests the Government to provide copies of these plans of action.**

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Sale and trafficking of children. 1. National Commission for the Shelter and Social Reintegration of Child Victims of Trafficking.* With reference to its previous comments, the Committee noted the Government’s indications that a National Commission for the Shelter and Social Reintegration of Child Victims of Trafficking (CNARSEVT) was established in April 2002. The responsibilities of the CNARSEVT include: (i) organizing the repatriation to Togo of child victims of trafficking identified at the borders and in the various destination countries; (ii) coordinating the shelter and care (accommodation and health care) of repatriated child victims of trafficking; (iii) supervising the family and social reintegration of repatriated child victims of trafficking; (iv) centralizing information and statistical data on child victims of trafficking, sheltered and reintegrated at the national level; and (v) mobilizing the necessary resources for the repatriation, shelter and social reintegration of child victims of trafficking. The CNARSEVT has regional committees to discharge its functions. **The Committee requests the Government to provide additional information on the activities of the CNARSEVT, including extracts of reports or documents, as well as the results achieved in terms of the number of child victims of trafficking who are repatriated, cared for and reintegrated.**

2. *Measures adopted in the context of various ILO-IPEC projects.* With reference to its previous comments, the Committee noted the Government's indications that, in the context of the implementation of the ILO-IPEC-LUTRENA project, the direct action taken for children and their families between 2001 and 2007 resulted in the removal of 4,038 children from trafficking and the reintegration in the school system of 173 children removed from this worst form of child labour. The Committee also noted the information contained in the Government's report indicating that four transitional shelter centres for children removed from trafficking have been established, that a system to shelter and refer children removed from trafficking has been created and that 165 vigilance committees have become operational in village communities. Furthermore, according to the technical progress report of September 2010 of the ILO-IPEC project to combat child labour through education, a total of 87 children, including 63 girls and 24 boys, were removed from trafficking between March and August 2010 and have benefited from educational services and training opportunities. ***The Committee strongly encourages the Government to continue to take immediate and effective measures to remove child victims of sale and trafficking and requests it to continue providing information on the number of children who are, in practice, removed from this worst form of child labour and placed in transitory shelter centres.***

*Article 8. International cooperation and assistance. Regional cooperation in relation to the sale and trafficking of children.* Further to its previous comments, the Committee noted the information provided by the Government in its report indicating that several multilateral agreements have been concluded with neighbouring countries in the context of the measures to combat the trafficking of children. The Committee noted that Togo signed the Cooperation Agreement between Member States' Police Forces on Investigation in Criminal Matters adopted in Accra in 2003 by the Member States of ECOWAS, the Multinational Cooperation Agreement to Combat Child Trafficking of Abidjan (2005) and the Abuja Multilateral Cooperation Agreement to Combat Trafficking in Persons, especially Women and Children (2006). It also noted that Togo has concluded a quadrilateral agreement with Benin, Ghana and Nigeria on border crime. It further noted the Government's indication that discussions are under way with Nigeria for the signature of a bilateral agreement to combat the trafficking of children. ***The Committee strongly encourages the Government to continue its efforts and to take measures to cooperate with countries that are signatories to the multilateral cooperation agreements referred to above, thereby strengthening security measures on frontiers, with a view to detecting and intercepting child victims of trafficking and apprehending and arresting persons involved in networks engaged in the trafficking of children. It also requests the Government to continue providing information on the progress made in the discussions for the adoption of a bilateral agreement with Nigeria.***

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

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

## Turkey

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

The Committee notes the Government's report, in addition to the communication of the Confederation of Turkish Trade Unions (TÜRK-İS) dated 10 May 2011.

*Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour.* In its previous comments, the Committee noted the indication of TÜRK-İS that no national policy was being pursued in Turkey to ensure the effective abolition of child labour and that the number of child workers was increasing. It noted the Government's statement that the framework for a national programme and policy for the elimination of child labour had been elaborated by the Child Labour Unit (CLU), in response to feedback received from various parties consulted, to create a wide-ranging and integrated national policy that is participative and time-bound. The Committee noted the information in the Government's report that measures to progressively eliminate child labour have been integrated into a wide variety of governmental initiatives and policies, including the Government's Ninth Five-Year Development Plan and the Ministry of Labour and Social Security's strategic programme for the years 2009–13. The Committee also noted that the issue of child labour is included as a priority in the Government's Joint Inclusion Memorandum with the European Union (EU), and that the EU has provided pre-accession assistance to address this phenomenon. In addition, the Committee noted that on 10 February 2009, the Government signed a Memorandum of Understanding with the ILO on the implementation of a Decent Work Country Programme, which includes the elimination of child labour as a priority. While taking note of these measures, the Committee observed the statement in the UNICEF draft country programme document of 5 April 2010 that, despite progress, child labour continues to be a serious issue in Turkey, particularly in the agricultural sector (E/ICEF/2010/P/L.6, paragraph 4).

The Committee notes the observations made by TÜRK-İS, according to which child labour in Turkey is found in the urban informal sector, in the domestic service, and in seasonal agricultural work.

The Committee notes the Government's information, in its report, on the activities and measures it has adopted in order to combat child labour in Turkey. In particular, the Committee notes that the Ministry of Food, Agriculture and Livestock, in collaboration with related agencies and institutions, prepared a Rural Development Plan which covers the years 2010–13 and which aims to improve the working conditions and life standards of mobile seasonal agricultural workers. In this regard, significant measures are taken to prevent children from taking part in mobile seasonal agricultural work and to provide children of compulsory education age with access to education. Furthermore, a plan of action was prepared to remove children from child labour in seasonal agriculture in provinces where hazelnuts are produced, which is a sector where children accompany their parents and are exposed to unfavourable conditions that are not appropriate to their age and development.

Moreover, the Committee notes the Government's information that the Ministry of National Education is implementing, since 2008, the Programme of Raising Class Teaching (YSÖP) which introduces certain children

aged 10–14 back to education, such as those who have been out of the education system due to economic or traditional reasons. The Committee observes that, with YSÖP, 28,559 students were introduced to schools between 2008–11, among which 7,677 in 2010–11 alone. The Committee also notes the Government’s statement that the Ministry of Education has signed a Memorandum of Understanding in 2011 to enhance collaboration among agencies and institutions on the issue of providing children with access to quality education and removing the obstacles to access to education, including child labour. While taking due note of the measures taken by the Government, the Committee notes with *concern* that child labour continues to be a problem in practice, particularly in the agricultural sector. ***The Committee strongly encourages the Government to strengthen its efforts to combat child labour, including through the various measures mentioned above, and to continue providing detailed information on the results achieved.***

*Article 8. Artistic performances.* In its previous comments, the Committee noted that section 16 of the Civil Code provides that children under 15 years may appear in artistic performances with the consent of their family or legal representative. The Committee noted the statement by TÜRK-İS that a system regulating children’s involvement in artistic endeavours is necessary, to allow for the monitoring and protection of these children. It noted the Government’s indication that Chapter 19 (entitled “Social Policy and Employment”) of the National Programme of Turkey for the Adoption of the EU Acquis (NPAA) (published in the *Official Gazette* of the Republic of Turkey on 31 December 2008 (No. 27097)), provides for the adoption of regulations in conformity with EU Council Directive 94/33, concerning the participation of persons under 18 in artistic activities. It also noted the Government’s indication that preparatory technical work was completed in this regard. The Committee further noted that the Schedule of Legislative Alignment (table 19.4.1) of the NPAA indicates that amendments on the employment of children below the age of 18 in the field of fine arts is necessary, and shall be introduced in Turkish legislation by 2010 through the draft law amending Labour Law No. 4857 (page 210).

The Committee notes the Government’s information that technical studies for the required amendments to Labour Law No. 4857 are completed but that a consensus on the details of the amendments has not yet been reached. In this regard, a project will be conducted in the second half of 2011 in order to decide what kind of authorization and monitoring mechanism should be established to provide the best protection for children involved in artistic performances. The Government indicates that conformity with the Convention on this point will be ensured through legal arrangements by the beginning of 2012 at the latest. ***Recalling that pursuant to Article 8(1) of the Convention, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment under the general minimum age for such purposes as participation in artistic performances, the Committee expresses the firm hope that the forthcoming amendments will be in conformity with the Convention. The Committee requests the Government to provide a copy of the relevant legislation with its next report.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that the third Child Labour Study (conducted in 2006 by the Turkish Statistics Institution (TSI) with ILO–IPEC support) indicated that, while the proportion of working children had dropped significantly, there remained 320,000 working children between the ages of 6–14 and 638,000 working children between the ages of 15–17 in 2006. The Committee noted the statement by TÜRK-İS that, while the number of working children has significantly decreased, there are still a number of children between the ages of 6–14 engaged in economic activity. TÜRK-İS indicated that to address this issue, poverty reduction is necessary and education should be encouraged.

The Committee notes the Government’s information that the last Child Labour Force Survey is the one that was conducted by the TSI in 2006. There is no official updated data relating to the child labour force. However, the Government indicates that it is planned to update the child labour force data in collaboration with the TSI by the end of 2011 or beginning 2012. ***The Committee strongly urges the Government to take the necessary measures to ensure that the TSI conduct its research to obtain up-to-date information on the number of working children in Turkey. The Committee requests the Government to provide this information, particularly on the percentage of children below the age of 15 who are engaged in economic activity, in its next report. To the extent possible, this information should be disaggregated by age and sex.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

The Committee notes the Government’s report, as well as the communication of the Confederation of Turkish Trade Unions (TÜRK-İŞ), dated 17 May 2011, and the communication of the Turkish Confederation of Employers’ Associations (TİSK), of 24 May 2011.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted that, according to the indications of the International Trade Union Confederation (ITUC), Turkey is a country of transit and destination for trafficked children, who are forced into prostitution and debt bondage. The Committee noted that the Children’s Office (in the Commission for the Provinces) organizes a yearly course for its officials on combating the trafficking and sexual harassment of children. It also noted the information contained in the Global Report on Trafficking in Persons of the United Nations Office on Drugs and Crime, according to which a second National Plan of Action to Combat Human Trafficking was prepared in 2007 and was awaiting adoption. The Committee however expressed concern at allegations of complicity by law enforcement officers with human traffickers.

The Committee notes the Government's indications that 3,816 security officers responsible for surveys of children have been trained by the children's units on subjects relating to the Convention, including the trafficking of children. The Government adds that the second National Plan of Action to Combat Human Trafficking was approved on 18 June 2009 and that it has entered into force. In the framework of this Plan, a Bill on foreign nationals and international protection has been prepared, which establishes measures applicable exclusively to child victims of trafficking. The Government also indicates that, according to the reports of the Office of the Attorney-General, there were 366 cases of trafficking in persons in 2009 and 347 cases in 2010, in which 3,912 and 2,842 presumed traffickers were involved, respectively, as well as 50 and 90 child victims of trafficking. Nonetheless, according to the reports of the criminal courts, only 16 persons responsible for trafficking involving victims under 18 years of age were found guilty and convicted in 2009, and five in 2010. The Government adds that 12 law enforcement officers presumed to have been involved in cases of trafficking were identified in 2009, and eight in 2010. However, the Government also indicates that specific sanctions are not envisaged for law enforcement officers, beyond the penalties established in section 80 of the Penal Code to punish persons found guilty of trafficking in persons, and administrative sanctions going as far as dismissal, in accordance with the provisions of the disciplinary rules of the police forces.

While taking due note of the measures adopted by the Government to combat trafficking, the Committee expresses *concern* at the low number of convictions in relation to the high number of presumed traffickers. ***The Committee therefore requests the Government to intensify its efforts to ensure that those responsible for the trafficking of children under 18 years of age, as well as complicit law enforcement officers, are prosecuted and that sufficiently effective and dissuasive sanctions are applied in practice. It requests the Government to continue indicating the number of persons found guilty and convicted in cases involving victims under 18 years of age. The Committee also requests the Government to provide information on the implementation of the second National Plan of Action to Combat Human Trafficking and the results achieved.***

*Article 7(2). Effective and time-bound measures. Clause (b). 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. *Children working in the agricultural sector.* The Committee noted previously that the protection afforded by the Labour Code does not cover children who work in agricultural undertakings employing fewer than 50 workers. It noted that, according to the Labour Inspection Board, 87 per cent of working children are employed in small enterprises with between one and nine workers. The Committee also noted that in 2006, 41 per cent of the 958,000 working children between the ages of 6 and 17 years were engaged in agriculture.

The Committee notes the indication by TÜRK-İŞ according to which one of the most important sectors in which children are engaged in hazardous work is seasonal agricultural work.

The Committee notes the Government's indication that Circular No. 2010/6 of the Prime Minister respecting the improvement of the social and professional life of nomadic seasonal agricultural workers and the project entitled "Improving the social and professional life of nomadic seasonal agricultural workers" (METIP project) envisage significant measures with a view to eliminating child labour in seasonal agricultural work and promoting their access to education. Furthermore, in towns producing nuts, where there is a high density of seasonal workers, a plan of action for the elimination of child labour in seasonal agricultural work for the production of nuts has been implemented. While noting the measures adopted by the Government, the Committee observes with *concern* that the engagement of children in hazardous types of work in the agricultural sector remains a problem in practice. ***The Committee requests the Government to intensify its efforts to ensure that children under 18 years of age are not engaged in hazardous types of work in the agricultural sector, particularly in seasonal agricultural work and the nut harvest. In this respect, the Committee requests the Government to indicate the results obtained through the METIP project and Circular No. 2010/6 in terms of the number of children who have been removed from work in the agricultural sector and who have benefited from rehabilitation and social integration services.***

2. *Children working in the furniture sector and other industrial sectors.* The Committee previously noted that the results of the survey on the worst forms of child labour, contained in the Government's report, showed that, while generally the proportion of working children engaged in the furniture industry is fairly low, in some provinces a significant number of children continue to be engaged in this dangerous work. The survey indicated that, in the province of Çankiri, 5.1 per cent of the children surveyed worked in the furniture industry.

The Committee notes from the communication of the TÜRK-İŞ that the worst forms of child labour continue to exist in this sector, as well as in the auto mechanic industry.

In this respect, the Committee notes the Government's indication that in the industrial sector children generally work in small enterprises and workshops for the repair and maintenance of cars, the production of furniture and shoes. The Government indicates that in 2009 the Labour Inspection Board conducted 639 inspections in furniture making, 143 inspections in shoemaking and 1,910 inspections in car repair workshops. In 2010, the number of visits in furniture-making and car repair workshops was 1,810. The Government indicates that, as a result of these inspections, the working conditions of 2,087 children and young workers have been improved, that no child under 15 years of age is employed in these sectors and that hazardous and arduous types of work are no longer performed by children and young workers. The Committee further notes that a project came into force in May 2011 in the furniture-making sector in Adana, Ankara, Çankiri, Eskişehir and Bursa with the objective of improving working conditions in enterprises, eliminating unlawful

work by children and guiding children towards education. *The Committee requests the Government to continue taking measures for inspections to be carried out in the furniture-making, shoemaking and car repair sectors with a view to ensuring that children under 18 years of age do not perform hazardous types of work in these sectors. The Committee requests the Government to continue providing information on the number of children performing hazardous types of work in such workshops or enterprises who have been identified in this way and removed from such work. It also requests the Government to provide information on the impact of the project that entered into force in May 2011 in the furniture-making sector in terms of the number of children who have been removed from hazardous types of work in the sector and then rehabilitated and socially integrated through educational measures.*

*Clause (d). Children at special risk. Children living or working on the streets.* In its previous comments, the Committee noted that, according to the TISK, nearly 10,000 children were working on the streets of Istanbul and nearly 3,000 in Gaziantep. They work under dangerous conditions without protection. It noted that, according to TÜRK-İŞ, work by children in the streets is one of the most dangerous forms of child labour in Turkey and that, while accurate estimates of children working in other sectors are available, the total number of street children remains unknown. The Committee also noted the results of the survey on the worst forms of child labour, contained in the Government's report, to the effect that, of the nearly 21,000 working children surveyed in the province of Van, 6.7 per cent were working on the streets. Other provinces with high proportions of children working on the streets include Erzurum, where 4 per cent of the nearly 28,000 children surveyed were found to be working on the streets, and Elazığ, where the figures are 6.7 per cent and 10,000 children, respectively. The Committee noted that since 1997, the General Directorate of Social Services and Child Protection (SHÇEK) has been operating 36 centres and six shelters in 28 different regions which offer rehabilitation services to children in difficulties, including those who work on the streets.

The Committee notes the indication by TÜRK-İŞ that the phenomenon of children working on the streets still exists in Turkey, but that there is a significant gap in statistics on this subject and that it is necessary to create a database on the phenomenon.

The Committee notes the Government's indication that there are now 37 centres for children and youth attached to the SHÇEK in 29 regions, offering various services and housing and health care assistance, education and guidance for children living or working on the streets. Through these centres, at the end of December 2010, 246 children had been removed from working in the streets and had returned to school, 948 children who were at risk of being engaged in work and in the worst forms of child labour were placed in school and 3,857 children were provided with support in the education system. The Government adds that, in 2009 and 2010, with the support of UNICEF, workshops on the "Service and evaluation model for departmental plans of action" were held in eight pilot towns. The objective of the workshops is to develop plans of action in all towns to reduce the number of children living or working on the streets. *The Committee requests the Government to pursue its efforts to ensure that children under 18 years of age who live or work on the streets do not perform work which, by its nature, is likely to harm their health, safety or morals, and to continue indicating the results achieved. It also requests the Government to provide information on the progress achieved in the formulation of plans of action to reduce the number of children living or working on the streets, and the results obtained following their implementation.*

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that, with technical support from the ILO and funding from the European Union, the Government had undertaken a study on the worst forms of child labour in seven provinces which covered 99,356 families in 103 districts and 330 towns. The Committee noted that the results of the study indicated the proportion of children in each of the provinces working in four hazardous sectors: work on the streets, tanning and shoemaking, furniture making and car repair. The Committee noted that of all the provinces surveyed, Van appeared to have the highest proportion of children working in these hazardous sectors (with 9.1 per cent of working children between the ages of 6 and 17 years working in one of the four sectors), followed by Elazığ (7.1 per cent) and Çankiri (6.2 per cent).

The Committee notes the Government's indication in its report under the Minimum Age Convention, 1973 (No. 138) that it is planned to conduct a survey to update the statistics on child labour towards the end of 2011 or the beginning of 2012, as the last national study was undertaken by the Institute of Statistics of Turkey in 2006. *Expressing the hope that the study on child labour in Turkey will include statistics on the worst forms of child labour, and particularly on hazardous types of work in street work, tanning and shoemaking, furniture making and car repairs, the Committee firmly encourages the Government to take measures to ensure that the study is conducted and completed within the envisaged time frame. It requests the Government to provide the results of this study with its next report. The Committee also requests the Government to continue providing information on the number and nature of the contraventions reported and the investigations undertaken, prosecutions, convictions and penal sanctions applied. To the extent possible, all information provided should be disaggregated by sex and age.*

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

## Uganda

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2003)**

*Article 1 and Part V of the Convention. National policy designed to ensure the effective abolition of child labour and application of the Convention in practice.* In its previous comments, the Committee noted that the Government acknowledges the problem of child labour in the country and recognizes its dangers. The Committee noted that, according to the 2005 Uganda National Household Survey, 31.1 per cent of children aged from 5 to 14 years were involved in economic activity (32.4 per cent of boys and 29.8 per cent of girls). The Committee noted that, according to the joint ILO-IPEC, UNICEF and World Bank report on understanding children's work in Uganda of August 2008, an estimated 38.3 per cent of children aged 7 to 14 years, over 2.5 million children in absolute terms, were engaged in economic activity in 2005–06. Some 1.4 million children under the age of 12 years were engaged in economic activity, and 735,000 children aged less than 10 years were economically active.

In this regard, the Committee previously noted that a national policy on child labour (NCLP), designed to ensure the effective abolition of child labour and progressively raise the minimum age for admission to employment or work, was adopted in 2006. The policy includes awareness-raising measures, integration of child labour concerns in national and district-level programmes, stimulating collective action at all levels of society and providing a legislative and institutional framework for action against child labour. It had noted that the Government is cooperating with ILO-IPEC in the elaboration of a national action plan (NAP) in order to implement this national policy. The Committee noted that, in its report, the 2009 Technical Advisory Mission on Child Labour Issues (the mission) expressed concern that a NAP for the elimination of child labour had yet to be developed to implement the NCLP. In this regard, the Committee noted that many activities were undertaken to get the process for the NAP started again and that the target date for the NAP to be adopted and operational is March–August 2012.

The Committee notes that, according to information available at ILO-IPEC, a retreat was organized in September 2010 to discuss the NAP which brought together all the relevant constituents and stakeholders. As a result, the draft NAP was produced and its validation took place in March 2011. The final NAP is currently being worked on. In the meantime, the Committee observes that a Simplified National Child Labour Policy was elaborated and adopted in 2010 as a first step to towards raising awareness on the NCLP and child labour matters in Uganda. Furthermore, the Committee notes that the Uganda Bureau of Statistics (UBOS), in collaboration with SIMPOC, has started conducting a standalone National Child Labour Survey in April 2011, which should provide up-to-date data disaggregated by sex, as well as statistics on the situation of child labourers. ***Once again, the Committee encourages the Government to strengthen its efforts in order to ensure that the NAP for the elimination of child labour is validated and adopted by the target date. It requests the Government to provide a copy of this NAP once it is adopted, as well as the results of the standalone survey of the UBOS, as soon as it is finalized. Finally, the Committee once again requests the Government to provide in its next report detailed information on the application of the Convention in practice, including recent statistical data on the employment of children and young persons. To the extent possible, this information should be disaggregated by age and sex.***

*Article 3(2). Determination of hazardous work.* In its previous comments, the Committee noted that, pursuant to sections 2, 32(4) and 32(5) of the Employment Act of 2006, the list of types of hazardous work to be prohibited to persons below 18 years of age was drafted in consultation with the social partners. It noted that the draft hazardous list had been revised and approved during the top management meeting of the Ministry of Gender, Labour and Social Development in May 2009, and that it would be gazetted after the drafting of an extra paragraph on light work. The Committee noted that, during its time in Uganda in 2009 the mission observed that the regulations necessary to implement the newly enacted laws in Uganda, including the Employment Act of 2006, were not being adopted or issued, partly due to the fact that the Labour Advisory Board (LAB) had not met for three years and that the adoption of regulations fell within the purview of the terms of reference of the LAB. The mission considered that the credibility of these newly enacted laws was at stake if they could not be implemented. The Committee therefore urged the Government to take the necessary measures to ensure that they would be adopted in the near future.

The Committee notes with *satisfaction* the Government's information that the Employment of Children Regulations, adopted in 2011, contain the list of hazardous activities prohibited to children under 18 years of age. It observes that this list includes occupations in a variety of sectors, such as agriculture (harvesting and marketing of tobacco or tea, preparing the land of rice plantations, maize milling, fishing), construction (building and road work), mining (sand harvesting and stone crushing), the urban informal economy (market and street activities, motor garages and carpentry workshops), and in entertainment (waitressing and attending in hotels, bars, restaurants or casinos).

*Article 7. Light work.* The Committee had previously noted that according to section 32(2) of the Employment Act, a child under the age of 14 years shall not be employed except for light work carried out under the supervision of an adult person and which does not affect the child's education. Light work, according to section 2 of the Employment Act, means work that is not physically, mentally and socially injurious to the child. The Committee noted that a list of light work activities had not yet been determined by the Ministry of Labour, but that an extra paragraph defining light work would be added to the draft list on hazardous work, after which the document would be gazetted. However, it noted that the Federation of Ugandan Employers indicated to the mission that a list of light work activities had not yet been

determined by the Ministry of Labour, and that the adoption of a provision on light work also fell within the purview of the LAB. The Committee therefore requested the Government to take immediate measures to determine light work activities that may be undertaken by children between 12 and 14 years of age and the conditions in which, light work may be undertaken.

The Committee notes with *satisfaction* that section 4 of the Employment of Children Regulations provides that light work activities include such occupations as sewing, sweeping, cleaning the floor or organizing the house, washing clothes, making purchases at the market, looking for firewood and preparing family meals.

*Article 8. Artistic performances.* The Committee had previously noted the absence of legislative provisions allowing the participation of children below the minimum age of 14 years in artistic performances. It requested the Government to provide information on the measures taken or envisaged for the granting of permits, as well as the conditions subject to which permits are granted for children under the age of 14 years who participate in practice in artistic performances.

The Committee notes with *interest* that section 9 of the Employment of Children Regulations provides that an employer who wishes to employ a child in artistic performances shall apply to the Commissioner, and that the Commissioner shall issue such permits restricting the age, number of hours of work and conditions in which work in this apprenticeship is allowed, in accordance with *Article 8* of the Convention.

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

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

The Committee took note of the report of the Technical Advisory Mission (the Mission) on Child Labour Issues that was carried out in Uganda in July 2009.

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. 1. Abductions and the exaction of forced labour.* The Committee had previously noted that article 25:1 of the Constitution of Uganda stipulates that no person shall be held in slavery or servitude and that section 25:2 states that no person shall be required to perform forced labour. It had noted that the Penal Code punishes as offences abduction (section 126); detention with sexual intent (section 134); and abduction for the purpose of reducing to slavery (section 245). Moreover, section 5 of the Employment Act of 2006 states that anyone who uses or assists any other person in using forced or compulsory labour commits an offence. Finally, section 252 of the Penal Code provides that any person who unlawfully compels any other to labour against their will commits a misdemeanour.

However, in its previous comments under the Forced Labour Convention, 1930 (No. 29), the Committee had noted that the armed group Lord's Resistance Army (LRA) abducted children of both sexes, forcing them to provide work and services as concubines, these alleged activities being associated with the killings, beatings and rape of these children. The Committee had noted that, according to the report of the United Nations Secretary-General on children and armed conflict in Uganda of 7 May 2007 (Secretary-General's report of 2007) (S/2007/260, paragraph 10), the figures from 2005 suggested that as many as 25,000 children may have been abducted since the onset of the conflict in northern Uganda in Kitgum and Gulu districts. However, the total number of abductions had significantly reduced since its peak in 2004. The total number of abductions in January 2005 was estimated to be approximately 1,500, significantly reducing to 222 over the first six months of 2006. Since September 2006, there had been no confirmed reports on the abduction of children in Uganda by the LRA. Moreover, the peace talks between the Government of Uganda and the LRA had officially opened on 14 July 2006 and the parties had signed a formal cessation of hostilities agreement in August 2006, which was extended until 30 June 2007. It was initially expected that the prospects of the signing of a peace agreement would mean a potentially significant increase in the number of children released by the LRA. However, despite repeated pleas by various stakeholders, the LRA had not released children from its ranks.

The Committee noted that, in its concluding observations for the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 17 October 2008, the Committee on the Rights of the Child expressed concern over continued abductions of children living in border regions by the LRA, to be used as child soldiers, sex slaves, spies and to carry goods and weapons (CRC/C/OPAC/UGA/CO/1, paragraph 24). The Committee on the Rights of the Child was further concerned over the inhuman and degrading treatment of the abducted children. Moreover, the Committee noted that, according to the report of the Secretary-General on children and armed conflict in Uganda of 15 September 2009 (Secretary-General's report of 2009), the LRA has not knowingly operated in Ugandan territory since the cessation of hostilities in August 2006. Over the past four years, however, the LRA, including a substantial but unknown number of Ugandan children associated with its forces, has increasingly moved into neighbouring countries to establish additional bases; and children and their communities in the Sudan, the Democratic Republic of the Congo and the Central African Republic have been the victims of attacks that have claimed hundreds of lives and resulted in the disappearance of hundreds of children. In the Democratic Republic of the Congo, 233 abductions of children by the LRA were documented by child protection partners between 1 December 2008 and 30 June 2009. The Secretary-General further indicates that efforts to sign a Comprehensive Peace Agreement with the LRA failed and, as a result, the LRA has increasingly become a regional actor. Since December 2008, LRA elements, operating in small groups, reportedly conducted attacks against several localities in the Democratic Republic of the Congo, killing civilians, burning houses and abducting children and adults. In total, it is estimated that more than 1,000 civilians have been killed and several hundred abducted by the LRA since it increased its violent activities in 2008.

The Committee therefore once again expressed its deep concern at the situation of children abducted by the LRA and forced to provide work and services as informants, porters, hostages, as well as becoming victims of sexual exploitation and violence. It observed that, although national legislation appears to prohibit abductions and the exaction of forced labour, this remains a serious issue of concern in practice, in particular in the context of renewed violence and conflict. In this regard, the Committee once again recalled that, by virtue of *Article 3(a)* of the Convention, the exaction of forced labour from children is considered as one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as

a matter of urgency. *The Committee strongly urges the Government to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children under 18 years, as a matter of urgency. In this regard, it requests the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also urges the Government to take measures to cooperate with the neighbouring countries and accordingly reinforce security measures, particularly on the common borders with the Democratic Republic of the Congo, the Central African Republic and Sudan, with a view to bringing an end to this worst form of child labour.*

2. *Compulsory recruitment of children for use in armed conflict.* The Committee had previously noted that, according to the Secretary-General's report of 2007 (paragraph 5), Uganda is among the countries where parties to armed conflicts – the Ugandan People Defence Force (UPDF), the local defence units and the LRA – recruited or used children and were responsible for other grave violations. According to this report, it was estimated that, notwithstanding various peace agreements, up to 2,000 women and children may still have been held by the LRA within its ranks and had not been released. Regarding children recruited by the national military forces, the Secretary-General's report of 2007 indicated that the UPDF recruited young boys to serve in its armed forces, especially within the local defence units, which are UPDF auxiliary forces. The report of 2007 also indicated that during recruitment, age verification was rarely carried out. After training, many of these children were said to be fighting alongside the UPDF. Although the Government of Uganda incorporated, in 2005, in the Uganda People's Defence Forces Act, a provision prohibiting the recruitment and use of child soldiers, the lack of effective monitoring at the local level led to children continuing to join some elements of the armed forces. However, according to the Secretary-General's report of 2007, the Government had committed itself to strengthening the implementation of the existing legal and policy frameworks on the recruitment and use of children in armed conflict. Moreover, in December 2006, the UPDF agreed to undertake inspection and monitoring, including to verify age during the recruitment process. Furthermore, the Uganda Task Force on Monitoring and Reporting (UTF) had committed itself to working with the UPDF and the local defence units to ensure immediate and appropriate follow-up to remove any person under 18 years of age found within the UPDF and local defence units, including through referral to appropriate child protection agencies.

The Committee noted that, according to the Secretary-General's report of 2009 (paragraphs 3–7), on 16 January 2009, the Government of Uganda and the UTF signed an action plan regarding children associated with armed forces in Uganda, which obligates the Government to prevent and end the association of children under the age of 18 with armed auxiliary forces; appoint focal points at the highest level of the Government on the implementation of the action plan; provide access on a regular and ad hoc basis to the UPDF and auxiliary facilities to the UTF to monitor and verify compliance; and promptly investigate allegations of recruitment and use of children and ensure the prosecution of perpetrators. Furthermore, the action plan identifies time-bound activities relating to children associated with the armed forces in Uganda. Among others, the measures include verification visits to all UPDF facilities and regular access to all relevant UPDF units by the UTF. In compliance with the action plan, the Government of Uganda and the UTF agreed upon a series of visits by the UTF to UPDF facilities in northern Uganda in early 2009, with a view to verifying that no persons under the age of 18 were present within, or recruited into, its ranks.

The Committee noted with satisfaction that no case of recruitment or use of children by the UPDF or its auxiliary forces has come to the attention of the UTF. Throughout its visits, the UPDF extended excellent cooperation to the verification team. Furthermore, the UTF observed the UPDF recruitment process in the northern districts of Uganda from 12 to 14 February 2009. It was noted that age requirements for recruitment into the UPDF, as set forth in existing laws and regulations, were strictly observed and followed by UPDF officers in compliance with the UPDF internal circular of February 2009 containing instructions on recruitment criteria. The Committee noted that, according to the Secretary-General's report of 2009, the UTF will nevertheless continue to monitor compliance of the UPDF within the action plan framework to ensure that continuous efforts are made to prevent the recruitment and use of children and that the implementation of the action plan continues.

However, the Committee noted that the LRA, whose leadership originates in Uganda and a significant number of whose forces are also from Uganda, remains listed on the Secretary-General's annexes to his reports on children and armed conflict because of the continued practice of recruitment of children within its ranks. Although LRA violations against children were originally reported solely under Uganda country situation reporting, the geostrategic situation of that group, which is expanding its armed activities to the wider region, has prompted the request of a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA. The UTF has therefore been engaged in consultations with the Resident Coordinator of the United Nations Country Team in Uganda, the United Nations Children's Fund headquarters and regional offices, the Department of Peacekeeping Operations missions in Sudan and the Democratic Republic of the Congo and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, on appropriate steps to establish a subregional strategy to monitor and report on grave child rights violations committed by the LRA in the region.

The Committee welcomed the measures taken by the Government and the positive results it has registered with regard to the UPDF. However, it expressed its concern at the situation of children who continue to be recruited for armed conflict by the LRA. The Committee refers to the Secretary-General's call upon the Government of Uganda to prioritize the protection of children in its military actions against LRA elements, either on Ugandan territory or in joint operations in neighbouring countries (S/2009/462, 15 September 2009, paragraph 28). *The Committee therefore urges the Government to intensify its efforts to improve the situation and to take, as a matter of urgency, immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by the LRA. In this regard, it urges the Government to take the necessary measures to ensure that a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA is adopted as soon as possible. It also requests the Government to take the necessary measures to ensure that persons who forcibly recruit children under 18 years for use in armed conflict are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.*

*Article 7(2). Effective and time-bound measures. Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children who have been affected by armed conflict.* The Committee had previously noted that the orphans and vulnerable children policy includes interventions to mitigate the impact of the conflict on vulnerable children, especially by providing them with psychological support and with health-care services. It had also noted that a number of measures had been taken in order to rehabilitate children affected by conflict: (a) the psychological support programme for the care of children in conflict areas; (b) the creation of the National Core Group for Psychological Support, responsible for advocacy against abduction and conflict-related child abuse; and (c) the project implemented by Save the Children from Denmark and Sweden, in collaboration with the UPDF and Gulu Support Children Organization (GUSCO) with the aim of training officers in the UPDF's Child Protection Unit and promoting the observance of rights of children affected by armed conflict. Moreover, according to the Secretary-General's

report of 2007 (paragraph 62), interim care centres, known as reception centres, were established in the north of Uganda in order to receive formerly abducted children, including those referred by the UPDF Child Protection Unit.

The Committee noted that, according to the mission report, the Ministry of Education and Sports (MoES) made interventions for child victims of armed conflict, as well as abducted children, and specialized schools have been built in the north of the country to give support and rehabilitate these children. Indeed, the Committee noted that, according to the report on Education Needs Assessment for Northern Uganda of February 2008 (ENA report) prepared by the Education Planning Department, the MoES has, among other things, provided psychosocial back-up support by training 50 trainers in psychosocial training, helped with the demobilization of 53 child soldiers, supported eight reception centres for former child abductees. The MoES has also constructed 27 learning centres with 114 classrooms in Kitgum, Pader and Lira for 6,000 displaced primary school children, as well as a primary boarding school at Laroo in Gulu with a capacity for 1,000 pupils. Furthermore, the ENA report indicates that many education provider organizations have contributed to the interventions of the MoES with a view to provide an interim response to the needs of northern Uganda in terms of education. The Committee also noted that, according to the Secretary-General's report of 2009, the action plan regarding children associated with armed forces in Uganda signed by the Government of Uganda and the UTF on 16 January 2009 covers different areas of activities, including preventing the recruitment of children under 18 years for use in armed conflict and releasing and reintegrating underage recruits. ***The Committee strongly encourages the Government to continue its efforts and take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to provide information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities through these measures, in particular through the action of the MoES and through the activities undertaken under the action programme regarding children associated with armed forces in Uganda.***

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

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

## Ukraine

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1979)**

*Article 2(1) of the Convention and Part IV of the report form.* 1. *Scope of application and labour inspection.*

The Committee had previously noted the Government's information that the provisions of section 188 of the Labour Code, regulating the minimum age for admission to employment, as well as the provisions prohibiting the employment of children in hazardous work, apply to workers of all enterprises, institutions and organizations, irrespective of the forms of ownership, type of activity and sectoral affiliation. It had observed that since 2005 the Goznadzortrud (authority within the Ministry of Social Labour and Social Policy which monitors the compliance of labour legislation) had participated in the implementation of the ILO-IPEC project "Institutional development of labour inspection for participation in the System of Child Labour Monitoring (CLMS) in two pilot regions – Donetsk and Kherson regions". It had noted with interest the Government's information that CLMS developed in the Donetsk and Kherson regions would 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 Committee had, however, noted the Government's statement that, the supervision of the use of child labour in the informal sector of the economy remained an outstanding issue which concerned, above all, the right of access to workplaces in the informal sector. According to the Government, the lack of criteria of evaluation of the presence of employment relations when using child labour in private garden plots or in the street did not provide the inspectors with the grounds to apply administrative sanctions. The basic problem, therefore, consisted 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. It had noted the Government's information that the labour inspectors involved in the implementation of the ILO-IPEC programme in the Donetsk and Kherson regions were carrying out their activities to develop such a mechanism with the participation of the representatives of other supervisory bodies. The Committee had repeatedly expressed its hope that, in adopting the CLMS at the national level, the labour inspection component concerning children working in the informal sector would be strengthened.

The Committee notes with *regret* that the Government's report does not supply any additional information on the CLMS. Moreover, it notes, that the Committee on the Rights of the Child (CRC), in its concluding observations (CRC/C/UKR/CO/3-4, paragraph 74, 21 April 2011), expressed concern at the high number of children below the age of 15 years working in the informal and illegal economy, in particular in illegal coal mines, as well as the extent of violations of labour law regarding the employment of children. It also expressed its deep concern at the challenges in identifying child labour in the informal sector, and at the lack of authority of the State Department for Supervision of the Observance of Labour Legislation to monitor the informal sector as well as child labour in the family. ***The Committee expresses its concern at the situation of children working in the informal and illegal economy and urges the Government to intensify its efforts to adapt and strengthen the labour inspection services in the informal economy, in order to ensure that the protection established by the Convention is ensured for children working in this sector. It once again requests the Government to indicate any measures adopted or envisaged within 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 the results achieved.***

2. *Minimum age for admission to employment or work.* The Committee had previously noted that under section 188(2) of the Labour Code, children of 15 years of age may exceptionally be authorized to work with the consent of their

parents or parent substitutes. The Committee had observed that the above provision of the Code allows young people to carry out an economic activity at an age lower than the minimum age for admission to employment or work specified by Ukraine upon ratifying the Convention, namely 16 years. It had also noted the Government's information that within the framework of the ILO-IPEC project "Declaration of the basic rights and freedoms at work", a draft Labour Code of Ukraine was being prepared the provisions of which comply with international labour standards. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to take the necessary measures within the framework of the adoption of the new Labour Code, to ensure that no one under the age of 16 years may be admitted to employment or work in any occupation, in conformity with Article 2(1) of the Convention. It also requests the Government to provide a copy of the new Labour Code, as soon as it has been adopted.***

*Articles 3(3) and 6. Authorization to perform hazardous work from the age of 16 and vocational training.* The Committee had previously noted that according to the provisions stipulated under Order No. 244 of the State Labour Protection Inspectorate of 15 December 2003, the admission of minors to employment in hazardous occupations is allowed only when minors reach the age of 18 years. It had also noted that by virtue of section 2(3) of the Order of the Ministry of Health of Ukraine No. 46 of March 1994, persons under the age of 18 years pursuing vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary and health norms on labour protection are strictly observed. However, it had noted the Government's statement that there are no adopted norms providing a minimum age for the admission of children and young persons to training. The Committee had also observed that, children between 14 and 16 years are allowed to perform hazardous work during vocational training. It had reminded the Government that, according to *Article 3(3)* of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, authorize employment or work as from the age of 16 years on the 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. ***Noting the absence of information in the Government's report on this point, the Committee once again requests the Government to take the necessary measures within the framework of the adoption of the new Labour Code, to ensure that children who follow vocational training programmes or apprenticeships are allowed to perform hazardous work only from the age of 16 years, in conformity with Article 3(3) of the Convention.***

*Article 7(3). Determination of light work.* The Committee had previously noted that section 188(3) of the Labour Code provides that, in order to teach young people to work productively, students in general vocational and technical education or specialized secondary education having attained 14 years of age may perform light work during their leisure hours provided the consent of one of their parents or parent substitutes is obtained and on condition that it does not harm their health or interrupt their schooling. It had also noted the Government's information that the draft Labour Code provides that the list enumerating the types of light work which may be performed by children shall be approved by a specially authorized authority dealing with labour issues. The Committee had requested the Government to provide information on any developments made in this regard. ***Noting the absence of information in the Government's report, the Committee once again expresses the firm hope that provisions determining light work activities which may be performed by children from the age of 14 years will soon be adopted pursuant to the provisions of the draft Labour Code. It once again requests the Government to provide information on any developments in this regard, and to provide a copy of the provisions determining the light work activities as soon as they have been adopted.***

*Article 8. Artistic performances.* The Committee had previously noted the Government's indication that an attempt was being made in the draft Labour Code to regulate the labour relations of young persons admitted to employment in the cinema, theatre and concerts. In this regard, it had noted the Government's information on the conditions and procedures to be followed for acquiring permission to employ children under 14 years for participation in artistic performances. The Committee had observed the absence of provisions limiting the hours of work and prescribing the conditions of work by children under 14 years for artistic performances. ***Noting the absence of information in the Government's report, the Committee once again expresses the firm hope that in the process of adopting the draft Labour Code, the Government will take the necessary measures to limit the number of hours during which and prescribe the conditions in which children under 14 years may be granted permission to work in artistic performances as laid down under Article 8 of the Convention. It requests the Government to provide information on any developments made in this regard.***

*Part V of the report form. Application of the Convention in practice.* The Committee notes the statistical reports of labour inspections provided by the Government with regard to the employment status of working children. According to this data, the labour inspectors inspected 441 enterprises during August–September 2010, and found 1,132 minors, including 28 children under 14 years of age, 134 children of 14 to 15 years, 144 persons of 15 to 16 years, and 826 persons of 16 to 18 years working in violation of the labour legislation. The Government's report indicates that children under 14 years of age who were found working (28 children) worked in the agricultural sector. Regarding the types of violations detected, the Committee notes the Government's information that 98 children were working without any labour contract, 16 children worked in heavy and harmful conditions; 74 children worked overtime; and 27 children worked without any wages. It further notes that the labour inspectors issued 274 instructions to employers to eliminate such violations, and 195 employers were brought to administrative liability. It also notes the Government's statement that the labour inspectors, in cooperation with the services on minors' affairs conducted 200 awareness-raising events of

children and their parents. *Having noted previously the Government's information that 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), and further noting that the Government has not provided any information in this regard, the Committee once again requests the Government to provide statistical information on child labour gathered from the study. It also requests the Government to continue providing information on the number of children found working by the labour inspection services, especially in the informal sector, and on the number and nature of violations detected and penalties applied.*

The Committee notes that the draft Labour Code which has been under preparation since 2007 has not yet been adopted. *The Committee expresses the firm hope that the Government will take all the necessary measures to bring the draft Labour Code into force, taking into consideration the above comments made by the Committee. In this regard the Committee invites the Government to consider seeking technical assistance from the ILO.*

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention and Part V of the report form. Worst forms of child labour and the application of the Convention in practice. Clause (a). Sale and trafficking of children.* The Committee observed that section 149 of the Criminal Code prohibits the sale and trafficking in persons for the purpose of sexual exploitation, use in the pornographic industry, engagement in criminal activities, peonage, adoption for commercial purposes, and use in armed conflict and labour exploitation. Subsection (2) provides for a higher penalty when this offence is committed against a minor. It also noted that section 150-1 of the Criminal Code provides for penalties for the offence of using or coercing a child for begging. The Committee, however, 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 country of trafficking victims but also an important transit route from other countries in the region. Moreover, the Committee noted that, according to the report of the Special Rapporteur on the sale of children, child prostitution, and child pornography of 24 January 2007 (A/HRC/4/31/Add.2, paragraphs 48–53), trafficking in children through and from Ukraine is a major 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 (UAE). 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, employment as waiters and for sexual services. Trafficked children are obliged to work long hours (often eight hours a day) and frequently at night. Considering the seriousness of the problem related to trafficking in children, within and outside Ukraine, the Committee requested the Government to strengthen its efforts to combat and eliminate the trafficking of children under 18 years as well as to provide information on the practical application of the penalties laid down in sections 149, 150, 304 and 150-1 of the Criminal Code.

The Committee notes the Government's information that in 2009, a criminal activity of a transnational group which was engaged in the recruitment and trafficking of Ukrainian nationals to Turkey for sexual exploitation was uncovered. The Government's report further states that with a view to eliminating all criminal networks and blocking the channels of trafficking in persons, the Ministry of Internal Affairs (MIA) of Ukraine together with the law enforcement authorities of the Republic of Turkey arrested all members of this criminal group and liberated from sexual slavery the victims who were Ukrainian women. During the same period, another transnational organized criminal group which was engaged in trafficking in women to the UAE and other states for sexual exploitation was dismantled and the unlawful activity of 11 members of this group, including the nationals of Ukraine, Russian Federation, Iraq and the UAE was terminated.

With regard to the practical application of the provisions of the Criminal Code, the Committee notes the Government's indication that in 2009, 279 crimes including 42 crimes involving children were registered under section 149 of the Criminal Code; 41 crimes involving children were detected in 2010 and 11 crimes involving children were detected during the first five months of 2011. Similarly, in 2009, 15 criminal cases were registered under section 150 of the Criminal Code (exploitation of children), 14 cases in 2010, and 3 cases during the first five months of 2011. Furthermore, 1,904 cases involving children in a criminal activity/begging (section 304 of the Criminal Code) were registered in 2009, 1,993 cases were registered in 2010 and 1,104 cases were registered during the first five months of 2011. The Committee further notes the Government's information that with regard to section 150-1 of the Criminal Code (using or coercing a child for begging), 87 cases were reported in 2009, 94 cases in 2010, and 45 cases during the first five months of 2011. Nonetheless, the Committee notes that the Committee on the Rights of the Child (CRC) in its concluding observations of 21 April 2011 (CRC/C/UKR/CO/3-4, paragraph 80), remained concerned that Ukraine continues to be one of the largest source countries of trafficking in Europe, and expressed its regret at the lack of information on prosecutions of persons engaged in trafficking of children. While acknowledging the various efforts taken by the Government in the area of trafficking, the Committee observes that the trafficking of children still remains a major issue in Ukraine. *Accordingly, the Committee requests the Government to strengthen its efforts to ensure in practice, the protection of children under 18 years of age from the sale and trafficking of children for labour or sexual exploitation. In this regard, it requests the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions of persons who engage in the sale and trafficking of children are carried out and that sufficiently effective and dissuasive penalties are imposed in practice, in accordance with the national legislation in force. The Committee also requests the Government to continue to supply specific information on the practical application of*

**sections 149, 150, 304 and 150-1 of the Criminal Code, including statistics on the number of prosecutions, convictions and penalties imposed.**

*Clause (b). Use, procuring or offering of a child for prostitution, production of pornography or for pornographic performances.* The Committee noted the Federation of Trade Unions of Ukraine's (FTUU) allegations that in Ukraine, children as young as 10 years old were involved in prostitution, pornographic activities and the sex industry. It 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 the Government's information that in 2009, 1,012 crimes were registered under section 301 of the Criminal Code (importation, manufacturing, marketing and dissemination of pornographic articles) including 16 cases involving minors. In 2010, 10 cases involving minors and in 2011, three cases involving minors, were registered. Similarly, in 2009, 866 crimes including 16 cases involving minors were registered under section 303 of the Criminal Code (trading and involving persons in prostitution), in 2010, nine cases involving minors and, in 2011, eight cases involving minors were registered. The Committee further notes the Government's information with regard to the various institutional and practical measures taken by the MIA to improve the efficiency of the activities of the law enforcement bodies in terms of the prevention and detection of crimes against children. In 2011, the representatives of the MIA participated in an international workshop on the fight against spread of child pornography on the Internet, and in a training seminar entitled "Struggle against sexual exploitation of children – exchange of best practices", held by the Ministry of Internal Affairs of the Republic of Moldova and the NGO "La Strada". In addition, the Committee notes the Government's statement that measures have been taken to identify the places of registration of the websites where child pornography is posted, and the persons who are responsible with the creation and updating of these sites. However, the Committee notes, the grave concern expressed by the CRC, in its concluding observations of 21 April 2011 (CRC/C/UKR/CO/3-4, paragraph 78), at the increase in the number of cases of sexual abuse, exploitation and involvement of children in prostitution and pornographic materials, and the alarmingly high number of Internet users of child pornography (5 million users per month). ***The Committee expresses its deep concern over the situation of children involved in prostitution and pornography and urges the Government to strengthen its efforts to eliminate the use, procuring or offering of children under the age of 18 for prostitution, the production of pornography and for pornographic performances. It also urges the Government to ensure that any person found guilty of committing an offence against minors under sections 301 and 303 of the Criminal Code is prosecuted and that sufficiently effective and dissuasive penalties are applied in practice. The Committee requests the Government to provide information on the measures taken to this end and on the results obtained, particularly in terms of the number of investigations and prosecutions carried out and sanctions applied.***

*Article 6. Programmes of action to eliminate the worst forms of child labour. Trafficking.* The Committee noted that the ILO-IPEC programme on child trafficking entitled "Prevention and reintegration programme to combat trafficking of children for labour and sexual exploitation in the Balkans and Ukraine" (PROTECT CEE 2001-07), ended in 2007. It requested the Government to continue taking measures under other action programmes to remove children from trafficking and provide for their rehabilitation and social integration.

The Committee notes the absence of information in the Government's report on this point. The Committee notes from the concluding observations of the CRC of 21 April 2011 (CRC/C/UKR/CO/3-4, paragraph 80) that a National Programme for countering Human Trafficking (2007-10) was adopted and implemented by the Government. ***The Committee requests the Government to provide information on the results achieved pursuant to the implementation of the National Programme for countering Human Trafficking 2007-10, particularly with regard to the number of children removed from trafficking as well as the rehabilitation and social integration measures adopted for those children. It also requests the Government to provide information on any other action programmes established in terms of the elimination of trafficking of children.***

*Article 7(2). Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking and commercial sexual exploitation of children.* The Committee noted the Government's information that the organization "End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes" (ECPAT International), along with the non-governmental organization "La Strada-Ukraine", were implementing a project on the "Development of the national system of assistance of child victims of trafficking and sexual exploitation". The Committee requested the Government to provide information on the implementation of the ECPAT/La Strada-Ukraine project and its results.

The Committee notes the absence of information in the Government's report on this point. In this regard, the Committee notes that the CRC, in its concluding observations of 21 April 2011 (CRC/C/UKR/CO/3-4, paragraph 78), expressed concern at the extremely limited number of rehabilitation centres specifically dedicated to providing assistance to child victims of sexual exploitation. ***The Committee urges the Government to increase the availability and accessibility of rehabilitation centres to provide appropriate and effective services, including legal, psychological and medical services to child victims of sexual exploitation and trafficking. It requests the Government to provide information on the measures taken in this regard.***

## United Arab Emirates

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1998)**

*Article 3(1) and (2) of the Convention. Minimum age for admission to, and determination of, hazardous work.* The Committee previously noted that Ministerial Order No. 5/1 of 1981, which lists operations that are dangerous, arduous or detrimental to health, and prohibits the employment of young persons in those occupations, applies to young persons under the age of 17. It also noted that the draft amended text of section 20 of the Federal Law No. 8 of 1980 (Labour Code) states that persons under the age of 18 years may neither be employed in exhausting tasks nor in tasks which, by their nature or the circumstances in which they are carried out, are likely to harm their health, safety or morals. Such types of employment shall be determined by virtue of a ministerial order, after consultation with the competent authorities. It further noted that the draft amended text of section 20 of the Labour Code would replace Ministerial Order No. 5/1 of 1981, and noted the Government's indication that the draft amendments to the Labour Code (containing the amended section 20) were going through the constitutional channels for its adoption. The Committee noted that while the Labour Code was amended by Federal Law No. 8/2007, these amendments did not include the drafted amended text of section 20.

The Committee notes the Government's statement that the draft amendment to section 20 of the Labour Code is still in the process of being adopted by Parliament. ***The Committee urges the Government to take the necessary measures to ensure that the draft amended section 20 is adopted in the very near future so as to ensure the prohibition of hazardous work for persons under 18 years of age. It once again requests the Government to keep it informed of any progress in this regard. Following the adoption of this amendment, the Committee once again requests the Government to take the necessary measures to ensure, following consultation with the organizations of employers and workers concerned, the promulgation of a ministerial order to determine the types of hazardous work prohibited for persons under 18, pursuant to the draft amended text of section 20.***

*Article 6. Minimum age for admission to apprenticeship.* The Committee previously observed that, according to section 42 of the Labour Code, the minimum age to enter into an apprenticeship contract (defined as the contract whereby the employer undertakes to provide the employee full vocational training) was 12 years. It also noted the Government's statement that the draft amended text of section 42 of the Labour Code provided 15 years as the minimum age for being accepted in training or vocational education, and observed that this text was going through the constitutional channels in the State.

The Committee notes the Government's statement that the draft amendment to section 42 of the Labour Code is still in the process of being adopted by Parliament. ***The Committee urges the Government to take the necessary measures to ensure that the draft amended section 42 is adopted in the very near future. It once again requests the Government to keep it informed of any progress in this regard, and to provide a text of the amended provision as soon as it has been adopted.***

***Considering that the Government has been referring to the amendments to sections 20 and 42 of the Labour Code since 2003, the Committee again expresses the firm hope that these draft amendments are adopted in the near future, in order to bring national legislation into line with the Convention. The Committee requests the Government to keep it informed of any progress made in this regard and invites it to consider seeking technical assistance from the ILO.***

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

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Articles 3 and 7(1) of the Convention. Worst forms of child labour and penalties. Clause (a). Slavery and practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation.* In its previous comments, the Committee noted the Government's indication that section 346 of the Penal Code prohibits the trafficking of children, and section 363 prohibits abetting, enticing or inducing a male or a female to commit prostitution. By virtue of Federal Act No. 51 of 2006, anyone who traffics a boy or girl under 18 years of age is liable to life imprisonment, and section 1 of this Act prohibits human trafficking for the purpose of exploitation, and defines exploitation to include all forms of sexual exploitation and prostitution. The Committee noted the 18 October 2009 statement by the UN Special Rapporteur on the sale of children, child prostitution and child pornography following her visit to the United Arab Emirates (UAE) (statement of the UN Special Rapporteur), that she received a low number of reported cases of the sale of children for the purposes of sexual exploitation. However, the annual report of the National Committee to Combat Human Trafficking in the UEA (NCCHT) (2008–09) indicated the continued existence of trafficking of children for this purpose.

The Committee notes the Government's information that, according to the NCCHT annual report of 2010–11, 58 cases of human trafficking and 152 victims were reported, and 169 perpetrators convicted. According to the database of the Ministry of the Interior and to the police records of 2010, there were eight notifications regarding 15 child victims of trafficking for sexual exploitation who were between 13 and 17 years of age. The Government indicates that 13 people were convicted and several judicial sentences were rendered, while other cases are still being handled in court. However, the Committee notes that, in its concluding observations of 5 February 2010, the Committee on the Elimination of Discrimination against Women expressed its serious concern at the persistence of trafficking in women and girls into the UAE for the purposes of economic and sexual exploitation (CEDAW/C/ARE/CO/1, paragraph 28). ***The Committee***

***therefore urges the Government to intensify its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purpose of sexual exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. It requests the Government to continue to provide information on the number of infringements reported, investigations, prosecution, convictions and penal sanctions applied for violations of the legal prohibition on the sale and trafficking of children for commercial sexual exploitation.***

*Articles 3(d) and 4(1). Hazardous work.* The Committee previously noted that Ministerial Order No. 5/1 of 1981, which lists operations that are dangerous, arduous or detrimental to health, and prohibits the employment of young persons in those occupations, applies to young persons under the age of 17. It also noted that the draft amended text of section 20 of the Labour Code states that persons under the age of 18 years may neither be employed in exhausting tasks nor in tasks which, by their nature or the circumstances in which they are carried out, are likely to harm their health, safety or morals. The Committee noted the copy of the draft amended text of section 20 of the Labour Code in the Government's report, and observed that section 20(3) prohibits the employment of persons under 18 years of age in hazardous work, and that such types of employment shall be determined by virtue of a Ministerial Order, after consultation with the competent authorities. The Committee further noted that the draft amended text of section 20 of the Labour Code would replace Ministerial Order No. 5/1 of 1981, but noted that, while the Labour Code was amended by Federal Law No. 8/2007, these amendments did not include the draft amended text of section 20.

The Committee notes that, in its report under the Minimum Age Convention, 1973 (No. 138), the Government indicated that the draft amendment to section 20 of the Labour Code is still in the process of being adopted by Parliament. It reminds the Government that, pursuant to *Article 3(d)* of the Convention, work or employment in conditions that are hazardous are among the worst forms of child labour and are therefore to be eliminated *as a matter of urgency*, in accordance with *Article 1*. ***Therefore, the Committee urges the Government to take immediate and effective measures to ensure the adoption of the draft amended text of section 20 of the Labour Code, on the prohibition of hazardous work for persons under 18, as a matter of urgency. Following the adoption of this amendment, the Committee also urges the Government to take the necessary measures to ensure, following consultation with the organizations of employers and workers concerned, the promulgation of a Ministerial Order to determine the types of hazardous work prohibited for persons under 18, pursuant to the draft amended text of section 20. The Committee requests the Government to provide information on any progress made in this regard in its next report.***

*Article 5. Monitoring mechanisms. National Committee to Combat Human Trafficking (NCCHT).* In its previous comments, the Committee noted the indication in the Government's report that, following the adoption of Federal Law No. 15 of 2005, the Minister of Interior established the NCCHT. It noted that the NCCHT was presided over by the Under-Secretary of the Ministry of Justice, and included representatives of the Ministries of Interior, Foreign Affairs, Labour, Social Affairs, and the General Director of the Dubai Police, Zayed Corporation for Charity, and the Red Crescent. The Committee noted that the NCCHT meets frequently, and that during 2008–09, it took numerous measures to address the problem of trafficking.

The Committee notes that, according to the 2010–11 annual NCCHT report, the NCCHT continues to take such measures. In particular, the Committee notes that, through the adoption of Decree 240 of 2010, a committee for the protection of child victims of trafficking was created, which works in collaboration with the Virtual Global Taskforce, to protect children from trafficking through awareness-raising, Internet programmes, and training. Moreover, this committee established a comprehensive information database aiming to protect children from trafficking and commercial sexual exploitation through information sharing. ***The Committee requests the Government to continue to provide information on the impact of the measures taken by the NCCHT and the committee for the protection of child victims of trafficking on the elimination of the trafficking of children under 18 years for labour or commercial sexual exploitation.***

*Article 7(2). Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking for sexual exploitation.* The Committee previously noted the allegation of the International Trade Union Confederation (ITUC) that the authorities of the UAE made no distinction between prostitutes and victims of trafficking for sexual exploitation, all of whom bear equal criminal responsibility for involvement in prostitution. The ITUC pointed out that trafficked persons were consequently not treated as victims and were not supported or protected. The Committee observed the Government's information that children in prostitution are sentenced to imprisonment and when they are foreigners (which is generally the case), they are repatriated to their country of origin. The Committee noted the Government's statement in reply to the ITUC's allegations that it considers persons who are exposed to sexual exploitation as victims who need protection and support through guidance and rehabilitation programmes. The Committee noted the information in the Government's report concerning the active work of various organizations in the UAE to provide support for the victims of trafficking and sexual exploitation, as well as of shelters for women and children who are victims of human trafficking. Nonetheless, the Committee noted that, in her statement of 18 October 2009, the UN Special Rapporteur noted that the age of criminal responsibility of 7 years of age was too low, and encouraged the Government to ensure that all persons who are sexually exploited be treated as victims and not as delinquents. She stated that these children should not be put in jail, but given access to adequate care, protection, rehabilitation, reintegration and repatriation.

The Committee notes the Government's information that, with respect to the criminal responsibility of minors, the penalties provided for by the Penal Code do not, in fact, apply to children aged 7 to 18 years. In their case, the penalties which are applicable are prescribed by Federal Act No. 9 of 1976 relating to delinquents and vagrants. Section 63 of this Act provides that "Any young person who has completed the age of seven years and not completed the age of sixteen years shall be prescribed the provisions contained in the Child Act". In this regard, the Government refers to the sentence handed down by the Upper Federal Court, No. 64/15 of 29 January 1994, which stated that if a young person between 7 and 16 years of age commits a crime as prescribed in the Penal Code or other penal laws, he/she shall be subject to one or more of the measures specified in section 15 of the Child Act. These measures include reprimands; mandatory vocational training; or placement in a place of treatment, rehabilitation centre, or a place of education or reformation. Moreover, the Committee notes the Government's statement that it has adopted a policy to handle the persons involved in trafficking crimes and treating them as victims by providing them with all means of support and family, health and psychological care. In this regard, the NCHT issued Decision No. 18/7 of 2010 on the organizational procedures to handle victims of human trafficking, which specifies the need by employees of the relevant institutions, as well the police authorities, to treat victims with dignity, safeguard their privacy and confidentiality. The Decision also specifies that shelters must provide all educational, psychological, legal, medical and social care to the victims, as well as seek to protect their rights. **Observing that section 63 of the Federal Act No. 9 of 1976 only applies to children between 7 and 16 years of age, the Committee urges the Government to ensure that children between 16 and 18 years of age trafficked to the UAE for commercial sexual exploitation are treated as victims rather than offenders. The Committee requests the Government to continue to take measures to ensure the rehabilitation and social integration of all child victims of trafficking for sexual exploitation under 18 years of age, and to provide information on measures taken in this regard. Finally, the Committee requests the Government to provide more detailed information on the application of the provisions of Federal Act No. 9 of 1976 to child victims of trafficking for sexual exploitation.**

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted that the statement of the UN Special Rapporteur indicated that there is a lack of an information system for gathering data on the sale and trafficking of children and the commercial sexual exploitation of children, in addition to a lack of analysis, recording, sharing of information, and reporting in this regard. The Special Rapporteur noted that the Government recognized the need for such a system and that it was in the process of establishing one.

The Committee notes the Government's information that one of the tasks of the Child Protection Centre is to create a statistical system in order to prepare a periodic report on child victims of crimes and provide these victims and their families with psychological and moral support. **The Committee once again urges the Government to pursue its efforts to establish a system to record and collect data on the number of children engaged in the worst forms of child labour and to report on child victims of crimes. It requests the Government to provide information on the progress made in this regard. It also requests the Government to provide any other information on the nature, extent and trends of the worst forms of child labour, in particular the sale and trafficking of children, studies and inquiries and statistical data on the number of children covered by the measures giving effect to the Convention. To the extent possible, all information provided should be disaggregated by sex and age.**

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

## Uruguay

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children.* Further to its previous comments, the Committee notes with **satisfaction** that, under section 78 of Act No. 18.250 of 17 January 2008 concerning migration, any person who participates in any manner or by any means whatsoever in the procuring, transport, transfer, accommodation or reception of persons for forced labour or services, slavery or similar practices, servitude, sexual exploitation, abduction, removal of organs or any other activity that violates human dignity shall be liable to imprisonment of four to 16 years. Furthermore, section 81(b) provides that the penalty shall be increased where the victim is a child or a young person.

*Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances.* The Committee previously noted that sections 1, 2 and 3 of Act No. 17.815 of 18 August 2004 concerning sexual violence, whether or not for commercial purposes, committed against children, young persons and persons with disabilities penalize the use, procuring or offering of minors for the production of pornography. It asked the Government to indicate whether these provisions also apply to the use, procuring or offering of minors for pornographic performances.

The Committee takes due note that, under section 4 of Act No. 17.815, any person who pays or promises to pay or offers any economic consideration in exchange to any minor or person with a disability, of either sex, to perform sexual or erotic acts of any nature shall be liable to imprisonment of two to 12 years. Moreover, it notes that section 5 provides that any person who contributes in any manner to the prostitution, exploitation or sexual slavery of minors or persons with disabilities shall be liable to imprisonment of two to 12 years.

*Article 4(1) and (3). Determination and revision of the list of hazardous types of work.* Further to its previous comments, the Committee notes the Government's indication that the revision of the list of hazardous types of work adopted in the context of Resolution No. 1012/006 of 2006 is awaiting approval from the executive authority. ***The Committee once again expresses the firm hope that the list of hazardous types of work will be adopted shortly and requests the Government to continue to provide information on this matter. It requests the Government to provide a copy of this list once it has been adopted.***

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

## Uzbekistan

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)**

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

The Committee notes the Government's reports dated 24 May, 1 August, 25 August and 12 September 2011. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 31 August 2010. The Committee finally takes note of the detailed discussions that took place at the 100th Session of the Conference Committee on the Application of Standards in June 2011 concerning the application by Uzbekistan of Convention No. 182.

*Article 3(a) and (d) of the Convention. Worst forms of child labour. Forced or compulsory labour in cotton production and hazardous work.* The Committee previously noted the various legal provisions in Uzbekistan which prohibit forced labour, including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code. It also noted that section 241 of the Labour Code prohibits the employment of persons under 18 years in hazardous work, and that the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age" prohibited children from watering and gathering cotton by hand. However, the Committee noted the assertion of the International Organisation of Employers (IOE) that, despite the legislative framework against forced labour, schoolchildren (estimates ranging from half a million to 1.5 million schoolchildren) are forced by the Government to work in the national cotton harvest for up to three months each year. The Committee also noted ITUC's allegations that state-sponsored forced child labour continues to underpin Uzbekistan's cotton industry. The ITUC communication emphasized that this involvement is not the result of family poverty, but state-sponsored mobilization which benefits the Government. The ITUC further alleged that these children are required to work every day, even on weekends, and that the work involved is hazardous, involving carrying heavy loads, the application of pesticides and harsh weather conditions, with accidents reportedly resulting in injuries and deaths.

The Committee further noted the conclusions from several United Nations bodies regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. In this regard, it noted that the Committee on Economic, Social and Cultural Rights expressed its concern at the situation of school-age children obliged to participate in the cotton harvest instead of attending school during this period (24 January 2006, E/C.12/UZB/CO/1, paragraph 20), and that the Committee on the Rights of the Child expressed concern at the serious health problems experienced by many schoolchildren as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65). Moreover, the Committee on the Elimination of Discrimination Against Women expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season (26 January 2010, CEDAW/C/UZB/CO/4, paragraphs 30–31) and the UN Human Rights Committee stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting. The UN Human Rights Committee emphasized that the Government needed to ensure that its national legislation and international obligations regulating child labour are fully respected in practice (7 April 2010, CCPR/C/UZB/CO/3, paragraph 23). Lastly, the Committee noted the statement in the UNICEF publication entitled "Risks and Realities of Child Trafficking and Exploitation in Central Asia" of 31 March 2010 that the issue of seasonal mobilization of children for the cotton harvest in Uzbekistan was a growing concern (page 49).

The Committee notes the statement in the Government's report dated 12 September 2011 that the participation of children below 18 years of age in activities on a family farm is not an infringement of the Convention. The Government states that children cannot be involved in the cotton harvest for three months, as the harvest only lasts one month, and that the involvement of children in gathering cotton does not have a negative effect on their health or education. The Committee notes Government's indication that the Association of Farmers of Uzbekistan, the Council of Trade Union Federation and the Ministry of Labour and Social Protection adopted, in May 2011, the "Joint Statement concerning the inadmissibility of using forced child labour in agricultural works" (Joint Statement). The Joint Statement asserts that various false insinuations and fabrications by certain biased foreign enterprises and organizations and the media, concerning the alleged large-scale coercion of children to participate in the country's agricultural production, are aimed at undermining the high rating of Uzbekistan's agricultural produce, especially cotton, in foreign markets. The Joint Statement also indicates that virtually all cotton is harvested by farm owners who, in economic terms, have no interest in making extensive use of children for the harvesting of cotton. The Committee further notes the indication in the Joint Statement that it is appropriate to encourage the voluntary participation of children in economic activity, according to their

capacity, but that this employment is permitted only outside of school hours and must not impede their full participation in general educational and vocational training programmes. The Joint Statement further indicates that agricultural producers, including farms, which employ children over the age of 15 years for work on a voluntary basis should assume the obligation to ensure fair pay, compliance with provisions for working time and rest periods, safe working conditions, nutritious food and any necessary medical care. The Committee further notes that the Joint Statement indicates that any form of coercion to force children to work by any party, including by the threat of penalties applied to them or to their parent, is inadmissible.

However, the Committee notes the more recent allegations of the ITUC dated 31 August 2011 indicating that, despite the Government's claim that almost all of the cotton in Uzbekistan is produced on private farms, the reality is rigid state control of all aspects of the cotton industry, whereby the forced mobilisation of children is organized and enforced by authorities, as channelled through the local administration. In this regard, the ITUC refers to a 2010 study which found that the mobilization of children during the cotton harvest by the central Government was systematic, utilized the school system, and left little room for choice on the part of children, their parents, school authorities and even farmers. The ITUC also alleges that approximately half of all cotton picked in Uzbekistan is the result of forced child labour, and that it is estimated that hundreds of thousands of children are forced out of school each year to pick cotton during school hours, to fill the shortfall in voluntary adult labour. The ITUC states that strictly enforced cotton quotas are set for each region by the central Government, and these quotas are subdivided to schools. Thus, headmasters are given quotas, which are passed onto students, dictating how much cotton each must harvest. The ITUC communication indicates that in 2010, daily quotas in some regions were between 25 to 40 kilograms for school children. The ITUC further indicates that school principals and teachers face dismissal if their students do not meet their share of the quota, and that parents have little choice but to allow their children to participate. Moreover, students who fail to meet their quotas or who pick poor quality cotton may be punished by beatings, detention, or told their grades will suffer, and that those who run away from the cotton fields or refuse to take part can face expulsion from school. Moreover, the Committee notes the allegations in the ITUC communication that forced child labour was used in the autumn 2010 cotton harvest with children receiving little pay, if any, despite working long hours, and that children can be left exhausted and suffering from ill health after weeks of arduous labour. In addition, the ITUC states that reports from at least nine of Uzbekistan's 13 regions confirmed that school children were forced to pick cotton in 2010: Andijan, Fergana, Jizzakh, Kaskadrya, Khoresm, Namangan, Surkhandarya, Syrdarya and Tashkent. Lastly, the Committee notes the statement in the ITUC's communication that state-sponsored forced child labour remains a profound and widespread problem in Uzbekistan, and that there is a vast disparity between the legal and policy situation, and the practice on the ground.

In addition, the Committee notes the recent information from UNICEF concerning the cotton harvest of autumn 2011. According to this information, the cotton harvesting began in Uzbekistan in the second week of September 2011 and was almost completed by the third week in October. During that time, two rounds of UNICEF observation visits in 12 regions were successfully completed. The Committee notes that UNICEF draws up an analysis of the findings which includes the following elements: (i) children aged 11–17 years old have been observed working full time in the cotton fields across the country; (ii) the mobilization of children has been organized by way of instructions passed through *Khokimyats* (local administration), whereby farmers are given quotas to meet and children are mobilized by means of the education system in order to help meet these quotas; (iii) in some instances, farmers also made a private arrangement with schools to pick their cotton often in return for material resources or financial incentives for the school; (iv) children were predominantly supervised in the fields by teachers; (v) in over a third of the fields visited, children stated that they were not receiving the money themselves; (vi) quotas for the amount of cotton children were expected to pick generally ranged between 20–50 kilos per day; (vii) the overwhelming majority of children observed were working a full day in the field and as a result, were missing their regular classes; (viii) children worked long hours in extremely hot weather; (ix) pesticides were used on the cotton crop that children spent hours hand picking; (x) some children reported that they had not been allowed to seek medical attention even though they were sick; and (xi) that the only noticeable progress towards the eventual elimination of the use of children in cotton picking was observed in the Fergana region.

The Committee notes that the Conference Committee, in June 2011, echoed the deep concern expressed by United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, about the systematic and persistent recourse to forced child labour in cotton production, involving an estimated one million children. The Conference Committee emphasized the seriousness of such violations of the Convention. It urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.

In light of the broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations with respect to the continued practice of mobilizing schoolchildren for work in the cotton harvest, often under hazardous conditions, the Committee must express its *serious concern* regarding the Government's continued insistence that children are not involved in the cotton harvest in Uzbekistan. The Committee once again recalls that, by virtue of *Article 3(a)* and *(d)* of the Convention, forced labour and hazardous work are considered as 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 these worst forms of child labour, as a matter of *urgency*. **The Committee urges the Government to take immediate and effective time-bound measures to**

***eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, as a matter of urgency. It requests the Government to provide information on progress made in this regard in its next report.***

*Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour.* The Committee previously noted the Government's indication that an interdepartmental working group had been established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. The Government further indicated that the supervision of labour legislation and regulations (including the prohibition on employing children in adverse working conditions) was carried out by the specifically authorized legal and technical inspections of the Ministry of Labour and Social Protection and trade union officials. However, the Committee noted an absence of information from the Government on the concrete results of this monitoring. Moreover, the Committee noted the IOE's indication that it remained uncertain as to whether the implementation of the measures adopted would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields. It also noted the ITUC's statement that the monitoring of forced child labour needed to be completely independent.

The Committee observes that the Conference Committee expressed regret that, despite the Government's indication that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest or on the number of children.

The Committee notes the Government's statement that no information is available on the number of persons pursued for mobilizing children for cotton gathering because there are no persons, including government officials or private persons, who have committed such offences. The Government further states that it has received information from 12 regional governments stating that children were not involved in cotton harvesting in these regions. The Committee also notes the Government's statement that relevant instructions have been issued to the regions to avoid the use of forced child labour. The Committee further notes the Government's indication that the Association of Farmers of Uzbekistan, the Council of Trade Union Federation and the Ministry of Labour and Social Protection implemented workshops in 11 regions between January and May 2011, to raise awareness among farmers on the inadmissibility of the use of child labour in agricultural works. The Government also indicates that more than 45,000 heads of farmers' households and 3,500 trade union activists have taken part in these workshops and discussions at the district level. In addition, the Committee notes the information in the Joint Statement that the enforcement of measures to prevent child labour on the part of the social partners is the responsibility of the Association of Farmers of Uzbekistan and the Council of the Federation of Trade Unions of Uzbekistan, and that enforcement on the part of the State is the responsibility of the Ministry of Labour and Social Protection. The Joint Statement also indicates that a special joint working group will be established by the Association of Farmers and the Council of the Federation of Trade Unions. Finally, the Committee notes the Government's statement that, in order to improve the legal labour relationships on farms, the State Labour Inspection has carried out monitoring covering more than 73,000 farms in 2010. The Government's report also indicates that 1,600 verifications were conducted in 2009 and 2010.

The Committee observes that the Government has taken significant awareness-raising and preventative measures regarding the mobilization of children during the cotton harvest. In the Committee's view, this would appear to amount to an implicit and tacit admission that such child labour occurs within the country. It also notes that the labour inspectorate appears to have undertaken a significant number of inspections on a considerable number of farms in 2010. However, the Committee notes with ***concern*** an absence of information as to whether any of the violations detected during these inspections pertained specifically to the worst forms of child labour, particularly the forced labour of, or hazardous work by, children under 18 years of age engaged in the cotton harvest. The Committee must, therefore, once again note with ***regret*** the absence of information from the Government on the concrete impact, if any, of the monitoring activities undertaken, pursuant to the Joint Statement, by the Ministry of Labour and Social Protection and the social partners. ***The Committee accordingly requests the Government to provide information on the concrete impact of the measures taken to monitor the prohibition of the use of forced and hazardous child labour in the agricultural sector. It also requests the Government to provide specific information on the number and nature of violations detected with regard to the mobilization of children under 18 to work in the cotton harvest.***

*Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work.* The Committee previously noted the Government's assertion that children are not involved in the cotton harvest, but observed that it was carrying out a project with the assistance of UNICEF to address the situation of child labour in the cotton sector. The Committee, therefore, considered it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. The Committee also noted the statements from the ITUC, the European Trade Union Confederation (ETUC), the European Trade Union Federation – Textiles, Clothing and Leather (ETUF–TCL), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), as well as the joint communication dated 22 November 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF–TCL indicating that a mission must be carried out as soon as possible in order to address the practice of child labour in the cotton sector and to initiate steps towards its eradication.

The Committee notes the statement from the ITUC, in its more recent allegations, that the cotton fields are strictly patrolled by police and security personnel, in an attempt to prevent independent monitoring. The Committee also notes that the Conference Committee expressed its serious concern regarding the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It urged the Government to accept a high-level ILO tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182. The Conference Committee also strongly urged the Government to receive this ILO high-level tripartite observer mission in time to report back to this Committee at its current session. Moreover, the Committee notes that the Conference Committee also strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with ILO–IPEC.

The Committee notes the Government’s statement in its report dated 12 September 2011, that it has demonstrated political will in its ratification of the Convention. Regarding ILO technical assistance or alternatively cooperation with ILO–IPEC, the Government indicates that there is a National Plan of Action on implementing Conventions Nos 138 and 182, and that such cooperation cannot be reduced only to the issues of forced labour of children in cotton harvesting. The Government also states that it is not necessary to invite a high-level observer mission to Uzbekistan on the use of child labour, and that this should not be considered as a refusal by the Government to cooperate with the ILO.

Finally, the Committee notes UNICEF’s indication that according to its analysis of the observation visits undertaken in 12 regions from September to October 2011, that its findings are in no way indicative of the number of children working in the cotton harvest, nor can UNICEF verify that the situation as observed by UNICEF teams corresponds to all circumstances in all cotton fields. UNICEF underlines that such findings are snapshots that cannot replace substantive and independent monitoring under the auspices of the ILO, which UNICEF continues to advocate for.

The Committee notes with *serious concern* that the Government has yet to respond positively to the recommendation to accept a high-level tripartite observation mission or to avail itself of ILO technical assistance. The Committee’s concerns are reinforced by the evident contradiction between the Government’s position that children are not removed from school for work in the cotton harvest, and the views expressed by numerous UN bodies and social partners that this worst form of child labour remains a serious problem in the country. It therefore considers an ILO mission to be both necessary and appropriate, to fully assess the situation of children’s engagement in the cotton sector. ***The Committee, therefore, urges the Government to accept a high-level ILO tripartite observer mission, and expresses the firm hope that such an ILO mission can take place in the very near future. It also strongly encourages the Government to avail itself of ILO technical assistance.***

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

## Bolivarian Republic of Venezuela

### ***Minimum Age Convention, 1973 (No. 138) (ratification: 1987)***

*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 statements of 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 and domestic service and as street vendors, and more than 300,000 were working in the informal economy. It noted the Government’s statement that, despite the lack of official statistics on the number of working children and young persons, it doubted the accuracy of the ITUC estimates in this area. However, it also observed that the Government itself did not provide any recent statistics on the total number of children working in the formal and informal sectors of the economy.

The Committee noted that the Ministry of Participation and Social Protection, in conjunction with the National Committee on the Rights of Children and Young Persons (IDENA), launched the “Neighbourhood children’s mission”, a programme aimed at guaranteeing the rights of children and young persons, especially those in situations of extreme poverty, in the context of the goals of the National Economic and Social Development Plan 2007–13. Among the activities implemented by the mission, the Committee noted the “Protecting the dignity of working children and young persons” (PRODINAT) programme, launched in 2008, which seeks to ensure young workers’ labour rights and whose ultimate goal is to progressively abolish child labour and protect young people at work. It also noted that in 2008 the Ministry of the Environment and the Ministry of Participation and Social Protection jointly participated in a project for ensuring decent conditions for people living and working in the garbage dumps on the outskirts of cities.

While noting the measures taken by the Government to ensure the effective abolition of child labour, the Committee expresses its *concern* at the lack of available statistics relating to the nature, extent and trends of child labour in the Bolivarian Republic of Venezuela. ***The Committee therefore urges the Government once again to take the necessary measures to ensure that sufficient data on the number of children and young persons under 14 years of age engaging in economic activity in the country are made available and requests it to supply this information as soon as possible. It also requests the Government to provide information in its next report on the number and nature of violations of the law reported by the inspection services.***

*Article 3(1). Age of admission to hazardous work.* The Committee notes that section 96(1) of the Act of 1998 concerning the protection of children and young persons forbids the employment of young persons between 14 and 18 years of age in the types of work expressly prohibited by the law. However, the Committee notes that this Act does not specify which types of work are prohibited. ***The Committee requests the Government to indicate in its next report whether the types of work referred to by section 96(1) of the Act of 1998 concerning the protection of children and young persons are types of work which, by their nature or the circumstances in which they are carried out, are likely to jeopardize the health, safety or morals of children and young persons under 18 years of age.***

*Article 3(2). Determination of types of hazardous work.* The Committee previously noted the Government's indication that the National Institute for Occupational Hazard Prevention, Health and Safety (INPSASEL) had completed its study on the classification of types of work that are hazardous for children and young persons and that a multidisciplinary team would conduct further studies to determine, on a scientific basis and using test cases, what exactly is to be understood by "hazardous work". It also noted that IDENA was drawing up a preventive guide for the classification of hazardous types of work for children and young persons.

The Committee notes that the Government's report does not contain any information on this subject. It notes with *regret* that no list of hazardous types of work prohibited for children and young persons under 18 years of age appears to have been adopted to date. ***Observing that the Bolivarian Republic of Venezuela ratified this Convention more than 20 years ago and that no list of hazardous types of work prohibited for children and young persons under 18 years of age has been adopted to date, the Committee urges the Government to take the necessary measures as soon as possible to ensure that such a list is adopted, after consultation of the employers' and workers' organizations concerned. It requests the Government to provide information in its next report on all progress made in this regard.***

*Article 3(3). Admission to hazardous work from the age of 16 years.* In its previous comments the Committee observed that, under section 96(1) of the Act of 1998 concerning the protection of children and young persons, the national executive authority may, by decree, determine minimum ages higher than 14 years for types of work that are hazardous or harmful to the health of young persons. It also noted the Government's statement that INPSASEL was considering 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 health and best interests of young persons. It finally noted the Government's indication that INPSASEL would take account in its research of the provisions of *Article 3(1) and (3)* of the Convention.

The Committee notes with *regret* that the Government's report once again contains no information on the progress of the work of INPSASEL with regard to the adoption of a decree fixing minimum ages for the performance of hazardous types of work, in accordance with the provisions of the Convention. It reminds the Government that, in accordance with *Article 3(3)* of the Convention, the employment or work of young persons between 16 and 18 years of age is only authorized under strict conditions relating to protection and prior training. It underlines the fact that this provision of the Convention constitutes a limited exception to the general rule of the prohibition on the performance of hazardous types of work by young persons under 18 years of age and should not be interpreted as an overall authorization to employ young persons in hazardous work from the age of 16 years. ***The Committee therefore once again urges the Government to take the necessary measures as soon as possible to ensure that its legislation is amended so that hazardous work may only be authorized for young persons over 16 years of age subject to the strict conditions laid down by Article 3(3) of the Convention.***

### ***Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2005)***

The Committee notes the Government's report. It also notes the comments from the Confederation of Workers of Venezuela (CTV), dated 31 August 2011, and the Government's reply, dated 30 November 2011.

*Articles 3, clauses (a) and (b), and 7(1) of the Convention. Sale and trafficking of children; use, procuring or offering of a child for prostitution; and penalties.* The Committee previously noted, in its comments under the Forced Labour Convention, 1930 (No. 29), the comments made by the International Trade Union Confederation (ITUC) referring to the "widely reported" trafficking of women and children for prostitution. It also observed that, according to the information contained in the Government's second periodic report to the Committee on the Rights of the Child (CRC) in December 2006 (CRC/C/VEN/2, paragraph 187), child prostitution is one of the most serious problems confronting the country.

The Committee notes the statistics submitted in the Government's report relating to the number of cases of trafficking, prostitution and pornography involving children and young persons recorded between 2007 and 2010 by the Division for investigations and for the protection of children, young persons, women and the family at the Ministry of People's Power, Internal Relations and Justice. It observes that no cases of trafficking of children were reported in 2010, compared with four cases in 2009. As regards child prostitution, just one case was reported in 2010, compared with seven cases in 2009. The Committee also notes the information supplied in the Government's report on the convictions handed down in two cases involving sexual exploitation and pornography.

The Committee expresses its *concern* that the number of reported cases of trafficking and prostitution of children remains relatively low in view of the scope and persistence of this practice in reality. ***The Committee urges the Government to intensify its efforts to ensure that persons who engage in the sale, trafficking or prostitution of children***

*and young persons under 18 years of age are effectively prosecuted and that sufficiently effective and dissuasive penalties are imposed. In this regard, the Committee requests the Government to take the necessary steps to ensure the thorough investigation and robust prosecution of offenders are carried out, especially by strengthening the capacity of law enforcement bodies. It requests the Government to continue to provide statistics on the number of offences reported, investigations, prosecutions, convictions and criminal penalties imposed.*

*Articles 3, clause (d), and 4(1). Determination of hazardous types of work.* Following its previous comments, the Committee notes that section 96(1) of the Act of 1998 concerning the protection of children and young persons states that young persons between 14 and 18 years of age may not be employed in work prohibited by law. However, the Committee observes that this provision does not specify the nature of the work that is prohibited. The Committee also notes that the Government's report does not contain any information on progress made with regard to the adoption of a list of hazardous types of work prohibited for persons under 18 years of age. It notes with *regret* that no list appears to have been adopted to date. The Committee reminds the Government that, under *Article 3(d)* of the Convention, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children constitutes the worst forms of child labour, and that, under *Article 1*, each Member which ratifies this Convention must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Furthermore, *Article 4(1)* provides that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). ***The Committee requests the Government to indicate in its next report whether section 96(1) of the Act of 1998 concerning the protection of children and young persons prohibits the employment of young persons under 18 years of age in hazardous work, in accordance with Article 3(d) of the Convention. Moreover, it urges the Government to take the necessary measures to ensure that the list of hazardous types of work prohibited for children and young persons under 18 years of age is adopted as soon as possible. It also requests the Government to provide information on the consultations held with employers' and workers' organizations with a view to determining these types of work.***

*Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in, and removing children from, the worst forms of child labour, and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation.* The Committee previously noted the adoption of the National Plan of Action against abuse and commercial sexual exploitation (PANAESC), the objectives of which include prevention of the sexual exploitation of young persons under 18 years of age, protection of young persons from such exploitation, and their rehabilitation. It also noted the adoption of the National Plan to prevent, combat and penalize the trafficking of persons and to assist the victims thereof (National Plan to combat trafficking).

The Committee takes due note of the various awareness-raising and training activities relating to the sale, trafficking and commercial sexual exploitation of children. However, the Committee notes that the Government's report does not supply any information on the measures taken to remove children from trafficking and commercial sexual exploitation and to ensure their rehabilitation and social integration. It observes that, according to the information contained in a 2011 report on the trafficking of persons in the Bolivarian Republic of Venezuela, available on the website of the United Nations High Commissioner for Refugees (UNHCR), there are no reception centres that cater specifically for the victims of trafficking. The report also indicates that although trafficking victims receive medical care and psychological assistance, rehabilitation services appear to be lacking. ***The Committee firmly encourages the Government to intensify its efforts to provide the necessary and appropriate direct assistance for the removal of children from trafficking and commercial sexual exploitation and to ensure their rehabilitation and social integration. It again requests the Government to provide detailed information on the measures taken in the context of PANAESC and the National Plan to combat trafficking and requests it to provide information in its next report on the number of children who have benefited from these measures.***

*Article 8. International cooperation.* In its previous comments the Committee noted that the Government of the Bolivarian Republic of Venezuela, in conjunction with the government members and associates of MERCOSUR, was participating in the "Niño Sur" initiative for the defence of the rights of children and young persons in the region. The initiative aimed to raise public awareness of sexual exploitation, improve national legal frameworks, and exchange best practices to tackle issues related to victim protection and assistance. The Committee noted that a regional legislative database relating to the prevention of, and action against, the sale and trafficking of children for sexual exploitation had been established in this context. It also noted that proposals for cooperation with the Governments of Brazil and Uruguay aimed at eliminating the sale, trafficking and commercial sexual exploitation of children were being drawn up.

The Committee notes the Government's indication that the National Committee on the Rights of Children and Young Persons (IDENA) has organized days relating to the comprehensive protection of children and young persons in border areas, in cooperation with Colombia. ***The Committee requests the Government to continue to provide information on the measures taken to cooperate with neighbouring countries with a view to eliminating the sale, trafficking and commercial sexual exploitation of children. It also requests the Government to provide information in its next report on the results achieved in the context of the "Niño Sur" initiative.***

*Part V of the report form. Application of the Convention in practice.* In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its conclusions on the Government's second periodic report of October 2007, had regretted the lack of information and data on the sexual exploitation and sale of children (CRC/C/VEN/CO/2, paragraph 74). It further noted that the Committee on the Elimination of Discrimination against Women, in its concluding observations of January 2006 (CEDAW/C/VEN/CO/6, paragraph 28), had requested the Government to include in its next periodic report a comprehensive assessment, based on appropriate studies, of the causes and extent of prostitution, as well as the trafficking of women and girls. The Committee noted that, as part of the annual workplan of the National Institute of Statistics, various activities were carried out in collaboration with UNICEF to ensure the visibility of children and young persons within national statistics. The Government indicated that a centralized national system was planned for reporting violations of the rights of children and young persons.

The Committee notes the allegation made by the CTV that there is no reliable data collection mechanism for evaluating the number of children involved in the worst forms of child labour. The Committee notes that, while statistical information relating to education was submitted in the Government's reply to the allegations of the CTV, no information has been provided concerning the number of children and young persons engaged in the worst forms of child labour in the country. ***The Committee therefore urges the Government to take the necessary measures to ensure that sufficient data on the nature, extent and trends of the worst forms of child labour are made available and requests it to send this information in its next report. To the extent possible, all information provided should be disaggregated by sex and age.***

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

## Zambia

### **Minimum Age Convention, 1973 (No. 138) (ratification: 1976)**

*Articles 1 and 2(1) of the Convention. National policy and scope of application.* The Committee had previously noted the International Trade Union Confederation's (ITUC) allegation that children are reported to be working in the unregulated economy. According to the ITUC, children are mostly found in agriculture, domestic service, small-scale mining operations, stone crushing and pottery. It had also noted the Government's information that a draft National Action Plan on Child Labour which included various measures for the elimination of child labour in the informal sector has been formulated. The Committee notes the Government's information in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the National Action Plan on Child Labour was adopted along with the National Child Labour Policy in June 2011. ***The Committee requests the Government to provide detailed information on the implementation of the National Action Plan on Child Labour and the National Child Labour Policy and their impact on abolishing child labour, especially in the informal economy.***

*Article 2(3). Age of completion of compulsory schooling.* Following its previous comments, the Committee notes with ***interest*** that a new Education Act of 2011 has been enacted by the Government which requires a parent of a child who has attained the school going age to enrol that child in an educational institution and to ensure that child's attendance at the institution (section 17(1)). It also notes that section 17(3) provides for appointing a committee to investigate the absence of any child from the educational institution and to issue a notice requiring the parent of that child to comply with subsection (1) within the prescribed period. Moreover, section 17(4) lays down penalties for the offences related to the failure to enrol a child in school, preventing a child from attending school or withdrawing a child from school. The Committee notes, however, that the Education Act of 2011 neither defines the school-going age nor indicates the age of completion of compulsory schooling. The Committee notes that according to section 34 of the Education Act of 2011, the Minister, may by statutory instrument, make regulations to provide for the basic school going age and age for compulsory attendance at educational institutions.

The Committee further notes the Government's information that it has established a comprehensive system of identifying poor and vulnerable children, assessing their needs and determining how best to meet their educational needs. The Government states that it has established bursary and scholarship schemes for the poor and vulnerable children, with special provisions for the needs of the girl child, orphans and children from rural areas. The Committee notes the Government's indication that the basic school enrolment rates have reached 94.2 per cent (an increase from 1,806,754 in 2000 to 3,510,288 in 2010), while the drop-out rates have been reduced from 4.6 per cent in 2000 to 2 per cent in 2010. It also notes from the Government's report that the proportion of orphans enrolled has increased from 11.1 per cent in 2002 to 18.5 per cent in 2010. The Committee takes due note of the various measures taken by the Government to improve the functioning of the education system. ***However, considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to ensure that regulations pursuant to section 34 of the Education Act of 2011 are adopted, defining the basic school going age and the age of completion of compulsory schooling up to the minimum age for employment, which is 15 years for Zambia. It also requests the Government to continue taking effective measures to improve the functioning of the education system, in particular by increasing the school enrolment rates and reducing drop-out rates, especially among children in the rural areas so as to prevent them from engaging in child labour.***

*Article 3(2). Determination of hazardous work.* The Committee had previously noted the Government's indication that a "statutory instrument" was formulated to enforce the Employment of Young Persons and Childrens

(Amendment) Act of 2004 (EYPC Act of 2004) as well as to serve as Zambia's hazardous work list. It had also noted that this "statutory instrument on hazardous work" prohibits work in a covered site in any of the following types of occupations: excavation/drilling; stone crushing; block/brick-making; building; roofing; painting; tour guiding; selling/serving in bars; animal herding; fishing; working in tobacco and cotton fields; spraying of pesticides, herbicides and fertilizers; handling farm machinery; and processing in industries.

The Committee notes the Government's statement that the Ministry of Labour and Social Security working in consultation with the Ministry of Justice has taken steps to finalize the Statutory Instrument on Hazardous Work before the end of 2011. ***The Committee expresses the firm hope that the Statutory Instrument on Hazardous Work containing the list of types of hazardous work prohibited to children under 18 years will be adopted soon. It requests the Government to supply a copy thereof, as soon as it has been adopted.***

*Article 7. Light work.* The Committee had previously noted section 4(A)(2) of the EYPC Act of 2004 which provides for a definition of "light work" for children aged between 13 and 15 years and section 4(5) which empowers the Minister to determine light work activities. Subsequently, it had noted Government's indication that once the Statutory Instrument on Hazardous Work had been adopted, it would determine light work activities. ***The Committee expresses the firm hope that once the Statutory Instrument on Hazardous Work has been adopted, the Government will take the necessary measures to adopt regulations pursuant to section 4(5) of the EYPC Act of 2004, to determine the light work activities which may be undertaken by children between 13 and 15 years of age as well as to prescribe the number of hours during which and the conditions in which such work may be undertaken.***

*Parts III and V of the report form. Labour inspectorate and application of the Convention in practice.* The Committee had previously noted the Government's indication that due to lack of transport and communication services, the District Child Labour Committees (DCLCs) were not able to function effectively in the districts.

The Committee notes the Government's information that eight more DCLCs were created and that more funding provisions towards DCLCs administrative costs have been included in the 2012 budget. The Government report further states that during the period from 2009 to 2010, 35 specific child labour inspections were undertaken by the labour inspectors, and 360 children were withdrawn from child labour. Of these children withdrawn, 60 per cent were taken back to school and reintegrated while the remaining 40 per cent were empowered with the necessary skills to make them self-reliant. The Committee further notes the Government's statement that the revised labour inspection form will now enable the labour inspectors to collect and obtain sector-wise data on child labour, including those from the informal sector. The Committee notes, however, that according to the joint ILO-IPEC, UNICEF and World Bank report on Understanding Children's Work (UCW) in Zambia of May 2009, an estimated 1.3 million children between the ages of 5–14 years are involved in child labour, which implies 41 per cent of this age group, and an alarmingly high number of over 1.4 million children between the ages of 5–17 years are exposed to hazardous working conditions. The Committee expresses its ***deep concern*** at the high number of children involved in child labour and hazardous work. ***The Committee urges the Government to step up its efforts to abolish child labour in the country. It also requests the Government to continue taking the necessary measures to make the DCLCs effectively functional, including through the allocation of additional resources and funding. It also requests the Government to provide sector-wise data on child labour collected by the labour inspectors, as well as information on the number and nature of violations detected with regard to child labour, including in the informal sector.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)**

*Article 3 of the Convention and Part V of the report form. Worst forms of child labour and application of the Convention in practice. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously noted the allegations made by the International Trade Union Confederation (ITUC) on the trafficking of children from Zambia to neighbouring countries for prostitution as well as on the kidnapping of Zambian children to perform forced labour in Angola. Further noting the nature and extent of internal trafficking in Zambia, the Committee previously requested the Government to provide information on the practical application of the law concerning the prohibition of the sale and trafficking of children, as well as on the measures taken for the rehabilitation and social integration of child victims of trafficking.

The Committee notes the Government's statement that a victim support unit (VSU) was recently created within the Police Service following the police reform programme in order to make the police services efficient in preventing crimes. It also notes that a Human Trafficking Desk was established under the VSU to deal with crimes related to children, including sale and trafficking. The Committee notes the Government's information that the VSU has a stop centre in eight towns in the country where counselling, legal advice and health care services are provided for victims of trafficking. It also notes the Government's information that the Government is working with other NGOs such as the Young Women's Christian Association (YWCA), Women in Law in Southern Africa, CARE International Zambia and Gender in Development Division to provide shelters for child victims of trafficking. Moreover, the Government, with the help of UNICEF, is also attempting to establish a victim centre in each of the nine provincial capitals of Zambia.

The Committee further notes the Government's indication that so far 19 cases of child trafficking were reported to the VSU, and in two cases the perpetrators were sentenced to 20 years' imprisonment, while in another case, an investigation is being carried out by the VSU and the girl in question has been placed in a safe home with the help of the

International Organization for Migration. ***The Committee requests the Government to continue providing information on the number of cases of trafficking of children reported to the VSU and on the prosecutions, investigations, convictions and penal sanctions applied in such cases. It also requests the Government to provide information on the number of child victims of trafficking who have been withdrawn and rehabilitated at the centres established by the VSU, and at the shelters established by the Government in cooperation with the NGOs and UNICEF.***

*Article 4(1). Determination of hazardous work.* The Committee previously noted the Government's indication that it had formulated a "Statutory Instrument on hazardous work" which would prohibit work in a covered worksite in any of the following types of occupations: excavation/drilling; stone crushing; block/brick-making; building; roofing; painting; tour guiding; selling/serving in bars; animal herding; fishing; working in tobacco and cotton fields; spraying of pesticides, herbicides and fertilizers; handling of farm machinery; and processing in industries. It expressed the hope that this Statutory Instrument on Hazardous Work would be adopted soon.

The Committee notes the Government's statement that the Ministry of Labour and Social Security working in consultation with the Ministry of Justice has taken steps to finalize the Statutory Instrument on Hazardous Work before the end of 2011. ***The Committee expresses the firm hope that the Statutory Instrument on Hazardous Work containing the list of types of hazardous work prohibited to children under 18 will be adopted in the very near future. It requests the Government to supply a copy of same, as soon as it has been adopted.***

*Article 5. Monitoring mechanisms. Inter-Ministerial Committee on Human Trafficking.* The Committee previously noted the establishment of an Inter-Ministerial Committee on Human Trafficking which aims to coordinate programmes on protection, prevention and prosecution on human trafficking issues, as well as to help in the development and revision of policies and legislation on human trafficking.

The Committee notes the Government's information that the Ministry of Home Affairs is in the process of appointing the nominees proposed by other ministries to the Inter-Ministerial Committee on Human Trafficking. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to provide information on the implementation of the programmes on protection, prevention and prosecution concerning human trafficking coordinated by the Inter-Ministerial Committee on Human Trafficking, and the results achieved, in terms of the number of children prevented or withdrawn from trafficking and rehabilitated.***

*Article 7(2). Effective and time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child orphans of HIV/AIDS and other vulnerable children.* The Committee previously noted the ITUC's indication that since the number of Zambians dying of HIV/AIDS had increased, the number of orphans had also increased and that nearly all of these children were engaged in hazardous work. It also noted that according to the "Report on the global AIDS epidemic" published by the Joint United Nations Programme on HIV/AIDS (UNAIDS) in July 2008, over 600,000 children aged below 17 years were HIV/AIDS orphans in Zambia.

The Committee notes the Government's information that within the National AIDS Strategic Framework of 2006–10, major steps have been taken towards the implementation and expansion of HIV/AIDS prevention response, which include social protection measures to help people and families affected by HIV/AIDS. It notes the Government's information on the various interventions carried out by the Government and the cooperating partners in this regard, which according to the Government have prevented vulnerable children from entering into the labour market. The Committee notes the Government's indication that it has provided funds of about 11 billion kwacha (ZMK) (US\$2,240,325) to the Public Welfare Assistance Scheme which is mandated to provide social protection to orphans, including primary and secondary education, food, health, shelter and clothing. It also notes the Government's information that it has implemented cash transfer funds targeting orphans and other vulnerable children (OVCs) in some districts of the country. Accordingly in the Eastern Province of Zambia, 688 people received cash to buy their basic necessities through the universal age-based scheme; a total of 1,167 households received ZMK40,000 through the social urban cash transfer scheme; and households with children received ZMK50,000 each. Similarly, in the Southern Province of Zambia, 4,042 people and 1,603 households have benefited through various schemes. It also notes from the Government's report that the proportion of orphans enrolled at the basic school level increased from 11.1 per cent in 2002 to 18.5 per cent in 2010. The Committee further notes that Zambia is a participating country in the ILO–IPEC project entitled "Tackling Child Labour through Education" (TACKLE) and started to implement four action programmes (APs) from 2010. Following the implementation of these APs, a total of 511 children have been prevented from child labour through education support; and 447 children have been withdrawn from child labour through formal education and skills training programmes.

The Committee notes that according to the Zambia Country Report of 31 March 2010 to the United Nations General Assembly Special Session on AIDS (UNGASS report) 15.7 per cent of orphaned and vulnerable children aged 0–7 years received free basic external support. The UNGASS report also indicates that the District AIDS Task Force and the District Welfare Assistance Committees have undergone training to deal with OVC issues and that a Parliamentary Caucus on children has been established to develop work plans and to design a pilot project to integrate issues of children, including OVCs. The Committee notes, however, from the UNGASS report that the OVC situation appears to be developing into a deepening crisis as funding and programming is failing to keep pace with the magnitude of orphans who need care and support. Moreover, the Committee notes that according to the Epidemiological Fact Sheet on HIV and AIDS of 2009 – Zambia (UNAIDS), over 690,000 children aged 0–17 years are orphans due to HIV/AIDS. While

appreciating the measures taken by the Government to protect orphans and other vulnerable children, the Committee express its *deep concern* at the increasing number of children orphaned in Zambia as a result of HIV/AIDS. **Recalling that children orphaned by HIV/AIDS and other vulnerable children are at an increased risk of being engaged in the worst forms of child labour, the Committee urges the Government to strengthen its efforts to protect such children from the worst forms of child labour. It requests the Government to provide information on the measures taken by the District AIDS Task Force, the District Welfare Assistance Committee and the Parliamentary Caucus on Children in protecting orphans and other vulnerable children, and the results achieved. The Committee finally requests the Government to provide information on the impact of the TACKLE project in preventing children/orphans affected by HIV/AIDS from being engaged in the worst forms of child labour, including the number of children prevented and withdrawn from the worst forms of child labour.**

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

## Zimbabwe

### **Minimum Age Convention, 1973 (No. 138) (ratification: 2000)**

*Article 2(1) of the Convention. Scope of application.* In its previous comments, the Committee noted that the Labour Act of 2002 and the Labour Relation Regulations of 1997 do not apply to self-employed workers. The Committee also noted the allegation of the Zimbabwe Congress of Trade Unions (ZCTU) that the informal economy is among the sectors where child labour is the most common. Moreover, the Committee noted the information from the 2008 ILO–IPEC Draft Rapid Assessment Survey on the worst forms of child labour in Zimbabwe (ILO–IPEC Rapid Assessment Survey) that a full 87 per cent of children surveyed were self-employed.

The Committee notes the Government’s indication that the Children’s Act [Chapter 5:06] prohibits parents and guardians from allowing their children to engage in employment, in addition to protecting all children from forms of ill-treatment, exploitation and neglect. In this regard, the Committee notes that section 10A(1)(a) of the Children’s Act states that no parent or guardian of a child or young person of school-going age shall knowingly cause or permit the child or young person to absent himself from school in order to engage in employment for gain or reward (punishable by a fine not exceeding two thousand five hundred dollars and/ or to imprisonment of a period not exceeding six months). The Government also indicates that it views children engaged in work on their own account as children in need of care and that there are specific mechanisms in place to ensure that such children are identified and put in places of safety. The Committee notes the Government’s acknowledgement that, notwithstanding the comprehensive legal provisions that prohibit children from engaging in child labour, children are in practice found in employment situations. In this regard, the Committee reminds the Government that the Convention applies to all branches of economic activity, including the informal sector, and that it covers any type of employment or work, whether or not it is performed on the basis of an employment relationship and whether or not it is remunerated. **Noting the large number of children working on their own account as identified in the 2008 ILO–IPEC Rapid Assessment Survey, the Committee requests the Government to strengthen its efforts to ensure that children working outside an employment relationship, particularly on those working on their own account or in the informal economy, benefit from the protection afforded by the Convention. It requests the Government to provide information on the existing mechanisms which reach out to these working children and on the specific measures taken to strengthen such initiatives.**

*Article 2(3). Age of completion of compulsory schooling.* In its previous comments, the Committee noted that, while section 5 of the Education Act of 1996 states that it is the objective for primary education to be compulsory for every child of school-going age, in practice, primary education is neither free nor compulsory and that the quality of education is low. The Committee also noted the ZCTU’s allegation that very young children engaged in work to pay for their school fees. Moreover, the ZCTU indicated that school drop-outs are a common phenomenon. In this regard, the Committee further noted the statement in the draft Five-Year National Programme for the Elimination of the Worst Forms of Child Labour of April 2009, from the Ministry of Labour and Social Services, that the number of school drop-outs had been constantly increasing in recent years, affecting girls disproportionately. Lastly, the Committee noted the Government’s indication that it had launched various programmes, such as the Basic Education Assistance Module (BEAM), aimed at ensuring that children attend school.

The Committee notes the Government’s statement that it has put in place measures to ensure that all rural primary school students do not pay tuition fees, and that this is a step towards the reintroduction of free education in Zimbabwe. The Government indicates that it is committed to achieving basic education for all, by removing obstacles and ensuring that all children have access to education. The Government states that it is taking appropriate measures in this regard, such as the payment of grants and subsidies to schools. The Committee also notes the Government’s indication that it has continued to increase its funding for the BEAM.

The Committee further notes the Government’s indication that the Education Act was amended in 2006 to provide that primary education shall be compulsory for every child. However, the Committee observes that the Education Amendment Bill (to amend the Education Act), passed by the Senate in 2006, did not appear to address the issue of compulsory education. In addition, the Committee notes that, according to information from the 2011 UNESCO *Education For All: Global Monitoring Report*, primary education lasts from 6 to 12 years. The Committee therefore

observes that the age at which compulsory schooling ends is two years below the current minimum age for admission to work of 14 years of age. ***Recalling that compulsory education is one of the most effective means of combating child labour, the Committee strongly encourages the Government to adopt legislation which would fix the age of completion of compulsory schooling at 14, in line with the minimum age for admission to work. The Committee also encourages the Government to pursue its efforts to strengthen the functioning of the education system and to provide information on the impact of these programmes with regard to increasing school attendance rates and reducing school drop-out rates. Lastly, the Committee requests the Government to provide a copy of the Education Act, as amended in 2006, with its next report.***

*Article 6. Apprenticeship.* The Committee previously noted that section 11(1)(a) and (3)(b) of the Labour Act of 2002 permit the employment of apprentices from the age of 13 years. The Committee observed that permitting the employment of apprentices from the age of 13 years, pursuant to the Labour Act, was not in conformity with *Article 6* of the Convention.

The Committee notes the Government's statement that this matter is currently being considered in the context of the ongoing labour law reform process, with a view to raising the minimum age for admission to apprenticeship in conformity with *Article 6* of the Convention. In this regard, the Committee notes the Government's indication that the principle of raising the minimum age for admission to apprenticeships has been adopted by the social partners. ***The Committee urges the Government to pursue its efforts within the framework of the ongoing labour law reform process, to ensure the establishment of a minimum age of admission to apprenticeship of no lower than 14 years of age, in conformity with Article 6 of the Convention.***

*Article 7(3). Determination of light work.* The Committee 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. The Committee also noted that quite a number of children below 13 years of age were economically active; the 2004 labour force survey indicated that 406,958 children aged 5–14 were engaged in work for at least three hours per day. The Committee further 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 notes the information in the Government's report that it is envisaged to include in the labour law reform process a determination of the types of light work that may be performed by children. The Government indicates that the revision of Statutory Instrument 155 of 1999 giving the schedule of light work will be done after the revision of the principal Act. ***The Committee requests the Government to pursue its efforts, within the reform process, to ensure a determination of the types of light work that may be performed by children from the age of 13 years. The Committee requests the Government to continue to provide information on progress made in this regard.***

*Part V of the report form. Application of the Convention in practice.* The Committee previously noted the ZCTU's allegations that, despite legislation applying the Convention, there is lack of enforcement due to the incapacity of labour inspectors. The ZCTU indicated that when breaches of the relevant legislation were detected, the cases took more than a year to be processed, both at the Department of Labour, and in the courts of law. The ZCTU further indicated that children in Zimbabwe often start work below the age of 13. The Committee also noted the information from the 2004 labour force survey that 42 per cent of children between the ages of 5–14 years were involved in economic child labour. The Committee further noted the information in the ILO–IPEC Rapid Assessment Survey that 68 per cent of child agricultural workers surveyed and 53 per cent of child domestic workers surveyed were 14 years old or younger. The Government indicates that it intended to address these sectors through the implementation of phase II of the Worst Forms of Child Labour Project. The Committee expressed its deep concern at the allegations of weak enforcement of child labour legislation, and 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 notes the Government's statement that it is currently strengthening existing programmes to reach out to children engaged in child labour. The Committee also notes the Government's statement that phase II of the Worst Forms of Child Labour Project is not yet underway, but that this phase will focus on the agricultural and domestic sectors. Lastly, the Committee notes the Government's indication that the Zimbabwe Statistics Agency has recently concluded the labour force survey of 2011, and that these results will be communicated to the Office once available. ***The Committee urges the Government to pursue its efforts, within phase II of the Worst Forms of Child Labour Project, to reduce the number of children under the minimum age who are engaged in economic activities, especially with respect to children working in the agricultural sector and domestic services. The Committee also requests the Government to provide information from the 2011 Zimbabwe labour force survey, when it becomes available, on the number of children below the minimum age who are engaged in economic activities.***

### **Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)**

*Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children.* The Committee previously observed that Zimbabwean legislation only covered cross-border trafficking for the purpose of sexual exploitation. However, the Committee noted that Zimbabwean

children were trafficked internally, and were trafficked to other states for both forced agricultural labour and domestic servitude, in addition to sexual exploitation. The Committee also noted the statement of the Zimbabwe Congress of Trade Unions (ZCTU) regarding the existence of trafficking of children to other countries in the region, such as Botswana and South Africa. In this regard, the Committee noted that according to the 2009 UNODC Global Report on Trafficking in Persons, no prosecutions or convictions were recorded for trafficking in persons during the recent years, due to the absence of a specific provision on human trafficking.

The Committee notes the Government's statement that it is fully committed to preventing and combating trafficking, should the phenomenon be present in the country. The Government indicates that it will embark on an exercise to determine the extent of the phenomenon in the country. The Committee also notes the Government's statement that it is in the process of discussing comprehensive legislation to deal with human trafficking in all its facets, including the trafficking of children. However, the Committee observes that the Government has referred to similar forthcoming legislation since 2005. Moreover, the Committee notes the information on the website for the Zimbabwean Parliament that, as of 31 August 2011, legislation concerning trafficking had not yet been introduced in Parliament. Recalling that *Article 1* of the Convention requires member States to take *immediate* measures to prohibit the worst forms of child labour as a matter of urgency, the Committee expresses its *concern* that comprehensive legislation has yet to be adopted to prohibit the internal trafficking of persons under 18, or their trafficking for the purpose of labour exploitation. **Accordingly, the Committee once again urges the Government to take the necessary measures to ensure that legislation prohibiting the sale and trafficking of children (including internal trafficking) for both labour and sexual exploitation is adopted in the very near future. It requests the Government to provide information on progress made in this regard, and to provide a copy of the relevant legislation, once adopted.**

*Article 4(3). Periodic examination of the list of hazardous work.* The Committee previously noted the Government's indication that a revision of the list of types of hazardous work was being contemplated under the Project on the Elimination of the Worst Forms of Child Labour in Zimbabwe (WFCL Project).

The Committee notes the Government's statement that the revision of the list of types of hazardous work has not yet been undertaken, and that this is envisaged to take place under phase II of the WFCL Project. **Observing that the Government has been referring to the imminent revision of the list of types of hazardous work since 2003, the Committee urges the Government to strengthen its efforts to ensure the appropriate examination and revision of the list of types of hazardous work prohibited for persons under 18, in consultation with the organizations of employers and workers concerned.**

*Article 7(2). Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education.* The Committee previously noted that Zimbabwe faced a decline in its net enrolment and completion rates of primary education, due to ongoing socio-economic challenges. The Committee also noted the ZCTU's contention that school drop-outs are a common phenomenon in Zimbabwe. In this regard, the Committee noted that the Government had introduced the Basic Education Assistance Module (BEAM) in 2001, with the primary objective of reducing the number of drop-outs and of reaching those who had never been to school due to economic hardship. According to information from UNICEF, the BEAM was revitalized in 2009 and had supported over 550,000 children in 5,400 primary schools. Nonetheless, the Committee noted the information in the ILO-IPEC Rapid Assessment Survey on the worst forms of child labour in Zimbabwe (Rapid Assessment Survey), conducted in September 2008, that 70 per cent of the children surveyed had dropped out or never attended school.

The Committee notes the Government's statement that it is taking steps towards the attainment of universal primary education. The Government indicates that it envisages several measures in this regard, including reintroducing free primary education, providing school lunches, improving the quality of education and ensuring a predictable and adequate state budget for education. The Government also indicates that it has waived tuition fees for children enrolled in rural schools, and that only levies are charged for these children. The Government indicates that such levies for needy children are paid for by the BEAM. However, the Committee also notes that, according to the UNESCO Education for All Global Monitoring Report of 2011, there remain 224,000 out-of-school children between the ages of 6 and 12. **Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to strengthen its efforts, including through the BEAM, to ensure access to free basic education to all children in Zimbabwe. The Committee requests the Government to provide information on concrete measures taken in this regard, particularly with respect to addressing the financial barriers to education, with a view to increasing school attendance rates and reducing drop-out rates.**

*Clause (d). Identify and reach out to children at special risk. 1. Orphans of HIV/AIDS and other vulnerable children.* The Committee previously noted that many children in Zimbabwe are orphaned due to HIV/AIDS and that most of these children find themselves involved in the worst forms of child labour. In this regard, the Committee noted the ZCTU's allegation that the HIV/AIDS pandemic has contributed to the phenomenon of child poverty and child labour, as the number of child-headed families increased. The Committee also noted that the Government had launched the Orphans and other Vulnerable Children National Action Plan (OVC NAP) in 2004, which seeks to ensure that these children have access to education, food, health services, and that they are protected from abuse and exploitation.

The Committee notes the Government's statement that it has made significant efforts over the years to curb the spread of HIV/AIDS and to provide anti-retroviral therapy for those infected. The Committee notes that Zimbabwe has

developed a National Orphan Care Policy, which provides a package of basic care and protection for orphans. The Government further indicates that it has continued to register a gradual decline in HIV prevalence, dropping nearly 10 per cent between 2001 and 2009. The Committee also notes the information in the Government's report to the UN General Assembly as a follow-up to the Declaration of Commitment on HIV/AIDS of April 2010 that approximately 21 per cent of households with OVCs received basic external support in 2009. This report indicates that more than 800,000 OVCs were provided with food or nutritional assistance support in 2009, while 219,874 OVCs were provided with school-related assistance.

Taking due note of the measures taken to provide assistance to orphans and other vulnerable children, the Committee notes the Government's indication that HIV/AIDS remains a leading cause of the worst forms of child labour in the country. In this regard, the Committee notes the information from the Multiple Indicator Monitoring Survey Preliminary Report of August 2009 that one in four children in the country are orphaned by HIV/AIDS. ***The Committee therefore requests the Government to pursue and strengthen its efforts, within the framework of the OVC NAP, to protect children orphaned by HIV/AIDS and other vulnerable children from the worst forms of child labour. It requests the Government to continue to provide information on the effective and time-bound measures taken in this regard, and on the results achieved.***

2. *Street children.* The Committee previously noted that, according to official estimates, there were approximately 5,000 street children in Harare, the majority of whom were boys between the ages of 14 and 18. It also noted that the number of street children had increased in recent years. Moreover, the Committee noted the information from the Rapid Assessment Survey revealing that 63 per cent of the street children surveyed were orphans, and the average age that these children began living on the streets was 10 years. The Rapid Assessment Survey indicated that begging was the source of livelihood for 45 per cent of these children.

The Committee notes the Government's indication that, among other programmes for OVCs, it has put in place the street children fund which provides for the needs of more than 12,000 children living or working in the streets. The Government indicates that this programme supports the reintegration of street children with their families to ensure that this process is smooth and sustainable. The Government indicates that 7,253 children (6,959 boys and 1,203 girls) have been reunited in a family environment since 2007. ***The Committee urges the Government to pursue its efforts to protect children under 18 years living and working on the streets from the worst forms of child labour. It requests the Government to continue to provide information on the results achieved in this regard, within the framework of the programme for OVCs and the street children fund.***

3. *Children engaged in mining activities.* The Committee previously noted the ZCTU's statement that one of the worst forms of child labour most common in Zimbabwe is work in the mining sector, where children scavenge for minerals to survive. The Committee also noted the information in the Rapid Assessment Survey that 11.6 per cent of the children surveyed were engaged in mining work and that children were mostly self-employed boys between the ages of 15 and 17 (though most had started below the age of 14). The Rapid Assessment Survey further indicated that 67 per cent of children working in this sector use chemicals (including mercury, cyanide and explosives), and approximately 24 per cent of these children work for more than nine hours a day. The Committee expressed its serious concern at the situation of children working in hazardous conditions in mines, and requested the Government to take measures, within the framework of phase II of the WFCL Project, to protect children working in mines in hazardous conditions.

The Committee notes the Government's statement that phase II of the WFCL Project has yet to be implemented, and notes that the Government provides no information on other measures taken to reach out to children engaged in hazardous work in mines. ***The Committee therefore urges the Government to take immediate and effective measures to prevent children from engaging in hazardous mining activities, and to remove and provide rehabilitative services to those children currently engaged in this worst form of child labour. It once again requests the Government to provide information on effective and time-bound measures taken in this regard and the results achieved.***

*Article 5 and Part V of the report form. Monitoring mechanisms and the application of the Convention in practice.* The Committee previously noted the ZCTU's contention that land invasions had caused the displacement of farm workers and their families, causing children to engage in illicit activities, including prostitution. The ZCTU further indicated that the relevant enforcement mechanisms need to be enhanced, and that there is a strong need to address the underlying causes of the worst forms of child labour, particularly poverty and to provide a comprehensive social system. The Committee also noted that the Rapid Assessment Survey indicated that of the children interviewed, 18 per cent were engaged in prostitution and 23 per cent were engaged in illicit activities. The Rapid Assessment Survey also indicated that poverty was the major push factor for the worst forms of child labour and that children engaged in these activities because there were no immediately viable alternatives through which to support themselves or their households. The Survey concluded that, while many of the legal provisions on the worst forms of child labour are sufficiently up to date, this legislation lacked enforcement.

The Committee notes the Government's statement, in response to the ZCTU's allegations, that the land reform exercise is not the cause of children engaging in the worst forms of child labour. The Government indicates that the leading causes are poverty and the negative effects of the HIV/AIDS pandemic. The Committee also notes the Government's statement that efforts are being made to strengthen labour inspections so as to identify and deal with incidents of child labour. The Government indicates that it will take measures to ensure that the provisions giving effect to

the Convention are adequately enforced. Regarding the phase II of the WFCL Project, the Government indicates that the tripartite partners have concluded work on the Project, but that it has faced serious challenges with respect to resource mobilization. The Government indicates that it remains committed to eliminating the worst forms of child labour through various child protection strategies which are already in place, and that it plans to set aside resources within the 2012–13 national budget to start key initiatives within the phase II of the WFCL Project.

The Committee once again expresses its *concern* at reports of the weak enforcement of provisions giving effect to the Convention. *The Committee urges the Government to strengthen its efforts to combat the worst forms of child labour, including through strengthened enforcement of the relevant legislative provisions and measures to address the roots causes of this phenomenon. The Committee also requests the Government to take the necessary measures, including through the allocation of resources, to ensure the implementation of phase II of the WFCL Project. The Committee requests the Government to provide information on the measures taken, and the results achieved.*

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

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 5** (Denmark: Greenland, India); **Convention No. 6** (Burkina Faso, Cambodia); **Convention No. 59** (Ghana, Guatemala); **Convention No. 77** (Albania, Algeria, Azerbaijan, Belarus, Bulgaria, Comoros, Cuba, Czech Republic, El Salvador, Guatemala, Haiti, Hungary, Israel, Italy, Kyrgyzstan); **Convention No. 78** (Albania, Algeria, Azerbaijan, Belarus, Bulgaria, Cuba, Czech Republic, El Salvador, Guatemala, Haiti, Hungary, Israel, Italy, Kyrgyzstan); **Convention No. 79** (Azerbaijan, Belarus, Israel, Italy, Kyrgyzstan); **Convention No. 90** (Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Guinea, Italy); **Convention No. 123** (Australia, Czech Republic, Ecuador, Gabon, Kyrgyzstan, Uganda); **Convention No. 124** (Azerbaijan, Belarus, Czech Republic, Ecuador, Gabon, Kyrgyzstan, Uganda); **Convention No. 138** (Bahamas, Barbados, Plurinational State of Bolivia, Botswana, Brazil, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Denmark, Djibouti, Equatorial Guinea, Gambia, Grenada, Guinea, Guyana, Hungary, Ireland, Republic of Korea, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lithuania, Mauritania, Republic of Moldova, Montenegro, Mozambique, Namibia, Nepal, Netherlands, Nigeria, Oman, Pakistan, Papua New Guinea, Paraguay, Peru, Portugal, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Seychelles, Singapore, South Africa, Sudan, Switzerland, Tajikistan, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom, Uruguay, Uzbekistan, Viet Nam, Yemen); **Convention No. 182** (Algeria, Bahamas, Barbados, Belgium, Plurinational State of Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Congo, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Gambia, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Ireland, Kenya, Republic of Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Guernsey, Uruguay, Uzbekistan, 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. 6** (Central African Republic, Estonia); **Convention No. 10** (Australia); **Convention No. 33** (Cameroon); **Convention No. 59** (United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas)); **Convention No. 90** (Czech Republic); **Convention No. 124** (Austria); **Convention No. 138** (Qatar).



## Equality of opportunity and treatment

### Afghanistan

#### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

*Equal remuneration for work of equal value. Legislation.* The Committee notes the Government's indication that Afghanistan's Decent Work Country Programme covers the principle of equal remuneration for work of equal value. However, the Government does not give any specific information on measures taken or envisaged to include provisions in the Labour Law which would reflect the concept of equal remuneration for "work of equal value". The Committee recalls the importance of providing for the right of men and women to receive equal remuneration for "work of equal value" in order to allow a broad comparison between jobs performed by men and women that may be different but nonetheless of equal value, and that legislative provisions that do not give expression to the concept of "work of equal value" hinder progress in eradicating gender-based pay discrimination. The Committee also recalls that the definition of remuneration should include not only the ordinary basic or minimum wage or salary but also any additional emoluments whatsoever, payable in cash or in kind, as stipulated in *Article 1(a) of the Convention*. **The Committee therefore asks the Government to take steps to adopt specific legislative provisions explicitly providing for equal remuneration between men and women for work of equal value and to provide information on the progress made in this regard.**

*Public service.* The Committee notes the Government's indication that a salary scale has been established in Annex I of the Civil Servants Law, taking into consideration the social situation as well as the national economic development, and the financial situation of the Government. The Committee draws the Government's attention to the fact that the method used to set salary scales must be free from gender bias and that it is important to ensure that there is no direct or indirect discrimination in the selection of factors for comparison, the weighing of such factors and the actual comparison carried out. **In order to better assess the method used to establish the salary scales in the public service, the Committee asks the Government to provide detailed information concerning the method and factors used to determine salary scales for public service employees, and to forward the latest version of the Civil Servants Act as well as its annexes.**

*Raising awareness of the principle of the Convention.* The Committee welcomes the Government's efforts to continue raising awareness of the principle of the Convention through various measures including organizing training programmes for government officials, workers, employers, judges and civil society, disseminating material on equal remuneration for women and men and organizing workshops for the gender units of ministries on women workers' rights under the Labour Law. **The Committee asks the Government to continue providing information on awareness raising activities carried out to promote the principle of the Convention, including information on the impact of such activities on reducing the gender pay gap. Please also provide information on the content of the training offered to government officials, workers, employers, judges and civil society.**

*Article 4. Cooperation with the social partners.* The Committee welcomes the Government's indication that a tripartite consultative group has been established, comprising government officials, and representatives of workers' and employers' organizations, which actively discusses issues relating to the implementation of the Labour Law and international labour standards in the country. **The Committee asks the Government to provide information on the activities and recommendations of the tripartite consultative group with respect to the principle of equal remuneration for men and women for work of equal value and on reducing the gender pay gap.**

*Statistics.* **The Committee asks the Government to provide statistics on the earnings of men and women by sector and occupation, and any statistics or analysis on the gender pay gap.**

#### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

*Articles 1 and 2 of the Convention. Legislation.* In response to its previous request to the Government to take the necessary measures to amend the Labour Law, the Committee notes the Government's indication that the Labour Law is under review. The Government also indicates that one of the main objectives of a project launched under the Decent Work Country Programme (DWCP) for Afghanistan is to reform the labour laws, and that recommendations will be made in this context regarding amendments needed to bring the Labour Law into compliance with international labour standards, in cooperation with employers' and workers' organizations. **Recalling that the prohibition of discrimination in section 9 of the Labour Law is very general, the Committee urges the Government to take the opportunity of the current labour law reform process to amend the law to prohibit direct and indirect discrimination covering all the grounds listed in Article 1(1)(a) of the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as any other grounds determined in consultation with employers' and workers' organizations, in accordance with Article 1(1)(b) of the Convention, and to provide information on steps taken in this regard. Please also provide specific information on the role of the social partners in this process. Recalling the terms of the National Action Plan for Women of Afghanistan (NAPWA), the Committee asks the Government to provide information on progress made to amend or repeal the laws that impair women's potential to fulfil their social and economic rights and duties.**

*Civil service.* Recalling its previous comments on the Civil Servants Act adopted in 2008, the Committee notes that the Government refers to section 9(1) of the Labour Law which prohibits discrimination in recruitment, payment of salary and allowances, and selection of a profession, as well as section 10 of the Civil Servants Act, prohibiting discrimination in recruitment based on the grounds of sex, ethnicity, religion, disability and physical deformity. The Committee recalls the importance of ensuring that civil servants are protected against discrimination based on at least all the grounds enumerated in the Convention and in all aspects of employment and occupation. ***Noting that a copy of the Civil Servants Act was not attached to the Government's report as indicated, the Committee asks the Government to forward a copy so that it may examine its provisions in light of the Convention. The Committee also asks the Government to clarify whether the provisions of the Labour Law are applicable to civil servants covered under the Civil Servants Law, and if so, to specify the inter-relationship between section 9 of the Labour Law and section 10 of the Civil Servants Act.***

*Article 1(1)(b). Disability.* The Committee welcomes the adoption of the Law on Rights and Benefits of People with Disability, which according to the Government provides for equal rights for persons with disabilities in terms of social, economic, political, cultural, educational, recreational and athletic participation in the society (section 15). ***The Committee asks the Government to forward a copy of the Law on Rights and Benefits of People with Disability and to provide information on measures taken in order to implement section 15 of the Law.***

*Article 5(1). Special measures of protection. Work prohibited for women.* The Committee notes that the list of physically arduous or harmful work prohibited for women to be established under section 120 of the Labour Law, is still under preparation. The Government indicates generally that the list will not include prohibitions based on stereotyped assumptions. The Committee recalls that protective measures which are aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their capabilities and appropriate role in society, are discriminatory and contrary to the Convention. ***Noting the absence of details regarding prohibitions set out in the list to be established under section 120 of the Labour Law, the Committee urges the Government to ensure that any restrictions on the work that can be done by women is strictly limited to maternity protection. The Committee also asks the Government to forward a copy of the list once it is adopted.***

## Albania

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

*Legislative developments.* The Committee notes with *interest* the adoption of the Protection from Discrimination Law (No. 10221, 4 February 2010) which prohibits discrimination in a range of areas, including employment, education and the provision of services. The Committee notes in particular that discrimination is prohibited on a wide range of grounds, namely gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, education or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, restricted ability, affiliation with a particular group or “any other reason” (section 1), many of which are additional grounds, as foreseen in *Article 1(1)(b) of the Convention*. The Law also defines direct and indirect discrimination (section 3) and covers all areas of employment, including job advertisements, recruitment and the treatment of employees in the workplace (section 12). The Committee also notes that the Law establishes the position of Commissioner for Protection from Discrimination (section 21) which has a broad mandate, including to examine complaints, perform administrative investigations, impose administrative sanctions, sensitize and inform the population about the principle of equality and non-discrimination and monitor the application of the Law (section 32). The Committee notes further that complaints of violations of the Law can be brought by persons or groups of persons claiming to have been discriminated against, or from organizations acting on behalf of such individuals or groups, with their written consent (section 33). For cases of violations of the Law brought before the court, section 36 provides for the shifting of the burden of proof once the plaintiff submits evidence upon the basis of which the court may presume discriminatory behaviour. ***The Committee asks the Government to provide information on the application in practice of the Protection from Discrimination Law, including the activities carried out by the Commissioner for Protection from Discrimination and the number and nature of complaints examined and the outcome thereof, as well as details regarding any proceedings brought before the court pursuant to the Law.***

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

## Angola

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)***

The Committee notes with *regret* that for a number of years, the Government's reports have failed to respond to the points raised in the Committee's comments. The Committee once again emphasizes that this prevents it from assessing the progress made with regard to the practical application of the Convention. ***The Committee urges the Government to take all necessary steps to ensure that its next report contains information in reply to all the issues raised by the Committee.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1976)***

The Committee recalls that in previous observations it referred to the comments submitted by the National Union of Angolan Workers (UNTA) related to cases of age discrimination. The Committee notes that the Government indicates in this respect that the maximum age for eligibility to work in the public service is 35 years and that enterprises shall submit requests to employment centres for the workers they need. With respect to the maximum age requirement of 35 years, the Committee considers that such a requirement is likely to be indirectly discriminatory against women as it may particularly affect women wishing to enter or re-enter the labour market following an absence for maternity and child rearing. *In this respect, the Committee encourages the Government, in collaboration with workers' and employers' organizations, to take measures to ensure that women are not indirectly discriminated against in access to employment due to the maximum age requirement. The Committee requests the Government to provide information on the measures taken in this regard.*

The Committee notes the Government's indication that some resolutions were adopted in order to ensure women's participation in the management of private and public entities and that a Gender Project is being implemented with the assistance of the ILO. The Government further indicates that in 2009 there were 319,003 employees in the public sector, of which 107,164 were women, and that there are no statistics concerning the informal economy. *The Committee requests the Government to continue to supply statistical information and hopes that the Government will take the necessary measures to improve the collection of such data so as to include information on the representation of men and women in the different industries and occupations, as well as indications as to the representation of women in decision-making positions and the share of men and women considered to work in the informal economy.*

The Committee further notes that the Government's report contains no reply to certain points raised in its previous comments. The Committee is therefore bound to repeat its previous observation, which read in relevant parts, as follows:

*Discrimination in practice.* The Committee notes that, although the Government has put in place legal provisions concerning discrimination in employment and occupation, including sections 3 and 268 of the General Labour Act No. 2/00, discrimination continues to occur in practice. In its report the Government states that violations of the non-discrimination provisions occur particularly in the private sector where imbalances in the participation in decision-making positions and a tendency to exclude women during and after maternity can be observed. The Government previously reported that gender-based discrimination also exists in the informal economy. As noted by the Committee previously, there is also a significant gender imbalance in the judiciary and as regards management positions in the civil service.

In its report, the Government states that it was difficult to measure the incidence of gender-based discrimination as women do not file petitions or complaints due to shortcomings in the "legal culture". The Government also states that it has made efforts to raise awareness of legal matters, particularly among women, by expanding information and education programmes on women's rights, using different national languages and various forms of communication. Efforts were also being made to address discriminatory cultural and traditional practices still prevailing in the country, which, for instance, lead to unequal access of girls to education. The Government, in a very general manner, also refers to the National Strategy and Strategic Framework to Promote Gender Equality and the Rural Growth and Development Programme which includes a programme for the economic empowerment of women. The report refers to the preparation and use of gender-disaggregated data, although such data has not been provided.

- ...
- (ii) *The Committee encourages the Government to continue and intensify its efforts to raise awareness and understanding of the principle of non-discrimination and the related legislation among men and women, and requests the Government to indicate the specific activities carried out to this end. Given the reports of discrimination based on sex and pregnancy in the private sector, the Committee requests the Government to indicate the measures taken or envisaged to enhance the capacity of the labour inspectorate and other competent authorities to identify and address discrimination in employment and occupation. Please also provide information regarding whether the competent authorities have addressed any such cases, and if so, the results thereof.*
  - (iii) *The Committee considers that the Government should take specific and proactive measures to promote and ensure equality of opportunity and treatment of women in the civil service, including the judiciary, and it asks the Government to indicate any measures taken or envisaged in this regard, including measures to ensure that women have access to management positions on an equal footing with men.*
- ...

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

## **Antigua and Barbuda**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1983)***

*National extraction and social origin.* The Committee recalls that the Constitution prohibits discrimination in respect of "race, place of origin, political opinions or affiliation, colour, creed or sex" (article 14(3)), whereas the Labour Code prohibits discrimination on the basis of "race, colour, creed, sex, age or political beliefs" (section C4(1) et al.). No provision is made, however, for an explicit prohibition of discrimination on the basis of national extraction or of social origin. Concerned over this omission in the application of the Convention, the Committee has for many years been requesting the Government to consider adding these grounds to those in the Labour Code upon which discrimination is

prohibited, and to indicate the manner in which workers are protected from discrimination on such grounds in practice. Noting the persistent lack in the Government's report of information regarding any steps taken to ensure and promote the application of the Convention with respect to these grounds, the Committee recalls once again that where provisions are adopted in order to give effect to the principle contained in the Convention, they should include all the grounds of discrimination laid down in *Article 1(1)(a) of the Convention* (General Survey of 1988 on equality of opportunity and treatment, paragraph 58). Moreover, even as the relative importance of the problems relating to each of the grounds may be different for each country, when deciding on the measures taken it is essential that in implementing a national policy attention be given to all the grounds. ***The Committee therefore urges the Government to take concrete steps to include a specific reference to the grounds of national extraction and social origin in the legislation, in accordance with Article 1(1)(a) of the Convention. It also asks the Government to monitor carefully any emerging forms of discrimination in law and practice that may result or lead to discrimination in employment and occupation on the basis of social origin and national extraction, and to report on the progress made in this regard.***

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

## Argentina

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1968)***

The Committee notes the observations of the General Confederation of Labour (CGT) of 31 August 2011, which refer to the lack of national policies on equality of opportunity and treatment in employment, with the exception of policies relating to gender equality and the integration of workers with disabilities. The Committee also notes the observations of the Confederation of Workers of Argentina (CTA) of 31 August 2011, referring to the precarious situation of domestic workers and unregistered workers, as well as various legal provisions which establish the requirement to be of Argentinean nationality to gain access to employment. ***The Committee requests the Government to provide its observations in this regard.***

*Equality between men and women.* The Committee notes the Government's indication that the National Women's Council works jointly with ministries and enforcement agencies in the field of labour. The Government also refers to the Social Insurance Inclusion Plan (Decree No. 1454/2005), under which retirement pensions were introduced for housewives, from which 1,219,000 women have benefited up to now, and the Universal Child Allowance, which has a direct impact on women, including those who are pregnant from the 12th week of pregnancy. However, the Committee observes that the Government has not provided information on the matters raised in its previous observation. ***The Committee requests the Government to provide information on the impact in practice of the framework agreement "Social dialogue for equality of treatment and opportunities for women and men in the working environment", and the activities undertaken by the Coordination Unit for Gender Equity and Equality of the Ministry of Labour and Social Security. The Committee also requests the Government to provide information on the progress achieved in reducing the remuneration gap between men and women, and on the differences that exist between men and women in terms of career and employment opportunities, including in non-traditional sectors.***

*Domestic workers.* The Committee notes the CTA's indication in its comments that most domestic workers are not registered, have lower levels of protection than other workers, work longer hours and have far fewer hours of weekly rest. The Committee notes the Government's indication that the Bill on workers in private households prepared by the Ministry of Labour and Social Security has been approved by the Chamber of Deputies and is currently being examined by the Senate. The Bill envisages placing workers in the sector (98.5 per cent of whom are women) under equal conditions with other workers so that they can benefit from maternity leave, employment stability, family allowances and coverage for employment accidents. ***The Committee hopes that the Bill will be adopted in the near future and requests the Government to provide information on any progress in this respect. The Committee also draws the attention of the Government to the recently adopted Domestic Workers Convention, 2011 (No. 189) and Recommendation No. 201.***

*Undocumented workers.* ***The Committee asks the Government to provide information on the impact in practice of Act No. 26476 of December 2008 establishing procedures for the regularization of employment relations and the promotion and protection of registered employment, and of the Employment Regularization Plan and the other measures adopted by the Government to promote the regularization of unregistered workers with a view to reducing their vulnerability and improving their conditions of work.***

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

## Armenia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)***

*Article 1 of the Convention. Legislation. Equal remuneration for work of equal value.* The Committee notes the amendments of 24 June 2010 to the Labour Code, and the Government's indication that the Law on Remuneration of 2001 has been repealed. In response to the Committee's previous comments regarding uncertainty in the meaning of the

concepts of “salary”, “wage”, “remuneration” and “payments”, the Government indicates that the terms “payments for work” are defined by the concept of “wage” which according to the Government, fully corresponds to *Article 1(a)* of the Convention. The Government also indicates that although the Labour Code does not enumerate in an exhaustive manner what is included in the term “wage”, various public services define the elements included in “wages” in their specific legislation. The Committee also notes that in the amendments to the Labour Code, “salary” is defined as being “remuneration paid to the worker against the performed work defined by the law, other legal acts of the labour contract” (section 178). The Committee notes that no amendments have been made to section 172 of the Labour Code and therefore recalls its previous comments in which it noted that section 172(2) of the Labour Code, providing for equal pay for the same or equivalent work between men and women did not reflect fully the principle of “work of equal value” which also encompasses work that is of an entirely different nature, but which is nevertheless of equal value. ***The Committee asks the Government to take the necessary steps to include a clear definition of remuneration in the Labour Code, particularly ensuring that it includes 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 as provided in Article 1(a) of the Convention. The Committee also asks the Government to take steps in order to include a provision in legislation specifically providing for equal remuneration for men and women for work of equal value, thus allowing for comparisons beyond the same or similar work.***

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

## Australia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

The Committee notes the observations of the Australian Council of Trade Unions (ACTU) of 31 August 2011.

*Legislative developments. Federal.* The Committee previously noted the adoption of the Fair Work Act, 2009, and the various improvements in protection from discrimination at work, and notes that as of 1 January 2010, the States, with the exception of Western Australia, have referred their industrial relations powers to the Commonwealth. Thus the Fair Work Act now applies to all employers and employees in Victoria, the Northern Territory and the Australian Capital Territory; to private sector employers in New South Wales, Queensland, South Australia and Tasmania; local government employers in Tasmania; and national system employers and employees in Western Australia. The Committee also notes the Government’s indication that it has launched the Human Rights Framework, with the anti-discrimination consolidation project as a key element, with a view to streamlining five Commonwealth anti-discrimination acts into a single comprehensive law. The Committee welcomes the recent enactment of the Sex and Age Discrimination Legislation Amendment Act 2011, as a result of which the Sex Discrimination Act now makes specific reference to Convention No. 111, includes breastfeeding as a ground of discrimination, and extends protection against direct discrimination on the ground of family responsibilities to both women and men in all areas of employment, rather than limiting it to dismissal as was previously the case. On the issue of workers with family responsibilities, the Committee refers to its comments under the Workers with Family Responsibilities Convention, 1981 (No. 156). The Committee notes that the ACTU indicates that the majority of the recommendations made in the report of December 2008 of the Senate Standing Committee on Legal and Constitutional Affairs regarding the effectiveness of the Sex Discrimination Act, have been referred to the Attorney-General and the Department of Finance and De-regulation for consideration as part of the project to harmonize the anti-discrimination legislation. Noting the aim of the harmonization project to “remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly”, the ACTU states that it has serious reservations about the capacity of the process to deal adequately with the Senate Committee’s recommendations, which the ACTU considers go to substantial reform of the legislation, and in this context calls for a more robust consultation process and for a review aimed at rendering the legislation more effective by addressing all the recommendations of the Senate Committee. The Committee also notes the Government’s indication that a review of the Equal Opportunity for Women in the Workplace Act, 1999, and the Equal Opportunity for Women in the Workplace Agency (EOWA) is ongoing, and that it will lead to modernizing the coverage of the Act to better reflect the goal of gender equality through encompassing women and men, particularly in relation to caring responsibilities, explicitly referring to pay equity, and requiring employers to report on the gender composition of their boards. The ACTU calls on the Government to ensure in the review process that “streamlining” of the equal employment opportunity (EEO) reporting process does not compromise the quality of data collected in the reports, and indicates that the role foreseen for employee representatives to participate in the reporting process and to sign off on reports should be taken seriously, and steps need to be taken to ensure they are truly independent and adequately resourced. ***The Committee asks the Government to provide information on the application of the Fair Work Act with respect to the implementation of the principles of the Convention. The Committee also requests information on the progress made in the anti-discrimination consolidation project and other initiatives under the Human Rights Framework, as they relate to non-discrimination and equality in employment and occupation, including specific information on the consultation process and the implementation of the Senate Committee’s recommendations. The Committee also requests the Government to provide information on the status of***

***the adoption of the amendments to the Equal Opportunity for Women in the Workplace Act, and to reply to the issues raised by the ACTU in this respect.***

***Legislative developments. State.*** The Committee notes that the Equal Opportunity Act, 1984 of Western Australia was amended pursuant to Act No. 2 of 2010, to include breastfeeding and bottle feeding an infant as prohibited grounds of discrimination. The Committee also notes that the Equal Opportunity Act, 1995 of Victoria was replaced by the Equal Opportunity Act, 2010 which came into force in August 2011. ACTU raises concerns regarding the changes to the Victoria Act, in particular with respect to the extension of the “permanent exceptions” in the Act, enabling discrimination by faith-based groups and schools, and the limitations on the powers of the Victorian Equal Opportunities Commission. ***The Committee asks the Government to continue to provide information on new or revised legislation on non-discrimination and equality of the States and territories, as well as information on its application in practice. The Committee also asks the Government to provide information on the practical application of the new Equal Opportunity Act, 2010 of Victoria, and to respond in particular to the concerns raised by the ACTU.***

***Discrimination on the basis of race, colour and social origin. Indigenous peoples.*** The Committee previously noted concerns regarding the Northern Territory Emergency Response (NTER), which resulted in restrictions on the rights of indigenous peoples to land, property, work and remedies. The Committee had also noted activities in the extractive sector affecting indigenous peoples’ rights to land and livelihoods, as well as difficulties related to the Native Title Act, 1993, for the recognition of traditional lands. The Committee notes the Government’s indication that since 31 December 2010, aboriginal peoples affected by the NTER have been able to bring proceedings under the Racial Discrimination Act before the Australian Human Rights Commission. With respect to the five year leases, resulting in compulsory acquisition of townships which had been held under the title provisions of the Native Title Act, the Government replies that the leases were necessary for urgent delivery of government services and capital investments to remote indigenous communities, that all pre-existing rights, titles and interests on aboriginal lands are preserved under the leases, and that the Government is committed to the payment of fair rent to traditional aboriginal owners, and that traditional aboriginal owners may negotiate for continuing access to land and engagement in traditional occupations. The Government also states that national consultations will begin soon with people in remote indigenous communities, service providers, employers and other stakeholders on how to improve participation and employment services, with a view to putting in place new arrangements by 2013, which will focus on maximizing local employment. The Committee also notes the NTER Evaluation Report of November 2011, prepared pursuant to the National Partnership Agreement for Closing the Gap in the Northern Territory. The report finds that new measures to improve enrolment and attendance at school and the extent and sustainability of the economic base are needed, with education and jobs being critical to the well-being of the communities. It concludes that employment remains low and narrowly based, and access to jobs remains a key problem for communities and a challenge to the sustainability of improvements. The report also concludes that a number of the measures, including those related to the employment projects and changes in land tenure, are likely to have contributed to people’s feeling of loss of freedom, empowerment and community control. In the report “Leading practice agreements: maximizing outcomes from native title benefits” of November 2010, the Committee notes that the Australian Human Rights Commission makes a number of recommendations, including regarding the need for improved consultation and cooperation with Aboriginal and Torres Strait Islander peoples before adopting or implementing any legislative or administrative measures relating to native title reforms. ***The Committee asks the Government to provide information on measures taken or envisaged to address the findings and conclusions of the NTER Evaluation Report, as well as the recommendations of the Australian Human Rights Commission. The Committee also asks the Government to provide specific information on the measures taken or envisaged to ensure that indigenous peoples have access to land and resources to allow them to engage in their traditional occupations. Please also provide detailed information on any concrete measures to address discrimination against indigenous peoples due to the NTER with respect to employment and occupation, and access to remedies. Please also provide information on any cases brought under the Racial Discrimination Act related to the NTER.***

***Equality of opportunity and treatment of indigenous peoples.*** The Committee notes from the 2011 report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, “Constitutional Reform: Creating a nation for all of us” that there is bipartisan political support to recognize specifically Aboriginal and Torres Strait Islander peoples in the Constitution. The Committee also notes the range of initiatives being undertaken in some of the states and territories to promote equality of opportunity and treatment of indigenous peoples and address discrimination. The Committee notes in particular the Queensland Indigenous Women’s Strategy to support indigenous women’s economic prosperity and leadership opportunities and capabilities. The Committee also notes that pursuant to the Victoria Aboriginal Economic Development Agenda, a range of initiatives are being undertaken to improve the economic and development outcomes of indigenous peoples, including through the indigenous jobseekers programme, which has resulted in 230 indigenous jobseekers being placed in employment since the programme began in May 2010. The programme also includes the engagement of aboriginal employment brokers, establishing an aboriginal employment resource centre and providing scholarships linked to employment. Victoria has also enacted the Traditional Owner Settlement Act 2010, providing for settlement of claims under the federal Native Title Act. The Government also states that the Office of the Commissioner for Public Employment of the Northern Territory is running a project focusing on capacity building and leadership training for indigenous women in the workforce. ***The Committee asks the Government to continue to provide information on the measures taken by all the States and territories to address discrimination and promote equality in***

*employment and occupation of indigenous peoples, and to indicate the results achieved. Noting that no information has been provided regarding the impact of the measures previously noted being undertaken at the federal level, including with regard to the “Closing the Gap” targets, the Indigenous Employment Programme, the Commonwealth Indigenous Economic Development Strategy, the new Community Support Programme or the Job Network, the Committee asks the Government to provide specific information in this regard, as well as information on any other federal initiatives aimed at promoting equality of indigenous peoples and addressing discrimination against them. Please also provide information on the status of the process to recognize specifically Aboriginal and Torres Strait Islander peoples in the Constitution.*

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1990)**

The Committee notes the comments by the Australian Council of Trade Unions (ACTU) of 31 August 2011.

*Legislative developments.* The Committee notes with *interest* the adoption of the Fair Work Act (FWA), 2009, one of the stated objectives of which is assisting employees to balance their work and family responsibilities and protecting against unfair treatment and discrimination (section 3). It notes that as of 1 January 2010, all the States, with the exception of Western Australia, have referred their industrial relations powers to the Commonwealth. Thus the FWA now applies to all employers and employees in Victoria, the Northern Territory and the Australian Capital Territory; to private sector employers in New South Wales, Queensland, South Australia and Tasmania; local government employers in Tasmania; and to national system employers and employees in Western Australia. The Committee also notes with *interest* the adoption of the Paid Parental Leave Act, 2010, which came into force in January 2011, providing Australia’s first statutory paid parental leave scheme. The Committee also welcomes the recent enactment of the Sex and Age Discrimination Legislation Amendment Act 2011, as a result of which the Sex Discrimination Act now makes specific reference to Convention No. 156. The Committee also notes the adoption of the New South Wales Industrial Relations (Public Sector Conditions of Employment) Regulation 2011, which includes unpaid and paid parental leave in the guaranteed minimum conditions of employment for the public sector. *The Committee welcomes the legislative developments, and asks the Government to continue to provide such information, including with respect to all the States.*

*Article 1 of the Convention. Definitions.* The Committee notes that section 17 of the FWA now defines “child” to include an adopted child or step-child; section 12 of the FWA defines “immediate family” to mean “a spouse, de facto partner, child, parent, grandparent, grandchild or sibling” of the employee or of a spouse or de facto partner of the employee.

*Article 3. Non-discrimination.* The Committee notes that the FWA provides a general prohibition of an employer taking any “adverse action” against an employee or prospective employee on various grounds including family or carer’s responsibilities (section 351(1)). It also provides that “modern awards” (legal instruments setting minimum terms and conditions for national system employees in particular industries and occupations) and enterprise agreements must not include terms that discriminate against an employee, including based on family or carer’s responsibilities (sections 153(1), 195(1)). The Committee also notes that the recent amendments to the Sex Discrimination Act extend protection against direct discrimination on the ground of family responsibilities to both women and men in all areas of employment. The Government indicates that draft amendments to the Sex Discrimination Act concerning indirect discrimination were not adopted, and that the Government will consider the issue of indirect discrimination on the ground of family responsibilities in the context of its consolidation of Australia’s anti-discrimination laws. The Committee further notes the Government’s indication that there is little case law to date with regard to discrimination on the basis of family responsibilities. *The Committee asks the Government to provide information on the application in practice of the FWA and the Sex Discrimination Act, as well as any relevant State legislation, and to provide summaries of judicial or administrative decisions addressing discrimination for the reason of family or carer’s responsibilities, and any exceptions permitted. The Committee also asks the Government to provide information on the status of the consolidation of the anti-discrimination legislation project as it relates to the Convention, including any progress in addressing indirect discrimination on the ground of family responsibilities.*

*Article 4. Parental leave.* The Committee notes section 70 of the FWA, which provides both eligible parents with separate periods of up to 12 months of unpaid parental leave, with a right to request an extension of up to an additional 12 months unpaid leave. The Government indicates that the FWA introduced one concept of unpaid parental leave, instead of maternity, paternity and adoption leave, and that under the Paid Parental Leave Act, the Paid Parental Scheme (PPL) provides from January 2011 that a primary claim may be made by the mother of the newborn child or the parent of the adopted child with payments at the rate of the national minimum wage for a maximum of 18 weeks; secondary claims, and in exceptional circumstances, tertiary claims may also be made (section 54). The Government also indicates that it has announced the introduction of paid paternity leave from January 2013 providing eligible fathers or parents caring for a child born or adopted with two weeks’ pay at the national minimum wage. In this connection, the Committee notes the concerns raised by the ACTU in the context of the Equal Remuneration Convention, 1951 (No.100), that the PPL scheme does not require employers to top-up the minimum wage payment to full income replacement level, and that the right to

request an extension to unpaid parental leave pursuant to section 76 of the FWA lacks a right of appeal against an employer's unreasonable refusal. ***The Committee asks the Government to provide information on the leave entitlements in practice, including statistical information disaggregated by sex, on the number of beneficiaries of leave entitlements, as well as the number of requests that have been refused by employers concerning the extension of unpaid leave. Please also provide information on the progress concerning the introduction of paid paternity leave.***

***Carer's leave.*** The Committee notes that section 96 of the FWA entitles an employee (other than a casual employee) to ten days paid personal/carer's leave for each year of service, in order to care for a member of the employee's immediate family or household who requires care or support due to personal illness, injury or unexpected emergency, or if the employee is not fit for work because of a personal illness or injury; section 102 of the FWA entitles an employee to two days unpaid carer's leave for each occasion when a member of the employee's immediate family or household requires care or support due to personal illness, injury or unexpected emergency. In this connection, the Committee notes the comments by the ACTU that carer's leave provisions should be extended in terms of length, scope of coverage and eligible persons. ***The Committee asks the Government to provide information on the practical application of sections 96 and 102 of the FWA, including the number of beneficiaries of paid or unpaid carer's leave, disaggregated by sex. Please also provide information on whether consideration is being given to extending the length, scope of coverage and eligible persons of carer's leave.***

***Working arrangements.*** The Committee notes that section 65 of the FWA provides a right for eligible employees to request flexible working arrangements, such as changes in hours of work, patterns of work and location of work. It also notes the Government's indication that it established the Fresh Ideas for Work and Family Grants Program to support Australian small businesses to implement practices that help employees balance their work and family obligations, such as work from home arrangements, as well as to improve employee retention and productivity. In this connection, the Committee notes the concerns raised by the ACTU that the right to request a change to working arrangements is limited to employees with caring responsibilities for pre-school children or children with a disability under the age of 18, and there is no right to appeal against an employer's refusal. The ACTU indicates that women continue to bear the greatest share of childcare, and that one of the most significant barriers to carer's maintaining a connection to the paid workforce is lack of flexible working hours. ***The Committee asks the Government to provide information on the practical application of section 65 of the FWA, including the statistical information disaggregated by sex, on the number of beneficiaries of various working arrangements and measures to assess the effectiveness of the legislation. It also asks the Government to indicate how it is ensured that such working arrangements assist workers with family responsibilities to enter, re-enter and remain in the workforce, including in small and medium-sized businesses.***

***Article 5. Childcare and family services and facilities.*** The Committee notes the Government's indication that the Child Care Management System was introduced during the 2008–09 financial year, which enables the Government to gather more information from the childcare sector about usage and affordability of childcare facilities. The Government also indicates that from July 2008 it increased the childcare rebate from 30 per cent to 50 per cent of out of pocket childcare costs, and increased the maximum payment per child per year. It further indicates that substantial ongoing support to childcare services is being provided in areas of need, including rural and remote areas. For example, it has been agreed that 38 child and family centres, which will address the needs of indigenous families and their young children, will be established. ***The Committee asks the Government to provide specific information on the demand for childcare services in comparison with availability, in order to allow the Committee to assess the progress made over time in ensuring sufficient coverage. It also asks the Government to clarify whether the childcare services in areas of need including rural and remote areas are aiming at providing childcare facilities and services for workers with family responsibilities. The Committee also requests the Government to provide information on the number and nature of services and facilities that exist to assist workers with family responsibilities regarding other dependent members of their family.***

***Article 6. Information and education.*** The Committee notes the Government's indication that Fair Work Australia and the Office of the Fair Work Ombudsman were established; the Fair Work Ombudsman appoints Fair Work Inspectors, and promotes compliance with legislation, including through education, information and assistance. The Fair Work Ombudsman has developed a number of Best Practice Guides to assist small to medium-sized businesses in implementing best practice initiatives, including best practices on work and family and parental leave. The Government also indicates that the Australian Human Rights Commission, which replaces the Human Rights and Equal Opportunity Commission, is responsible for conducting activities which covers barriers to equality, and has been given 6.6 million Australian dollars over four years (2010–14) to expand its information and community education role.

The Committee also notes the Government's indication that one of the striking findings of the "Work and Family Balance in Regional Victoria Pilot Project" was a lack of legislative awareness, particularly by employees and managers, in respect of relevant employment regulations; and that the project outcomes provide a much-improved knowledge base for policy making and programme development to support, as well as to monitor, good work and family balance. With regard to Queensland, the Government indicates that as part of the Work and Family Project, the "Better Work Life Balance Questionnaire" has been developed as an online e-survey, which can be used by any organization to help evaluate and improve work-life balance policies and practices. ***The Committee asks the Government to provide specific information on the awareness raising activities conducted by the Fair Work Ombudsman and the Australian Human***

**Rights Commission, for workers and employers concerning measures to reconcile work and family responsibilities, including leave entitlements, and working time arrangements in the relevant employment regulations. It also asks the Government to provide information on the impact of projects in Victoria and Queensland on State policy and practice in terms of helping individuals reconcile their work and family responsibilities as well as information on any similar projects and programmes in other states.**

*Article 7. Vocational guidance and training.* With regard to the “Parents returning to work program”, which was initiated by Victoria, the Committee notes the Government’s indication that to date over 10,500 individual grants have been made available to parents, and that the last projects will be completed in December 2011. The Committee also notes the Government’s indication that from January 2005 to June 2007 the “Back to work: parents and carers program” of Queensland provided 1,889 people with assistance including job search help, job placement, a contribution to childcare or carer costs, and training, etc. and 787 people found jobs. The Government adds that other initiatives such as the “Community Jobs Plan” aim to provide opportunities for work on a range of public works, with an emphasis on participants gaining training, competencies and work skills in activities which will lead to employment opportunities relevant to local labour market demands. **The Committee asks the Government to continue to provide information on initiatives that enable workers with family responsibilities to re-enter the labour market after a period of leave.**

*Part V of the report form. Statistics.* The Committee notes section 61 of the FWA, which provides that the National Employment Standards (NES) are minimum standards which apply to the employment of employees, and that they cannot be excluded by enterprise agreements; the NES includes requests for flexible working arrangements, parental leave and related entitlements, and carer’s leave. It also notes the Government’s indication that the Workplace Agreements Database shows that of 9,352 agreements approved under the FWA until December 2010, covering an estimated 1.3 million employees, 86.9 per cent of the agreements, covering 96.6 per cent of the employees, contain one or more family-friendly or flexible work provisions, including leave entitlements and working time arrangements; 25.5 per cent of the agreements, covering 67.5 per cent of the employees, contain one or more parental or child caring provisions that are additional to those provided in the NES; 83.8 per cent of the agreements, covering 93.9 per cent of the employees, contain one or more flexible working hours, flexible access to leave or flexible working arrangements provisions that are additional to those provided in the NES; and 94.6 per cent of the agreements covering 98.3 per cent of the employees, provide for job-sharing, part-time or casual engagement. **The Committee asks the Government to continue to provide information on the incidence and types of family friendly provisions in enterprise agreements. The Committee also asks the Government to indicate how it is ensured that workers in low-paid, part-time or casual jobs, who are predominantly women, are not unfairly disadvantaged compared with other workers with respect to work-family entitlements in the context of enterprise agreements.**

## Barbados

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)**

*Legislative developments.* The Committee notes the observations by the Barbados Workers’ Union (BWU), dated 31 August 2011, expressing disappointment at the time it has taken to enact legislation with respect to sexual harassment and employment rights. The BWU also indicates that the Employment Rights Bill will address discrimination in employment and occupation based on union status, HIV/AIDS status, disability, military and civic obligations imposed by law, pregnancy, race, colour, gender, marital status, religion, age, political opinion, national extraction, social origin or indigenous origin, or where the employee is responsible for the care and welfare of a child or a dependent family member. The Committee notes that it has been commenting for many years that the existing legislation does not provide full legislative protection against discrimination as defined under the Convention and that, in this context, the Government has been referring to the Employment Rights Bill since 2004. **The Committee asks the Government to take steps without further delay to ensure full legislative protection against direct and indirect discrimination in all aspects of employment and occupation, for all workers, on all the grounds enumerated in Article 1(1)(a) of the Convention, namely race, sex, colour, religion, political opinion, national extraction and social origin. The Committee welcomes the additional grounds of discrimination, as foreseen in Article 1(1)(b) of the Convention, that appear to be included in the Employment Rights Bill, and asks the Government for information on the status of the process for the adoption of the Bill.**

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

## Plurinational State of Bolivia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1973)**

*Principle of equal remuneration for men and women for work of equal value.* In its previous comments, the Committee noted that article 48 of the new Constitution refers to the principle of equal remuneration for work of equal value and it asked the Government to provide information on the steps taken and the legislation adopted under this provision. The Committee notes the Government’s indication that the preliminary draft amendment to General Labour Act

provides that “the State, through the Ministry of Labour, shall promote the inclusion of women in work and shall guarantee the same remuneration as for men for work of equal value.” The Government also indicates that the National Plan of Action for Human Rights includes among its actions “formulating and implementing a cultural campaign for equal work, equal wages, equal opportunities and equal rights.” *The Committee asks the Government to provide information on the legislative progress of the preliminary draft amendment to the General Labour Act and to provide a copy of the latest version of it. The Committee also asks the Government to provide information on the measures adopted in the context of the implementation of the National Plan of Action for Human Rights with a view to the application of the Convention.*

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1977)***

The Committee notes with *interest* the full and extensive legislation adopted since the approval of the National Constitution on 7 February 2009. The Committee notes in particular the Act to combat racism and any form of discrimination, No. 045 of 8 October 2010, and its regulatory decree (Supreme Decree No. 0213); the “Avelino Siñani-Elizardo Pérez” Education Act No. 070; Supreme Decree No. 0012 of 19 February 2009 regulating the conditions for the employment stability of mothers and fathers with children who work in the public and private sectors; Supreme Decree No. 0521 on subcontracting; and the Act extending the agrarian reform at the community level. The Committee observes that the above legislation is pertinent to the application of the Convention. *The Committee will examine the conformity of this legislation with the Convention and the other pending matters together with the Government’s next regular report. The Committee requests the Government to provide copies of any new legislative or administrative provisions relating to the application of the Convention.*

## **Botswana**

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1997)***

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

*Article 1 of the Convention. Legal protection from discrimination.* Recalling its previous comments regarding the legal protection from discrimination available under the Constitution, the Committee notes with *satisfaction* that its section 15 was amended in 2004 to include the prohibited ground of sex. *The Committee requests the Government to take steps so that protection from discrimination based on social origin is also ensured, and to provide information on any cases regarding discrimination in employment and occupation decided by the courts. Recalling its previous comments regarding section 15(4)(e) of the Constitution which allows differential treatment by law where this is “reasonably justifiable in a democratic society”, please indicate how this provision has been and is being applied in practice.*

*The Employment Act.* The Committee notes the Government’s indication that the Employment Act is being amended. *Recalling its previous comments noting that the Employment Act currently only prohibits discrimination in respect of termination of employment contracts, the Committee hopes that the Government will take this opportunity to include more comprehensive provisions to prohibit direct and indirect discrimination in employment and occupation, including with regard to recruitment and selection, all terms and conditions of employment, and training. Please indicate any further developments in this regard.*

*Sexual harassment.* The Committee notes that the Public Service Act was amended in 2000 to include new provisions on sexual harassment. Section 32(1) declares sexual harassment to constitute misconduct. A definition of sexual harassment is set out in section 32(2). *The Committee requests the Government to provide information on the number of cases that have been brought under these provisions. Noting the Government’s indication that most institutions in the private sector have not yet put in place policies on sexual harassment, the Committee recommends that the Government includes similar provisions in the Employment Act.*

*Article 2. Equality of opportunity and treatment of men and women.* The Committee notes from the Government’s report that it has adopted a gender mainstreaming strategy to ensure that a gender perspective is included in all policies and programmes; gender audits have been carried in a number of ministries, including the Ministry of Labour and Home Affairs. The Department of Women’s Affairs has continued its awareness-raising activities on gender equality issues. A review of all laws that discriminate against women is still ongoing. While there is no explicit policy on affirmative action, the Government has nominated women to decision-making positions and allocated special funds to promote women’s participation in economic and income generating activities. *The Committee requests the Government to continue to provide more detailed information on the specific measures taken or envisaged to promote and ensure equality of opportunity of men and women in employment and occupation, including access to vocational training and access to credit. Please also provide statistical information available on women’s participation in the labour market (public and private sectors), including self-employment, as well as their share in the informal economy. Finally, the Committee requests the Government to provide information on the measures it takes to eliminate customary practices that are detrimental to women’s equality of opportunity and treatment in employment and occupation, such as the practice of legal guardianship by men over unmarried women.*

*The situation of indigenous peoples.* The Committee recalls that discrimination as set out in *Article 1* of the Convention covers discrimination against indigenous peoples and that the national policy to promote equality of opportunity and treatment to be adopted and implemented in accordance with *Article 2* should include measures to eliminate discrimination against these peoples. *The Committee requests the Government to provide information on the measures taken in this regard, including measures to promote and facilitate the ability of indigenous peoples to pursue their traditional occupations.*

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

## Bulgaria

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

*Access to education, training and employment. Equality of opportunity and treatment irrespective of national extraction or religion.* The Committee welcomes the detailed information, including statistics, provided by the Government regarding training and employment programmes, including measures taken with a view to promoting self-employment, for persons from the Roma community and on the results achieved in terms of participation in these programmes. The Committee notes that measures have been taken in order to improve the skills of Roma people and to support Roma entrepreneurs. In addition, employees from the Employment Agency have received specific training to work with representatives of the Roma community and other ethnic minorities.

The Committee notes with *interest* the measures taken to monitor the programmes and measures aimed at promoting equal access to employment, training and education of the members of the Roma community. It notes the Government's indication that the monitoring of the implementation of the National Action Plan (NAP) on the initiative "Decade of Roma Inclusion 2005–15" is carried out by an interdepartmental working group which prepares on a regular basis a monitoring report identifying the remaining challenges. The following main challenges were identified for Roma people in the field of employment: high unemployment rate (in particular long term unemployment), high number of discouraged persons, need to broaden the scope of active employment measures for long term inclusion, high number of persons working without a formal employment contract, and lack of initial capital to start a family business. The monitoring report also contains recommendations, focusing on the need to improve the coordination between the various institutions and municipalities for joint action, the creation of a Coordinating Council to monitor the implementation of the NAP, and continuation of the collection and analysis of comparable data to monitor the progress made.

With respect to access to education, the Committee notes the detailed information provided by the Government on the various measures that are being taken with a view to removing Roma children from special kindergartens and schools and integrating them in the school system. According to the Government, the number of integrated schools has increased from 262 in 2006–07 to 298 in 2007–08 and activities are carried out on a permanent basis to facilitate mutual adaptation of Roma children and other children in their new educational environment and to build positive attitudes among all children, parents and teachers.

*The Committee requests the Government to continue to take concrete measures to foster equal opportunities of Roma people, particularly with respect to access to employment and education and to provide information thereon, including statistical information concerning their situation in the labour market. The Committee also requests the Government to continue and intensify its efforts to assess and to monitor the progress made in this respect, and to provide information on measures taken further to the recommendations of the monitoring reports. The Government is asked to provide information on the measures taken to promote equal access to employment and occupation in the public and private sectors of persons from other ethnic, religious and linguistic minority groups, in particular persons from Turkish origin, Bulgarian-speaking Muslims (Pomaks) and persons of Macedonian origin.*

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

## Burkina Faso

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

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

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* In its previous comments the Committee emphasized that the Labour Code, 2004, did not clearly reflect the principle of the Convention even though it explicitly established the principle of equal remuneration for men and women for work of equal value, since it also provided for equal wages for workers regardless of their sex "given equal conditions of work, vocational qualifications and output" (section 175). This led the Committee to recall the importance of ensuring that the principle of equal remuneration for work of equal value also applies to situations in which men and women work under different conditions or, have different qualifications, and nevertheless perform work of equal value. In its previous observation the Committee had noted that the Labour Code was being revised. The Committee notes the adoption of Act No. 028-2008/AN of 13 May 2008 issuing the Labour Code, section 182 of which retains the same provisions as the former Labour Code with regard to equal remuneration for men and women. It therefore notes that the Government has not taken the opportunity afforded by the elaboration of a new the Labour Code to bring these provisions fully into conformity with the principle of the Convention.

The Committee wishes to draw the Government's attention to the fact that experience has shown that the requirement of "equal conditions of work, skill and output" can provide a pretext for paying women lower wages than men (General Survey of 1986 on equal remuneration, paragraph 54) and that the emphasis should rather be placed on the nature and value of work, which necessitates a comparison of tasks on the basis of objective and non-discriminatory criteria. Referring to its general observation of 2006, in which it spells out the meaning of the concept of "work of equal value", the Committee emphasizes that it is essential to compare the value of the work done in different occupations, which may involve different qualifications and skills,

responsibilities or working conditions but which are nevertheless of equal value. The Committee considers that the coexistence in the Labour Code of 2008, of provisions on the one hand establishing equal remuneration for all workers irrespective of their sex “given equal conditions of work, vocational qualifications and output” and provisions on the other hand stating that “the determination of wages and the fixing of rates of pay must respect the principle of equal remuneration for men and women workers for work of equal value” may lead to confusion or conflict in the application of the principle of the Convention in practice, in view of the different criteria adopted. ***The Committee therefore requests the Government to take the necessary steps to bring section 182 of the Labour Code of 2008, into full conformity with the principle of equal remuneration for men and women for work of equal value established by the Convention and to supply information on any measures taken in this regard.***

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

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

## Burundi

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)**

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

*Article 1 of the Convention. Equal remuneration for work of equal value.* The Committee recalls that both article 57 of the Constitution and section 73 of the Labour Code provide for equal remuneration for equal work, which falls short of fully reflecting the principle of equal remuneration for work of equal value as set out in *Article 1* of the Convention. In its report, the Government states that there is no obstacle to reflecting the principle of the Convention in the national legislation. ***Noting the Government’s willingness to bring article 57 of the Constitution and section 73 of the Labour Code into conformity with the Convention, the Committee hopes that the Government will take the necessary measures as soon as possible and to indicate in its next report the progress made in this regard.***

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)**

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

The Committee notes the comments on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU) dated 30 August 2008, to which the Government has not as yet replied. ***It requests the Government to provide its comments regarding the issues raised by COSYBU.***

*Discrimination based on race, colour or national extraction.* In its previous comments the Committee requested the Government to provide information on the measures taken to address discrimination in employment between different ethnic groups. In reply, the Government once again refers to the 2005 Constitution, and to the Arusha Agreement. As previously noted by the Committee, article 122 of the Constitution prohibits discrimination based, inter alia, on an individual’s origin, race, ethnicity, sex, colour and language. The Committee also notes that, pursuant to article 129(1) of the Constitution, 60 per cent and 40 per cent of the seats in Parliament are reserved for Hutus and Tutsis, respectively. Similar provisions also exist for government positions. In its report, the Government also asserts that ethnic discrimination in employment and occupation no longer exists. As the elimination of discrimination and the promotion of equality is a continual process, and cannot be achieved solely through legislation, the Committee finds it difficult to accept statements to the effect that discrimination is inexistent in a given country. It stresses the need for the Government to take continuing action with a view to promoting and ensuring non-discrimination and equality in employment and occupation. ***The Committee therefore reiterates its request for information on any specific measures taken to promote and ensure equality of opportunity and treatment, irrespective of ethnic origin, in respect of employment in the private and public sectors, including awareness-raising activities and measures to promote respect and tolerance between the different groups. It also reiterates its request for information on the activities of the newly established public service recruitment commission with a view to promoting equal access to public service employment of different ethnic groups.***

The Committee notes that, despite the provisions of article 7 of Protocol I to the Arusha Agreement which provides for the promotion of disadvantaged groups, notably the Batwa, the Working Group of Expats on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights (Report of the Research and Information Visit to the Republic of Burundi, March–April 2005, page 31) reports that this particular group continues to suffer from strong negative stereotypes and racial harassment by other segments of the population. While taking note of the Government’s very general statement that measures have been taken in the field of education, the Committee observes that, according to the African Commission’s Working Group, the Batwa’s access to education is well below the national average. The illiteracy rate among the Batwa is estimated to be over 78 per cent. ***The Committee urges the Government to take all measures necessary to ensure equal access of the Batwa to education, vocational training and employment, including through reviewing and strengthening relevant national laws and policies and ensuring their full implementation. The Committee also requests the Government to take measures to combat stereotypes and prejudice against this group. The Government is requested to provide detailed information with regard to these matters in its next report.***

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

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

## Cambodia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)**

*Article 1(a) of the Convention. Definition of remuneration.* In its previous comments, the Committee had noted that the definition of “wage” set out in section 103 of the Labour Law of 1997 excludes health care, legal family allowance, travel expenses and benefits granted exclusively to help the worker do his or her job, and asked the Government to indicate whether consideration is being given to revising the definition of “wage” in the Labour Law to ensure that it meets the requirements of *Article 1(a)* of the Convention. The Committee notes that the Government’s report does not contain any up to date information in this regard. **Recalling that the broad definition of “remuneration” enshrined in Article 1(a) of the Convention captures all elements that a worker may receive for his or her work, the Committee asks the Government to take steps to amend the Labour Law in order to bring it in line with Article 1(a) of the Convention.**

*Article 1(b). Work of equal value.* With regard to section 106 of the Labour Law, which provides for equal wages for “work of equal conditions, professional skill and output ... regardless of their origin, sex or age”, the Committee had asked the Government to take steps to ensure that full legislative expression is given to the principle of equal remuneration for men and women for work of equal value, providing not only for equal remuneration for workers who perform the same jobs, have the same skills and work under the same conditions, but also applying to situations where men and women perform work of a different nature, that is nevertheless of equal value. The Committee notes the Government’s indication that at present, the Government is not considering amending the Labour Law. **Recalling the importance of giving full legislative expression to the concept of “work of equal value”, in order to address effectively direct or indirect pay discrimination that results from the undervaluing of work performed predominantly or exclusively by women, the Committee urges the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and to provide information on the steps taken in this regard.**

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

## Cameroon

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1970)**

The Committee notes the communication from the Confederation of United Workers of Cameroon (CTUC), dated 20 October 2011. **The Committee asks the Government to communicate its comments in this response.**

*Article 2(2)(a) of the Convention. Work of equal value. Legislation.* For several years the Committee has been drawing the Government’s attention to the fact that section 61(2) of the Labour Code makes payment of an equal wage to all workers, regardless of their origin, sex, age, status and religious belief, contingent on “equal conditions of work and skill” and that it therefore does not give full effect to the principle of equal remuneration for work of equal value. The Committee notes the Government’s commitment to amending section 61(2) of the Labour Code when the Code is revised. It notes, however, that the report contains no information as to when the reform of the labour legislation is to be conducted. **The Committee trusts that the Government will take the necessary steps in the near future to amend section 61(2) of the Labour Code so that it reflects the principle laid down in the Convention, and asks the Government to provide specific information on the measures taken to this end and on progress made in the Labour Code revision process.**

*Article 2(2)(c). Collective agreements.* In its previous comments the Committee pointed out that section 70 of the CAMRAIL collective agreement is discriminatory in that it provides for the grant of travel allowances only to the wife and children of a worker and not to the husband of a CAMRAIL female worker. The Committee asked the Government to take the necessary steps to ensure that the provisions of the CAMRAIL collective agreement observe the principle of equal remuneration for men and women for work of equal value. The Committee notes the Government’s statement that it is in the process of taking the necessary measures to ensure that the clauses of the CAMRAIL collective agreement observe the principle laid down in the Convention. **Pointing out once again that the principle of equal remuneration for men and women laid down in the Convention applies not only to wages but also to all related benefits, the Committee asks the Government to specify the measures taken, in cooperation with the social partners, to ensure that the discriminatory clauses of the CAMRAIL collective agreement are revised, and to indicate, more generally, the action taken to encourage the social partners to examine collective agreements in the light of the principle of equal remuneration for men and women for work of equal value. Please also provide copies of relevant extracts 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: 1988)**

*Article 1(1)(a) of the Convention. Grounds of discrimination. Legislation.* The Committee notes the Government’s statement that it is revising the Labour Code and its enabling texts in full and that the revised legislation will contain provisions defining and prohibiting direct and indirect discrimination based on each of the criteria listed in the Convention. **The Committee urges the Government to take the necessary steps to ensure that the Labour Code includes**

*provisions defining and prohibiting direct and indirect discrimination based on race, colour, sex, religion, political opinion, national extraction and social origin, at all stages of employment and occupation, and asks it to provide specific information on progress in the revision of the labour legislation.*

*Discrimination based on sex.* With reference to its previous comments, the Committee notes the Government's assurance that any provision which has the effect of destroying or impairing equality of opportunity or treatment for women in employment and occupation will be repealed. It notes, however, that the Government gives no indication of progress made in the process of revising the legislation. It further notes that in its concluding observations, the United Nations Human Rights Committee stated that it remains concerned that women are vulnerable to discrimination under customary law, and at the prevalence of stereotypes and customs in Cameroon which are contrary to the principle of equality of rights between men and women. The UN Human Rights Committee considers that Cameroon should strengthen and pursue its efforts to address discriminatory traditions and customs through education and awareness-raising campaigns (CCPR/C/CMR/CO/4, 4 August 2010, paragraph 8). *Noting this information, the Committee again urges the Government to take the necessary measures without delay to remove from the legislation the provisions that have the effect of discriminating against women in employment and occupation, and asks it to provide information on the measures taken to this end. The Committee also asks the Government to take steps to combat stereotyping and prejudice regarding the respective roles of men and women in society so as to remove obstacles to the employment of women. The Committee also requests the Government to provide specific information on the status of the work in process on the Bill for the prevention and punishment of violence against women and discrimination based on sex, and to send a copy of it as soon as it has been adopted.*

*Article 2. National policy on equality of opportunity and treatment.* The Committee notes the Government's statement that there is no discrimination whatsoever on grounds of race, colour, sex, religion, political opinion or social origin in Cameroon. It notes that the Government merely indicates that it will take the necessary steps to prepare and implement the national policy on equality. *Pointing out that no society is completely free of discrimination, the Committee again asks the Government to take the necessary steps as soon as possible to declare and pursue a national policy on equality including programmes of action and specific measures to promote equality of opportunity and treatment without distinction as to race, colour, sex, religion, political opinion, national extraction or social origin, and to address discriminatory practices in employment and occupation. The Government is also asked to provide information on progress made in declaring and pursuing this policy and on the results obtained.*

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

## Canada

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1964)***

The Committee notes the observations provided by the Canadian Labour Congress (CLC) referred to in the Government's report.

*Discrimination on the grounds of political opinion and social origin.* The Committee recalls its previous comments in which the Committee urged the Government to take the necessary measures with a view to the amendment of the Canadian Human Rights Act (CHRA) and the legislation of specific provinces and territories, to include the grounds of political opinion and social origin as prohibited grounds of discrimination, the Committee notes with *regret* that the Government does not provide any indication that steps have been taken in this regard with respect to the CHRA, or to the legislation of the territories or most of the provinces concerned. The Committee further recalls its previous comments in which it noted that the CLC had expressed concern at the rise in social inequalities in Canada, and that a research paper released in 2009 by the Canadian Human Rights Commission concluded that adding the ground of "social condition" to the Canadian Human Rights Act would extend protection to the most marginalized and vulnerable groups in society, providing them with better access to legal recourse.

The Committee notes that although there still has been no change at the provincial and territorial levels in terms of adding social origin or political opinion as grounds of discrimination, the Manitoba Human Rights Commission has recommended the inclusion of "social disadvantage" or "social condition" to the Human Rights Code, thus encompassing "social origin" based on Canadian legislation and jurisprudence. The Committee further notes that the New Brunswick Human Rights Commission has developed and published a Guideline on Political Belief and Activity intended to raise awareness on individuals' rights and responsibilities under the New Brunswick Human Rights Act. In the jurisdiction of Newfoundland and Labrador, the Human Rights Act, 2010 was adopted, which, as was the case under the previous legislation, prohibits discrimination on a range of grounds, including social origin and political opinion.

*Recalling that the ground of social origin or "social condition" is only covered by the legislation of Quebec, Northwest Territories, New Brunswick and Newfoundland, and that political opinion continues to be absent from the federal legislation, as well as from the legislation of Alberta, Ontario, Saskatchewan and Nunavut, the Committee once again urges the Government to amend the CHRA and to take the necessary measures with a view to amending the legislation of the relevant provinces and territories, to include social origin or "social condition" and political opinion*

*as prohibited grounds of discrimination in employment and occupation, and to provide information on the concrete steps taken in this regard. The Committee also asks the Government to provide information on any developments regarding the inclusion of “social condition” as a prohibited ground of discrimination in the Manitoba Human Rights Code, and encourages the Government to take this opportunity to take measures to have the ground of political opinion also included.*

*Gender equality in employment and occupation.* The Committee notes the CLC’s comments relating to section 13(5) of the Canada Post Corporation Act, which states that a mail contractor is not deemed to be a dependent contractor or an employee within the meaning of the Canada Labour Code. The CLC considers that this discriminates against women as they account for 71 per cent of the rural and suburban mail carriers, and the composition of dependent contractors is predominantly women. The Committee also recalls its previous comments noting concerns regarding the restructuring of the Status of Women Canada (SWC), resulting in the closure of a number of the SWC’s regional offices, thus making access to the services of the SWC more difficult for women, particularly in remote and rural areas. The Committee notes that the Government considers that there has been no negative impact due to the restructuring of the SWC on women’s access to programmes and services regarding employment and occupation, and that numerous projects have been funded addressing women’s economic security and prosperity with a specific focus on supporting women in non-traditional occupations. The Government indicates that in 2011, the SWC launched the Blueprint Projects which aim, inter alia, to help community-based organizations improve financial and growth opportunities for women business owners, increase recruitment of women in non-traditional work, and retain and promote women in non-traditional and under-represented sectors. The Committee also notes that the SWC continues to promote sustainable gender-based analysis (GBA) which must be conducted by federal departments with respect to all policies and programmes to ensure that the outcomes benefit both women and men. The Committee further notes that under the New Brunswick Wage Gap Initiatives, various initiatives and projects have been launched in order to promote non-traditional career options of both women and men, and that Ontario has launched training programmes to increase the representation of women in non-traditional fields of employment, that benefited 450 women between 2009–11. *The Committee asks the Government to provide information on the impact of the exclusion pursuant to section 13(5) of the Canada Post Corporation Act on women in terms of equality of opportunity and treatment in employment and occupation and to indicate whether any measures are being taken to address the issues raised by the CLC. The Committee asks the Government to provide information on the impact of the measures taken under the Blueprint Projects with respect to the increase of women’s representation in non-traditional work and to provide information on the outcome of GBA conducted in federal departments. The Committee also asks the Government to continue providing information on measures taken to promote women’s access to occupations that have been traditionally dominated by men, including in the provinces and territories, and to provide information on the impact of such measures in increasing women’s representation in traditionally male-dominated occupations.*

*National policy.* The Committee notes that the CLC considers that there is a need for a more structured national policy which would encompass unifying principles for all jurisdictions, express goals to be achieved and provide for holistic approaches for integrating workplace developments. The CLC also notes that a better oversight is needed to ensure that regulatory reforms, labour market changes and technological innovations are made with the aim to reduce inequalities. The CLC notes in particular that part-time and temporary work should be systematically examined as well as income inequalities, especially for women, young workers and economically marginalized groups, and that the social partners should be involved in all processes dealing with the promotion of equality of opportunity in employment and occupation. *The Committee asks the Government to indicate whether any steps have been taken or envisaged to address the issues raised by the CLC, including with respect to the need for a more structured national policy and to indicate how the social partners collaborate in this process.*

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

## Central African Republic

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1964)**

*Articles 1 and 2 of the Convention.* *Application in law of the principle of equal remuneration between men and women for work of equal value.* The Committee refers to its previous observation in which it noted with regret that the new Labour Code (Act No. 09.004), because it limited equal wages to jobs involving “equal working conditions, skills and output”, did not give full effect to the principle of equal remuneration for men and women for work of equal value. It had therefore asked the Government to amend the relevant provisions of the Labour Code. *Noting that the Government’s report does not contain any information on measures envisaged or taken in this respect, the Committee asks the Government once again to take the necessary steps to amend sections 10 and 222 of Act No. 09.004 issuing the Labour Code so as to provide explicitly for equal remuneration between men and women for work of equal value, and to provide information on any measures taken to this end.*

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

## 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:

*Article 1(1)(a) of the Convention. Grounds of discrimination.* In its previous comments, the Committee asked the Government to amend the national legislation in order to ensure that it at least covers discrimination on the basis of all the grounds listed in the Convention, including a prohibition on any discrimination based on race or colour. While noting the Government's statement that it faces difficulties which prevent it from revising the Constitution accordingly, the Committee wishes to draw the Government's attention to the fact that these grounds could be included in the provisions of the Labour Code concerning discrimination (sections 6 and 7), which in their current wording cover sex, age, nationality, membership or non-membership of a trade union, trade union activity, and the origin and opinions (particularly religious and political) of the worker, or that regulations implementing the Labour Code could be adopted to also cover race and colour before any revision of the Constitution is undertaken. **The Committee therefore requests the Government to take the necessary steps to adopt legislation, or revise existing legislation or expand the provisions of the Labour Code so that at least all the grounds on which discrimination is based, which are prohibited under the terms of Article 1(1)(a) of the Convention, are expressly covered by the national legislation, and to supply information on the measures adopted in this respect.**

*Discrimination on the basis of sex.* For a number of years, the Committee has been drawing the Government's attention to the incompatibility of section 9 of Ordinance No. 006/PR/84 of April 1984 issuing regulations on trading with the provisions of the Convention and has asked the Government to take the necessary steps to repeal this provision. **In view of the lack of any reply from the Government on this point, the Committee requests the Government to state whether the 1984 Ordinance is still in force and, consequently, to clarify whether a husband still has the right to object to the commercial activities of his spouse. If so, it urges the Government once again to repeal section of the Ordinance because of their discriminatory nature with regard to women.**

*Sexual harassment.* **In view of the lack of information in the Government's report on the measures taken or contemplated to combat sexual harassment in the workplace, the Committee is bound to repeat its request in this respect, referring once again to its general observation of 2002, in which it emphasizes that sexual harassment undermines equality at work by jeopardizing the integrity, dignity and well-being of workers and is harmful to enterprises by weakening the foundations of the employment relationship and reducing productivity.**

*Article 1(1)(b). Additional grounds of discrimination.* The Committee notes the adoption of Act No. 019/PR/2007 of 15 November 2007, protecting the rights of persons living with HIV/AIDS. This Act contains provisions which define the denial of access to employment for HIV-positive persons as a discriminatory act (section 22), prohibit screening for HIV in relation to obtaining employment, promotion, training or benefits (section 36), guarantee employment to any employee who is living with HIV as long as he or she is capable of working, and guarantees the offer of acceptable replacement work (section 36), and prohibit any penalty or dismissal on the basis of the worker's HIV status (section 38). **The Committee requests the Government to indicate whether the implementing decrees provided for in section 64 of the Act No. 019/PR/2007 have been adopted, particularly as regards the abovementioned provisions relating to the right to work (sections 32–41) and, if so, to provide a copy of the decrees. The Government is also requested to provide information on any measure taken or contemplated to ensure the effective implementation of these legislative provisions against discrimination towards, and stigmatization of, persons living with HIV and AIDS, for example awareness-raising campaigns on equality at work intended for workers' and employers' organizations, labour inspectors, magistrates and the general public.**

**Also noting, according to the information contained in the report drawn up by the Ministry of Education in October 2008 on the development of education, that an Act on the protection of disabled persons has been adopted, the Committee requests the Government to send a copy of it to the Office and indicate the steps taken to ensure in practice the equality of opportunity and treatment in respect of employment and occupation for disabled persons.**

*Article 2. National policy to promote equality. Access to education and vocational training.* As regards education and training, on which actual possibilities of access to employment and occupation in both the public and private sectors depend, the Committee notes the adoption of Act No. 016/PR/06 of 13 March 2006 issuing guidelines for the Chadian education system, which focuses on combating the exclusion from education of groups considered the most vulnerable, namely girls living in rural areas, nomadic and lake-dwelling groups, street children, physically disabled persons, refugees and displaced persons, child domestic workers, child herders and child soldiers. The objectives of this Act include "ensuring equitable access to high-quality education for all Chadian children" and "promoting schooling for girls by removing stereotypes and other socio-economic and cultural obstacles to the full development of girls and women in terms of the education process".

The Committee also notes, according to the abovementioned report on education, that incentives aimed at making school attendance more attractive to girls are provided for in the "National plan of action for education for all" and that experimental action has been taken in four pilot areas to promote schooling for girls, such as awareness raising on a large scale with regard to gender issues, grants to communities to undertake income-generating activities, waiving school fees and no age limits on school enrolment for girls, etc.

**Welcoming the efforts made and the desire shown by the Government to achieve greater equality in the area of education and training, the Committee hopes that the planned measures to promote equal access to education will be implemented in the near future and that the abovementioned experimental measures can be extended throughout the country in order to rectify the inequalities which exist in practice. It requests the Government to supply information on the results achieved, in the context of the various mechanisms established, with respect to schooling and access to vocational training for girls and women, particularly those living in rural areas. Please also provide information on any measure taken or contemplated to combat discrimination on grounds other than sex in education and vocational training, including the results achieved.**

*Article 3(d). Employment in the public sector.* **The Committee requests the Government to provide as detailed information as possible on the measures taken or contemplated to promote and guarantee equality of opportunity and treatment in the public sector, including the results achieved by these measures in terms of employment, promotion and**

*training of women within the public service. The Government is also requested to supply all available statistical information on the numbers of men and women employed at different levels in public service and, more generally, in the public sector.*

*Part V of the report form. Practical application and statistics.* The Committee notes that in reply to its request for statistics the Government indicates that it will soon give labour inspectors the means to gather information relating to the situation of workers on the ground. *The Committee requests the Government to indicate the steps taken to equip labour inspectors with the appropriate resources and to supply the statistical information thus obtained on employment in the private and public sectors, disaggregated by sex, and also any statistical information available on employment in the informal economy, in order to enable an evaluation of the effect given to the Convention in practice.*

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

## Chile

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)**

The Committee notes the observations made by the National Association of Public Employees (ANEF), the Association of Employees of the Women's National Service, the College of Teachers of Chile AG, the National Confederation of Business and Services, and the Confederation of Unions in the Banking and Financial Sector of Chile, dated 15 September 2011. *The Committee asks the Government to provide its comments in this respect.*

*Work of equal value.* In its previous comments, the Committee referred to Act No. 20348 of 2 June 2009 protecting the right to equal remuneration and adding section 62bis to the Labour Code, under which employers are required to comply with the principle of equal remuneration for men and women who perform the same work. On that occasion, the Committee asked the Government to indicate the measures adopted or envisaged to reflect fully in the legislation the principle of the Convention. In this respect, the Committee notes the Government's indication that Chilean legislation refers to the principle of "the same work" as the labour market is strongly segregated by gender and, in general, women do not perform the same work as men. The Government adds that during the parliamentary discussion of the Act, reticence was expressed with regard to the term "work of equal value", because the interpretation of that phrase would not be completely clear. For that reason, the term "same work" was preferred. In this respect, the Committee considers that the system established contributes to the persistence of the gender pay gap and of occupational segregation on grounds of gender, with certain jobs being performed basically or exclusively by women, and others by men, in accordance with custom or historical attitudes. The Committee recalls that occupational segregation tends to result in the undervaluation of "women's work" in comparison with that performed by men and that to address this segregation it is essential to take into account the concept of "work of equal value", which allows a broad scope for comparison. The application of the principle of the Convention is not confined to comparisons between men and women who work in the same establishment or enterprise, but allows a much broader comparison to be made of work performed by men and women in different locations or enterprises, or with different employers. *The Committee therefore again asks the Government to take the necessary measures to amend section 62bis of the Labour Code with a view to guaranteeing equal remuneration for men and women, not only in situations in which men and women perform equal or similar work, but also in situations in which they carry out different work, but which is nevertheless of equal value.*

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1994)**

*Article 4 of the Convention.* The Committee notes with *interest* the adoption of: Act No. 20137 which increases to seven days the leave entitlement of a worker for the death of a child and to three days in the case of the death of either an unborn child or a father or mother, and grants protection against dismissal for up to one month for such workers; Act No. 20367 granting three days' leave to a mother in the event of adoption (irrespective of maternity leave), thereby establishing equality with the three days' leave granted to fathers; Act No. 20482 improving the manner in which use can be made of paternal leave for the birth of a child; and Act No. 20166 granting mothers the right to a break at work to feed their children. The Committee also notes with *interest* the practical measures adopted by various mining enterprises in relation to equality of opportunities for men and women with family responsibilities, which include: the holding of workshops on parental responsibility, the establishment of rooms for the expression and storing of breast milk, the promotion of the use of parental leave and measures for the protection of pregnant women. *The Committee requests the Government to provide information on the application in practice of these provisions, including statistical data disaggregated by sex on the number of workers benefiting from these measures, and on other enterprises or sectors which have established similar measures.*

*Article 5.* In its previous comments, the Committee requested the Government to provide information on the impact of the new legal provisions on the number of child-care facilities, to extend the right to use crèches to the children of working fathers and to provide information on the supervision of compliance with the requirement to provide child-care facilities. In this respect, the Committee notes that, according to the Government, there has been a great increase in the number of crèches and kindergartens and that employers can comply with the requirement to provide crèches either by establishing one in the enterprise or by paying the costs of the crèche to which the woman worker takes her children. The Committee also notes the adoption of Act No. 20399, granting entitlement to use crèches to men and women workers

when they have been granted the personal care of a child under two years of age. Entitlement to use a crèche is also granted to male workers in the event of the death of the mother. ***The Committee requests the Government to continue making efforts to extend the benefit of child-care facilities to working fathers, as envisaged in the Convention, and to provide statistical data on the crèches and kindergartens established. The Committee asks the Government to provide information on the supervisory measures adopted with a view to ensuring that enterprises comply with the requirement to provide crèches for the children of workers. The Committee also requests the Government to report any other measures adopted, that are compatible with national conditions and possibilities, to take account of the needs of workers with family responsibilities.***

*Article 8. Noting that the Government has not provided specific information on the application in practice of Acts Nos 19670 and 20047 respecting the extension of the protection against dismissal enjoyed by mothers to biological fathers and to adoptive fathers and mothers, the Committee reiterates its request to provide such information.*

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

## Colombia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)***

The Committee notes the observations of 30 August 2011, of the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) concerning the persistence of a marked wage gap between men and women, and reporting that few women are employed in the rural sector and that there is no objective job evaluation mechanism, owing in part to the absence of regulations to Act 1258 of 2008. ***The Committee asks the Government to send its comments in reply.***

*Article 1 of the Convention. Work of equal value. Legislation.* The Committee has, for a number of years, been asking the Government to amend the provisions of the legislation that are more restrictive than the principle of equal remuneration for work of equal value laid down in the Convention, namely: section 5 of Act No. 823 of 10 July 2003 establishing rules on equal opportunities for women; and section 143 of the Substantive Labour Code. The Committee understands that a bill is under preparation in the Seventh Committee of the Chamber of Representatives “to establish mechanisms to promote affirmative action for wage equality between men and women in Colombia” (Bill No. 015 of 2010). The Committee observes that section 1 of the Bill provides that the purpose of the law is to prevent and combat any unwarranted differential in pay between men and women engaged in the same job, occupation or post with identical functions. Section 4 of the Bill refers to “mandatory guiding criteria for employers regarding payment of equal wages for equal work for men and women”. The Committee notes that these provisions are more restrictive than the principle of “equal remuneration for work of equal value” laid down in the Convention. It recalls that in its general observation of 2006, it emphasized that the concept of “equal value” is essential to addressing occupational segregation, where men and women often perform different jobs under different conditions, and even in different establishments, since 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 (general observation of 2006, paragraph 3). ***The Committee asks the Government to report on the progress through Parliament of Bill No. 015 of 2010 and to take the necessary measures to ensure that the legislation adopted gives full effect in law to the principle of equal remuneration for men and women for work of equal value laid down in the Convention.***

*Articles 3 and 4.* The Committee notes that the Government provides information on the adoption of an Agenda for equality at work, consisting of an express commitment made by the unions to gender equality in enterprises, in order to strengthen the role of women and to carry out specific measures to ensure their effective inclusion in the labour market. The Agenda sets out 12 strategies that include wage equality, and was signed in March 2009 by 17 country-level unions and 17 private enterprises, and these were joined in June 2010 by 22 unions belonging to the Inter-Union Committee of *Valle del Cauca*. As a result of the Agenda, an inter-union gender committee was established to pursue the objectives set, and in 2010 a “gender equity model” was adopted with a view to reducing the wage gap. ***The Committee asks the Government to continue to provide information on the implementation of these and similar measures and on their impact in reducing the wage gap and in giving effect to the principle of the Convention.***

The Committee notes that although it contains some general information, the Government’s report does not reply specifically to the pending issues referred to below:

*Article 1 of the Convention. Remuneration.* The Committee notes that the Government’s report does not supply any information on the Committee’s comments regarding the communication of 15 August 2007 from the Single Confederation of Workers of Colombia (CUT) concerning the narrow definition of remuneration in the legislation. ***The Committee asks the Government once again to take the necessary steps to ensure that account is taken not only of the ordinary, basic or minimum wage or salary but also of “any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment” to ensure equal remuneration for men and women for work of equal value. The Committee asks the Government to include information in this respect in its next report.***

...

*Article 2.* The Committee notes the adoption of Act No. 1257 of 4 December 2008 establishing standards regarding awareness raising, prevention and penalties relating to violence and discrimination against women. The Committee also notes the

reform of the Penal Code and the Code of Criminal Procedure, the adoption of Act No. 294 of 1996 and of other provisions. In particular, section 12 establishes that the Ministry of Social Protection will promote the social and economic recognition of the work of women and will implement mechanisms for enforcing the right to equal remuneration. The Committee hopes that the planned mechanisms will include effective measures to ensure equal remuneration for work of equal value and not only for equal work, in order to effectively address pay discrimination against women. **The Committee asks the Government to supply information on these mechanisms and their implementation.**

...  
*Research and statistical information.* The Committee notes the information supplied in the Government's report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning the research undertaken to compare the income of men and women in the private sector with a view to making progress in identifying possible reasons for the persistent wage gaps in the country. **The Committee would welcome further information on the results of, and follow-up to, research on the gender wage gap. The Committee asks the Government once again to supply statistical information to the extent possible, in accordance with its 1998 general observation, namely with regard to:**

- (i) **the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area; and**
- (ii) **statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1) to (7) of paragraph (i) above).**

*Monitoring of application.* **The Committee asks the Government once again to supply information on the inspection unit's activities in relation to the principle of equal remuneration for men and women for work of equal value.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

*Discrimination on the basis of race, colour or social origin.* The Committee notes the Government's general reference to various measures to promote fundamental rights and also to technical studies, investigations, plans and policies, adopted with a view to preventing discrimination in access to employment, such as the strategy entitled "Towards a national decent work policy in the context of fundamental rights" and the "Strategy to promote dignified and decent work, from a corporate social responsibility perspective, for vulnerable population groups in Colombia". However, the Committee observes that the Government does not provide specific information concerning the content of these plans and their impact in practice. **The Committee requests the Government to send specific information on the abovementioned measures and plans and their impact on the elimination of discrimination in access to employment and occupation on the basis of social origin, race, colour or physical characteristics. It also requests the Government to take steps to ensure that no investigations into the social background of job candidates are carried out which result in discrimination on the basis of social origin and that measures are taken to prohibit discriminatory vacancy announcements. The Committee requests the Government to provide information on any administrative or judicial proceedings relating to allegations of discrimination on the basis of the abovementioned criteria.**

*People of African descent and indigenous peoples.* The Committee notes the observations from the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) of 30 August 2010, referring once again to discrimination in access to employment and training suffered by Afro-Colombian and indigenous peoples. The Committee notes the report of the independent expert on minority issues of 25 January 2011 (A/HRC/16/45/Add.1), which refers, in particular, to discrimination in access to quality education, employment and participation in the economic and political life of the country and also the disproportionate poverty and displacement from their lands suffered by many Afro-Colombians. According to the report, the scant amount of statistical information that exists with respect to these peoples hampers the adoption of adequate government policies. The report states that the estimated rate of illiteracy among the Afro-Colombian population is 30 per cent (double the national average). Their poor level of education reduces their opportunities for employment, which is largely restricted to the informal sector, domestic work (in the case of women) and other unskilled jobs. Even though the Government has adopted a series of measures and plans in relation to the Afro-Colombian peoples, the independent expert considered that they were insufficiently enforced and urged the Government to adopt general anti-discrimination legislation which lays down civil and criminal penalties. In this regard, the Committee notes the 2010 study (No. 3660) produced by the National Council for Economic and Social Policy (CONPES) concerning the policy to promote equal opportunities for the Black Afro-Colombian, Palanquera and Raizal peoples and also the 2010–14 development plan for the Black Afro-Colombian, Palanquera and Raizal communities, entitled "Towards a multi-ethnic and pluricultural Colombia with democratic prosperity". The Committee notes that the CONPES study evaluates the programmes implemented from 2002 to 2010 and makes a series of time-bound recommendations to various state bodies and institutions relating to education, training and employment for Afro-Colombian peoples. **The Committee requests the Government to provide information on the specific measures taken on the basis of CONPES study No. 3660 and their impact on the situation of the Afro-Colombian peoples. The Committee also requests the Government to indicate whether similar studies have been produced or specific education and training measures have been adopted for indigenous peoples and, if so, to supply information on their impact on access to employment and occupations for the indigenous peoples.**

*Discrimination based on sex.* In its previous comments the Committee noted the information supplied by the Government concerning anti-discrimination measures adopted as part of national development programmes and the programmes promoted, inter alia, by the Ministry of Social Protection, the Ministry of Agriculture and Rural Development and the National Training Service. The Committee notes that the CUT and CTC indicate in their observations that women are more heavily affected than men by unemployment, that they receive considerably lower wages, that they occupy less-skilled jobs, that they constitute the majority of workers in the informal sector and that they occupy only a small proportion of high-level posts. In this respect, the Committee notes that the Government provides information indicating that: (i) the Presidential High Council for Women's Equality reached an agreement with UN Women for the follow up of judicial decisions concerning women's labour and social security rights; (ii) the Javeriana University organized a course on women and gender addressed to public officers as well as managers from the private sector; (iii) in the framework of the UNIDOS programme, financial credits have been granted to women in situations of extreme poverty or having been displaced; (iv) the National Programme for the promotion of women entrepreneurs was developed; and (v) measures have been taken in order to include and retain women in the world of labour such as the Labour Equality Agenda and the National Public Policy for gender equality. ***The Committee requests the Government to continue to supply information on the practical implementation of these programmes, policies and measures, and on their impact on the discrimination against women in employment and occupation. The Committee also requests the Government to provide information on the measures taken to give effect to the Equal Opportunities Act (No. 823 of 2003), especially as regards employment training for women in both urban and rural sectors, and on measures taken to ensure that rural women have access to land ownership or possession, agrarian credit, technical assistance, and agricultural training and technology, as provided for in section 3 of Act No. 823 of 2003. Finally, the Committee requests the Government to provide statistical information on the situation of women and men in the labour market and on their distribution in the various economic occupations, posts and sectors.***

*Indigenous women.* ***The Committee again requests the Government to provide information on action in favour of indigenous women formulated by the Presidential Office for Equal Rights for Women and the results achieved with regard to education, vocational training, employment and occupation.***

*Sexual harassment.* The Committee notes Act No. 1010 of 2006, whereby measures are being adopted to prevent, correct and penalize harassment in the workplace and other forms of harassment within the employment relationship. The Committee observes that section 2 of the Act refers to sexual harassment as abuse in the workplace which takes the form of violence against the sexual freedom of the worker. The Act provides that the existence of sexual harassment is presumed if certain circumstances are fulfilled. The Act lays down the obligation to prevent harassment through specific measures and establishes penalties for persons directly responsible for harassment and for employers who have not taken the necessary steps to prevent it. However, pursuant to section 3, a wide range of attenuating circumstances are set out, including emotional state, excusable passion, family links, evident or hidden provocation or "any other similar circumstances". ***The Committee requests the Government to indicate the manner in which Act No. 1010 of 2006 guarantees in practice adequate protection against both quid pro quo and hostile working environment sexual harassment. Observing that section 3 sets out a wide range of attenuating circumstances in the event of proven harassment in the workplace, the Committee requests the Government to indicate the manner in which the full protection of victims is ensured in such circumstances. The Committee also requests the Government to provide information on administrative and judicial proceedings instituted in relation to sexual harassment and to indicate whether the Act applies to workers in associated cooperatives.***

***Finally, observing that the Government's report contains very little information on the questions under consideration despite explicit requests in this regard, the Committee requests the Government to send a detailed reply to these questions in its next report.***

## Comoros

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)**

The Committee notes the observations made by the Workers' Confederation of Comoros (CTC), received on 1 September 2011, in which the organization states that, given that section 97 of the Labour Code has still not been revised, it is difficult to assess the extent of its application in enterprises with respect to remuneration because there is no wage scale to which employers might refer. ***The Committee invites the Government to submit any comments it would like to make in reply to the observations of the CTC.***

Furthermore, the Committee notes that it has not received the Government's report. It therefore feels bound to reiterate its previous observation, which reads as follows:

*Article 2(2)(a) of the Convention. Principle of equal remuneration for work of equal value. Legislation.* The Committee notes that, according to the Government's report, in the context of the draft revision of the Labour Code, particularly section 97, the draft section on equal remuneration states that "all employers must ensure equal remuneration for the same work or for work of equal value". The Committee also notes the communication from the Comoros Employers' Organization (OPACO) dated 1 September 2009, which states that the revision of section 97 of the Labour Code has not yet been carried out. It notes the Government's reply referring the OPACO to its report. ***The Committee asks the Government to indicate the progress of the legislative work relating to the revision of the Labour Code and hopes that the new Labour Code, giving full expression***

*to the principle of equal remuneration for men and women for work of equal value, will be adopted in the near future. The Committee asks the Government to supply information on the role of the social partners in the process of the revision of the Labour Code and to send a copy of the new Code once it has been adopted.*

*The Committee hopes that the Government will do its utmost to take the necessary measures in the 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: 2004)**

*Article 2 of the Convention. National policy. Equality of opportunity and treatment of men and women.* In its previous comments, the Committee noted the adoption in June 2008 of the National Policy on Gender Equity and Equality (PNEEG) to ensure equality in employment and occupation. It also noted that the Employers' Organization of Comoros (OPACO), in a communication received on 1 September 2009, indicated that it had not been informed of the elaboration of such a policy and regretted that no measures had been taken to prevent the exclusion of women from certain jobs and occupations. The Committee takes note of the Government's brief comments to the effect that an action plan has been drawn up to introduce measures implementing the PNEEG. The Government also states, in reply to OPOCO's observations, that equality in employment is guaranteed in enterprises and that the promotion of social dialogue is part of the Government's action plan for 2011–15 to ensure effective collaboration with the social partners with a view to achieving perfect social concentration and cohesion. In this respect, workshops designed to strengthen the capacity of employers' and workers' organizations have been held throughout the country. *Taking note of this information, the Committee requests the Government to provide specific information on the awareness-raising and training activities carried out or planned with the social partners, within the framework of the implementation of the PNEEG. Furthermore, the Committee requests the Government to provide detailed information on the action plan implementing the PNEEG and, more specifically, on the measures taken or envisaged to promote equality of opportunity and treatment between men and women in respect of access to education, vocational training, wage and non-wage employment and working conditions (including remuneration, promotion, and security of tenure). The Government is asked to forward a copy of the PNEEG and the action plan.*

*Equality of opportunity and treatment irrespective of race, colour, religion, political opinion, national extraction and social origin.* The Committee notes that the Government's report does not contain any reply to its previous comments in this regard. *The Committee therefore once again requests the Government to indicate the measures taken or envisaged to elaborate and apply a national policy to promote equality of opportunity and treatment in employment and occupation, irrespective of race, colour, religion, political opinion, national extraction and social origin.*

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

## **Costa Rica**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1960)**

*Article 1 of the Convention. Equal remuneration for work of equal value.* The Committee has been referring for a number of years to article 57 of the National Constitution, which establishes that "the wage shall always be equal for equal work under identical conditions of efficiency", and to section 167 of the Labour Code, which provides that "quantity and quality shall be taken into account when determining the level of the wage for each type of work. Equal wages shall be paid for equal work, performed in the same job and under equal conditions of efficiency and time ...". The Committee recalls that these provisions do not give full effect to the principle of equal remuneration for work of equal value established in the Convention. The Committee recalls that the concept "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, that it does not require work to be performed in the same conditions or with the same efficiency, and that it encompasses work that is of an entirely different nature, which is nevertheless of equal value. *Noting that the Government provides no specific information on this matter, the Committee again asks it to take the necessary steps to amend the legislation so as to give full legislative effect to the principle of the Convention, and to provide information on the progress made in this regard.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)**

*Sexual harassment.* The Committee refers to its previous comment in which it noted the existence of problems regarding the effectiveness of procedures for handling complaints of sexual harassment and the reluctance of victims to bring complaints for fear of reprisals. In this regard, the Committee notes with *satisfaction* the adoption of Act No. 8805, amending Act No. 7476 against sexual harassment in employment and teaching, which came into force on 28 April 2010. The Committee notes that the new Act applies to both the public and private sectors, lays down clear rules of responsibility regarding the prevention of sexual harassment and above all establishes a detailed complaints procedure. In general, the procedure is launched at the level of the workplace but, according to the circumstances, may also be commenced by bringing a complaint before the National Directorate for Labour Inspection when the person committing

the harassment is the victim's employer. The Act applies to sexual harassment committed by a superior, or by a person whose rank is lower or the same. The Act also provides for preventive measures for the protection of the victim.

As regards implementing measures, the Committee notes the Government's indication that the Women's Ombudsman has launched educational initiatives to raise awareness and provide legal training with a view to preventing and penalizing sexual harassment; an inter-institutional commission was established for monitoring the legislation and this body has held meetings for public institutions concerning implementation and training; follow-up activities were held regarding the drafting and amendment of internal regulations concerning sexual harassment and institutional policy in 170 public institutions with a view to facilitating the processing of complaints. The Committee notes the Government's indication that, one year after the adoption of the Act, 48 per cent of public institutions have regulations concerning sexual harassment. The Committee also notes that in 2009–10 a total of 111 complaints were brought while in 2010–11 (following the implementation of the new Act) 209 complaints were filed with the Women's Ombudsman. The Government indicates that this increase in the number of complaints might correspond to greater awareness of the issue and the dissemination of the new Act. The Committee also notes all the educational and awareness-raising initiatives implemented by the Gender Equality Unit at the Ministry of Labour and Social Security. ***The Committee requests the Government to continue to provide information on the implementation of the Act against sexual harassment in employment and teaching, on the measures to raise awareness of this issue and on the impact of such measures.***

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

## Côte d'Ivoire

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1961)***

*Access to the public service. Legislation.* For many years the Committee has been asking the Government to take the necessary steps to revise section 14(2) of Act No. 92-570 of 11 September 1992 issuing the General Public Service Regulations in order to bring it into conformity with the Convention. The provision in question states that “specific arrangements may be made, on account of physical fitness requirements or constraints inherent in certain functions ... to reserve access [to the public service] for candidates of one or other sex”. The Committee notes in this connection the observations made by the General Confederation of Enterprises of Côte d'Ivoire, received on 15 December 2010, to the effect that the Government should take account of the Committee's comments and section 14(2) should simply be repealed, insofar as entry to the public service is by competition which is open to candidates of both sexes. The Committee notes that, in its report, the Government acknowledges that this provision is discriminatory and expresses its commitment to repealing it as soon as the Act issuing the General Public Service Regulations is revised. The Government also states that, according to the texts in force, there are no longer any public sector jobs which are prohibited for women and the fact that women are under-represented in the public service is due not to legal obstacles but to social and cultural factors which the Government is addressing actively. While noting the Government's undertaking to repeal section 14(2) of the Act issuing the General Public Service Regulations, the Committee observes that the Government again refers to a possible revision of the Public Service Regulations but gives no indication as to when such a process is to begin. ***It asks the Government to take the necessary steps to repeal, in the near future, section 14(2) of Act No. 92-570 of 11 September 1992 issuing the General Public Service Regulations, and to specify the timetable set for the revision process.***

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

## Croatia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1991)***

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

*Article 1(1)(a) and (b) of the Convention. Anti-discrimination legislation.* The Committee notes the adoption of the Anti-Discrimination Act on 9 July 2008 (*Official Gazette* 85/08), which defines and prohibits direct and indirect discrimination “in all its manifestations” (sections 2 and 9(1)), both in the private and in the public sectors. The Act provides protection against discrimination on the grounds of race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation (section 1), thus covering all the grounds enumerated in *Article 1(1)(a)* of the Convention as well as a number of additional grounds pursuant to *Article 1(1)(b)*. With regard to the grounds of pregnancy and maternity, the Committee notes that the new Labour Act, adopted in December 2009, prohibits an employer from refusing to employ and from dismissing a pregnant woman (section 67(1)) and the Gender Equality Act of 15 July 2008 (*Official Gazette* 82/08) provides that “less favourable treatment of women for reasons of pregnancy and maternity shall be deemed to be discrimination”. The Gender Equality Act also prohibits discrimination in relation to “balance between professional and private life” (section 13(1)(6)).

The Committee notes that the Anti-Discrimination Act creates a category of “more serious forms of discrimination” which includes multiple discrimination and repeated and continued discrimination, and provides that such elements should be taken into account by the courts when determining the compensation for the victim and the fine for the perpetrator. The Committee notes

further that this Act covers, inter alia, work and working conditions; access to self-employment and occupation, including selection criteria, recruitment and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining; education; and social security, including social welfare, pension and health insurance and unemployment insurance (section 8). The Labour Act also prohibits explicitly direct and indirect discrimination “in the field of labour and labour conditions, which includes selection criteria, employment and promotion requirements, vocational guidance and training, additional training and retraining” (section 5(4)).

***The Committee requests the Government to provide information on the legal and practical measures taken or envisaged to implement the relevant anti-discrimination provisions of the Labour Act, the Anti-Discrimination Act and the Gender Equality Act with regard to equal opportunities and treatment in employment and occupation. It further asks the Government to indicate the manner in which the provisions regarding the most serious forms of discrimination are being applied in practice.***

***Articles 2 and 3. Gender equality in employment and occupation.*** The Committee notes with interest the adoption of the new Gender Equality Act on 15 July 2008. The Act provides for sanctions – fines from 1,000 to 1 million Croatian kuna (HRK) – in case of violation of its substantive anti-discrimination provisions (sections 31–38). It also provides for the adoption of action plans for promoting and ensuring gender equality on the basis of an analysis of the status of men and women every four years (section 11(2)) and specifies that all employers, whether public or private, shall “incorporate anti-discrimination provisions and measures with a view to achieving gender equality in their acts” (section 11(5)). Furthermore, according to this Act, social partners shall, in the course of collective bargaining and in collective agreements, comply with the provisions of the Act and measures aimed at ensuring gender equality (section 11(6)). ***The Committee asks the Government to provide information on the implementation of section 11 of the Gender Equality Act, including on any action plans adopted and implemented and on measures taken by public and private employers to ensure gender equality and their impact on the employment of men and women.***

The Committee notes the information provided by the Government on the measures taken with a view to strengthening women’s entrepreneurship within the framework of the National Policy for the Promotion of Gender Equality 2006–10. It further notes that statistics published by the Central Bureau of Statistics in 2010 show that the Croatian labour market is highly gender segregated. In 2008, men represented more than 70 per cent of the workers in agriculture, forestry and fishing, mining and quarrying, manufacturing, energy and supply, construction, transportation, and more than 55 per cent in public administration, whereas women represented more of 70 per cent of the workers in education, health and social services, and financial and insurance activities. In this respect the Committee welcomes the repeal of the Ordinance on jobs not permitted for women (*Official Gazette* 44/96) further to the entry into force of the new Labour Act on 1 January 2010 and the absence in this new Act of a general provision on jobs which women must not perform, unlike in the former Labour Act in its section 63(1). As regards the nature of jobs performed by women, the Committee notes that, according to the Government’s report, despite the lack of official statistics, unofficial data show that there are only 6 per cent of women in managerial positions in the private sector. ***While encouraging the Government to pursue and strengthen its efforts to support women’s entrepreneurship, the Committee asks the Government to take measures to address effectively the horizontal and vertical occupational segregation between men and women in the labour market, including measures aimed at promoting women’s access to a wider range of jobs and providing them with a wider choice of educational and vocational opportunities. The Committee requests the Government to provide detailed information on the measures taken to that end, including measures taken to improve the access of women to posts of responsibility and management positions, both in the private and the public sectors, and their impact. As regards the public sector, the Committee requests the Government to provide more specific information on the number and proportion of female civil servants and civil service employees in posts of responsibility.***

***Equality of opportunity and treatment in employment and occupation of the Roma.*** The Committee notes the measures taken in 2007 and 2008, pursuant to the National Programme for the Roma/Action Plan for the Decade of Roma Inclusion, relating to the employment and training of persons belonging to the Roma national minority. The Committee welcomes in particular the production and dissemination of a leaflet, both in Croatian and in Roma language, explaining the rights and obligations of unemployed persons and providing guidelines on job search. The Committee notes that the Croatian Employment Service implemented special programmes, which included an education component, in which 436 persons participated (2007–08). The Committee further notes that according to the data provided in the Government’s report at the end of 2008, 4,390 members of the Roma community were registered with the Employment Service. The Committee estimates that this number does not reflect the total number of unemployed persons of the Roma minority – the total Roma population being estimated by the authorities to be between 30,000 and 40,000 persons. The Committee notes the Government’s indication that the main obstacle for the members of the Roma minority to access employment is their low level of education. In this respect, in its report following his visit to Croatia in April 2010 (CommDH(2010)20, 17 June 2010), the Commissioner for Human Rights of the Council of Europe called upon the authorities to eliminate any tendency of segregation of Roma pupils and to reinforce their pre-school education in order to increase the currently extremely low percentage of Roma pupils who have completed elementary school education. He also encouraged the adoption of targeted professional training measures. ***The Committee can only but emphasize the importance of education and vocational training to improve future access to the labour market and asks the Government to take all the necessary measures to ensure equal access to education, including pre-school education, for Roma children, without discrimination. The Committee further asks the Government to strengthen its efforts to promote employment opportunities and to ensure equal treatment of the Roma in employment and occupation, including by adopting specific measures concerning the employment of Roma women. Please also provide specific information on the work of the Commission for the Monitoring of the Implementation of the National Programme for Roma with respect to non-discrimination in employment and occupation, as well as any available recent statistics on the number of men and women from the Roma community in the labour market, in particular the estimated levels of employment, unemployment and self-employment.***

***Article 3(d). Access of minorities to employment under the control of a national authority.*** ***In the absence of a reply by the Government on this matter, the Committee reiterates its requests for information on the following:***

- (i) the efforts made by the Government to promote and ensure access by members of national minorities to public employment in the framework of the Civil Service Employment Plan;***
- (ii) the progress made in achieving recruitment targets concerning minorities; and***
- (iii) the current ethnic and gender composition of the civil service.***

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

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1991)**

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

*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.

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

## **Cuba**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1954)**

*Article 1 of the Convention. Work of equal value and legislation.* The Committee has been referring for a number of years to the fact that section 99 of the Labour Code of 1984 provides that workers receive equal pay for equal work without any distinction whatsoever, especially on the basis of sex, and that this is more restrictive than the principle established in the Convention, since it does not reflect the concept of "equal remuneration for work of equal value". The Committee recalls the need for the legislation to reflect the principle of the Convention since legal provisions that are narrower in scope are likely to hinder progress in eradicating gender-based pay discrimination against women. ***Noting that the Government's report does not contain any additional information in this respect, the Committee again asks the Government to establish in its legislation the principle of equal remuneration for work of equal value and to provide information on any developments in this regard. The Committee also asks the Government to send information on the measures taken or contemplated to promote understanding of the principle of the Convention and to strengthen the capacity of all the parties concerned to identify, detect and address violations of this principle.***

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

## **Czech Republic**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)**

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2010 and the resulting conclusions of the Conference Committee, which addressed the following issues: (1) the new non-discrimination legislation; (2) the outstanding issues with regard to the follow-up to the representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (the Screening Act); (3) the situation of the Roma in employment and occupation. The Committee notes that the Conference Committee requested the Government to provide full information on all the issues raised and urged it to accept an ILO technical assistance mission in order to enable it to bring its law and practice into conformity with the Convention without further delay. The Committee notes that a detailed report from the Government was received in November 2010 and a further report was received in September 2011. The Committee also notes that an ILO mission took place from 26–29 April 2011. The Committee notes the Government's indication that the report of the mission and its conclusions were briefly discussed by the Working Group of the Council of Economic and Social Agreement for cooperation with the ILO on 24 August 2011 and would be submitted to the plenary session of the Council in October 2011.

*The anti-discrimination legislation.* The Committee notes that the Conference Committee urged the Government to provide full information on the new Anti-Discrimination Act (Act No. 198/2009) to the Committee of Experts to enable it to assess whether it provided adequate protection against discrimination on all the grounds enumerated in *Article 1(1)(a) of the Convention*, as well as on effective enforcement and monitoring mechanisms, and to ensure that the level of protection previously provided would not be decreased, in particular with respect to discrimination on the basis of family responsibilities, marital or family status or membership or activity in political parties, trade unions or employers' organizations. The Committee recalls that the new Labour Code (Act No. 262/2006) prohibits all forms of discrimination in labour relations but does not specify any prohibited grounds, unlike the previous Labour Code which prohibited discrimination on the basis of sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, family background, language, health condition, age, religion or confession, property, marital or family status, family responsibilities, political or other conviction, membership of or activity in political parties or movements, trade union or employers' organizations. However, the new Anti-Discrimination Act prohibits direct and indirect discrimination based on

race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief or opinions. In addition, the Employment Act (No. 435/2004) prohibits any form of direct or indirect discrimination of persons exercising their right to employment on the same grounds as the former Labour Code.

The Committee notes from the 2010 Government's report and the information provided to the mission that protection against discrimination is provided under the Constitution (articles 1, 4 and 10), the Charter of Fundamental Rights and Freedoms (articles 1 and 3) which forms part of the constitutional order under article 3 of the Constitution, the Labour Code, the Employment Act and the Anti-Discrimination Act. According to the Government, the Anti-Discrimination Act, which was primarily adopted to implement European Directives on discrimination and equality, has to be read within the overarching framework of the constitutional legal order, in particular the Charter of Fundamental Rights and Freedoms, which contains an open list of grounds of discrimination. It is also possible to claim discrimination on the basis of the grounds that are not expressly covered by the Anti-Discrimination Act, by applying other legislation or international agreements which are directly applicable in the country according to the Constitution. According to the Czech-Moravian Confederation of Trade Unions (CMKOS), the removal from the Labour Code of the list of prohibited grounds and the narrower set of grounds prohibited under the Anti-Discrimination Act has resulted in diminishing the protection of workers against discrimination, in particular with respect to family responsibilities, marital or family status or membership or activity in political parties, trade unions or employers' organizations. In addition, the CMKOS stated that the Government intended to revise the list of prohibited grounds in the Employment Act and reiterated this statement in the observations that were communicated with the Government's report in September 2011. In this respect, the Government indicated that the amendment of the Employment Act had not yet been adopted and was envisaged with a view to avoiding unnecessary duplications in legislation and not to limiting the list of discriminatory grounds.

The Committee notes from the mission's report that there is consensus that interpretation by the courts would be required to ensure clarity that all the prohibited grounds of discrimination contained in the various legal instruments can be directly invoked and are justiciable. The Committee also notes the mission's recommendation that the tripartite constituents consider taking advantage of the legislative texts currently under consideration to include in the revision of the Labour Code the list of prohibited grounds currently in the Employment Act so as to ensure legal clarity and certainty concerning protection against discrimination in all areas of employment and occupation. The mission also recommended that promotional and awareness-raising tools be developed and disseminated to clarify the full list of grounds of discrimination that are prohibited under the existing constitutional legal order and the other legislative texts, and that appropriate training for all concerned should be given due consideration.

***The Committee requests the Government to take the necessary measures, within the framework of the labour legislation reform, to include in the Labour Code a provision listing the prohibited grounds of discrimination to ensure legal clarity and certainty concerning protection of workers against discrimination in all areas of employment and occupation and to ensure that at least all the grounds previously enumerated are included. It also asks the Government to take appropriate measures to foster awareness of all the legal provisions on discrimination, including how they interact, and the legal procedures available for redress among workers, employers and their organizations, as well as labour inspectors, judges and officials dealing with non-discrimination and equality issues in employment and occupation. The Government is requested to provide information on any measures taken in this respect. Please also provide information on any administrative or judicial decisions applying and interpreting the legal provisions on discrimination in the field of employment and occupation, as well as on the practical application of the various non-discrimination provisions, including how they interact.***

*Discrimination on the basis of political opinion. The Screening Act.* With respect to the follow-up to the two representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding the Screening Act, the Committee notes that the Conference Committee, recalling its position and that of the Committee of Experts that the provisions of the Act violated the principle of non-discrimination on the basis of political opinion, contrary to the Convention, strongly urged the Government to amend or repeal the Act without further delay. The Committee recalls that in a judgment handed down in 1992, the Constitutional Court of the Czech and Slovak Republic stated that most provisions of the Screening Act were in conformity with Convention No. 111 and the State had the right to determine the requirements for appointment to high office and other functions of decisive importance in the interests of its own security. It notes further that, in a second judgment in 2002 by the Constitutional Court of the Czech Republic, the Court stated that the Act was setting prerequisites for working in State services and supplementing the absence of a law on civil service and therefore its existence was still necessary. The Committee notes the information provided in the Government's report on the implementation of the Screening Act, including the statistical data on screening certificates issued from 2007–10.

The Committee notes that the ILO mission was provided with detailed information on the rationale for the adoption of this Act, in particular, the historical and political contexts which led to its adoption. Detailed information was provided to clarify the scope of application of the Screening Act, according to which the Act applies to limited categories of persons occupying managerial positions in the public service and state enterprises. The Committee also notes from the report of the mission that work is under way to adopt a new Public Service Law to replace the Service Act (Act No. 218/2002) that was adopted in 2002 but which has not yet entered into force. The Committee also notes the mission's recommendation that the opportunity be taken in the context of the ongoing preparations for a new Public Service Law to clearly specify

and define the functions in respect of which screening would be required, and be in accordance with *Article 1(2)* of Convention No. 111.

***The Committee requests the Government to provide information on the measures taken to clearly specify and define the functions in respect of which screening would be required in the law that will be adopted on the public service. The Committee asks the Government to provide information on the progress made in drafting and adopting the new law, and to supply a copy of the law once it is adopted. It requests the Government to continue to provide information on the application of the Screening Act and the positions concerned, including statistical information on the screening certificates issued and the appeals lodged against a positive certificate.***

*The situation of the Roma in employment and occupation.* The Committee notes that the Conference Committee, while noting that steps had been taken aimed at the social inclusion of the Roma, remained concerned that measures had not yet led to verifiable improvements for the Roma in employment and occupation and urged the Government to take measures to develop improved means to monitor the situation of the Roma, including through the collection and analysis of appropriate data, with a view to demonstrating the achievement of real progress with respect to equal access of the Roma to education, training, employment and occupation.

The Committee notes the detailed information in the Government's report regarding various programmes and projects which are being implemented with a view to improving employment and education of members of the Roma community. It notes, in particular, the establishment of the Agency for Social Integration in Roma Localities created to ensure effectiveness of individual measures at the local level. The Committee also notes that a report on the situation of Roma communities in the country, including with respect to their situation in the labour market, is prepared annually and submitted to the Cabinet. According to the Government, in 2009, the report referred to the marginalization of Roma people on the labour market due to the economic crisis and emphasized the disadvantages suffered by members of this community, such as their lack of qualifications, their low level of education and their lack of professional experience. As a result, the issues identified were put on the agenda of the Government Council for Roma Community Affairs for action.

With respect to the collection of data to monitor the progress made regarding the situation of the Roma population in employment and occupation, the Committee notes from the report of the mission that, according to the Act on national census, the collection of data on ethnic origin should be voluntary and as a consequence there is no mandatory registration regarding Roma ethnicity. However, even though there is no empirical data, there is expert knowledge of the situation of the Roma population, through regional coordinators, and the number of people in the Roma community was estimated at 183,000 in 2010. The mission was also informed of a specific scheme developed by a non-governmental organization called "Ethnic Friendly Employer" which grants a label to enterprises employing members of ethnic minorities. The Committee notes that the mission recommended that proactive measures to promote social inclusion and tolerance be vigorously continued, in cooperation with employers' and workers' organizations, and that their impact be monitored.

***The Committee requests the Government to step up its efforts to promote employment of the Roma population in the public and the private sectors, with a particular focus on the employment of Roma women, and to continue to take measures to promote equal opportunity in education and vocational training for Roma children and youth. It requests the Government to continue to assess the impact of the measures taken and to ensure that any progress made in the employment situation of the Roma population is not reversed by the economic downturn or the lack of appropriate funding, including with respect to the activities of the Agency for Social Integration in Roma Localities and the Government Council for Roma Community Affairs. The Committee also asks the Government to continue to take proactive measures to promote social inclusion and tolerance, in cooperation with employers' and workers' organizations, and to provide information on the "Ethnic Friendly Employer" scheme. Noting that a national census is taking place in 2011, the Committee requests the Government to provide statistics, disaggregated by sex, on the number of persons who identify themselves as members of the Roma community and their situation in employment, including self-employment, and any estimates thereof received from the regional coordinators for Roma affairs.***

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

## **Democratic Republic of the Congo**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)***

*Articles 1 and 2 of the Convention.* *Equal remuneration for work of equal value and application of the principle to all aspects of remuneration.* The Committee recalls that section 86 of the Labour Code, which provides that with equal conditions of work, vocational qualifications and output, the salary is equal for all workers, irrespective of origin, sex or age, is not in conformity with the Convention, which requires measures to promote and ensure equal remuneration for men and women for work of equal value. It recalls its previous concerns that the Labour Code currently provides for equality only in respect of the salary (section 86) and accommodation and accommodation allowances (section 138), and that the term "remuneration" as defined in section 7(h) includes additional payments, such as commissions, payments in kind, bonuses, etc., whereas it is provided that transport allowances, family allowances, accommodation and accommodation allowances and health care are not considered part of the remuneration. In this context, the Committee had drawn the Government's attention to the Government's obligation under the Convention to ensure that the principle of equal remuneration for men and women for work of equal value is applied to all aspects of remuneration, as broadly defined in

*Article 1(a)*, and that women and men should have the right to equal remuneration not only where they have the same working conditions, vocational qualifications and output, but also where they have different vocational qualifications and when they work in different working conditions, so long as the work performed is of equal value. The Committee notes the Government's statement that it has taken due note of the Committee's comments and will take them into consideration in the context of a future revision of the Labour Code. The Government also envisages defining a wage policy which takes account of all the elements of remuneration. **Recalling its 2006 observation which calls on States which have not yet done so to ensure that their legislation fully reflects the principle of the Convention, the Committee once again asks the Government to take the necessary steps to bring the legislation into line with the Convention with a view to ensuring that the principle of equal remuneration for men and women is fully reflected in the legislation and that it applies to all the elements of remuneration, as defined in Article 1(a) of the Convention. It hopes that this will be done in the very near future. The Committee also asks the Government to provide further details of the wage policy, which it hopes will cover all elements of remuneration.**

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)**

The Committee notes from the third joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo (A/HRC/16/68, 9 March 2011) that the human rights situation in the country remains of serious concern, especially in the east of the country. The Committee notes particularly the concerns expressed with respect to sexual violence against women, including systematic and mass rape, and related impunity, as highlighted in the most recent report submitted by the United Nations High Commissioner for Human Rights (A/HRC/16/27, 10 January 2011). The Committee notes that the recommendations to the Government in the report include repealing all provisions of law that discriminate against women, denouncing publically and unequivocally all forms of violence against women, and ensuring that the judicial system brings the perpetrators of such violations to justice promptly and impartially. The Committee notes that according to the report, sexual violence remains widespread despite the Government's efforts to stop it and the phenomenon is rampant throughout the country and affects thousands of women. The recent mass rapes committed in Walikale territory exemplify this scourge. The Committee further notes that the UN High Commissioner for Human Rights considers that the situation of women will remain precarious as long as the State fails to tackle in earnest the social roots of sexual violence, i.e. women's inferior social, economic and political status in Congolese society. The Committee recalls that the objective of the Convention, notably equality of opportunity between men and women in employment and occupation cannot be achieved in a general context of serious human rights violations and inequality in society. **Considering the serious concerns raised regarding the human rights situation and its particular effects on women due to their inferior economic and social status in society, the Committee urges the Government to take all the necessary measures to address the inferior position of women in society reflected in sexual violence against women and discriminatory laws, which it considers has a serious impact on the application of the principles of the Convention. In this context, the Committee also urges the Government to create all the necessary conditions to give effect to the provisions of the Convention.**

The Committee notes the Government's very brief report in reply to its previous observation, in which it raised issues relating to the legislative prohibition of discrimination in employment and occupation, discrimination based on sex, and discrimination based on race or ethnic origin.

*Articles 1 and 2 of the Convention. Prohibition of discrimination in employment and occupation.* The Committee recalls that, although section 1 provides that the Labour Code applies to all employers and all workers, with the exception of state public services, regardless of race, sex, civil status, religion, political opinion, national extraction and social origin, the Labour Code contains no provisions prohibiting and defining discrimination in employment and occupation. Act No. 81/003 of 17 July 1981 on the conditions of service of career members of the state public service also lacks anti-discrimination provisions. The Committee notes that the Government repeats its statement that it will include provisions prohibiting and defining indirect and direct discrimination in employment and occupation, including in respect of recruitment, once it has been determined when the revision of the Labour Code will take place. **The Committee urges the Government to make progress in this regard and asks the Government to indicate all steps with a view to including provisions in the Labour Code and Act No. 81/003 defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, on at least all the grounds enumerated in the Convention.**

*Discrimination based on sex.* The Committee previously noted that certain provisions of the Family Code, of Act No. 81/003 of 17 July 1981, on the conditions of service of career members of the state public services, and of the Legislative Ordinance No. 88-056 of 29 September 1988, respecting the activities of magistrates, constituted discrimination on grounds of sex in employment and occupation contrary to the Convention. The Committee recalls that sections 448 and 497 of Act No. 87/010 of 1 August 1987, enacting the Family Code, appear to indicate that, in certain cases, a woman has to obtain the authorization of her husband to take up salaried employment, whereas no such obligation is imposed upon the husband. In relation to jobs in the public service, section 8 of Act No. 81/003 of 17 July 1981 and section 1(7) of Legislative Ordinance No. 88-056 of 29 September 1988 provide that a married woman must have obtained the permission of her spouse to be recruited as a career member of the public service or appointed as a

magistrate. The Committee notes the Government's statement that the Statute of magistrates will be communicated in its next report and that the Statute of the public administration has not yet been promulgated. ***The Committee having previously noted that the modification of the abovementioned texts was under way, requests the Government to make progress in bringing the abovementioned provisions, including those in the Family Code, into conformity with the Convention and to provide the amended texts, as soon as possible.***

*Discrimination based on race or ethnic origin.* The Committee notes that the Government's report does not reply to the Committee's previous comments regarding the socio-economic situation of the Batwa, and discrimination faced by the Batwa in employment and occupation. The Committee had noted in this context the concluding observations of the United Nations Committee on the Elimination of Racial Discrimination, of 17 August 2007, expressing concern that "pygmies" (Bambutu, Batwa and Bacwa) are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market. CERD also expressed concern that the rights of these groups to own, exploit, control and use their lands, their resources and communal territories – which are the basis for the exercise of their traditional occupations and livelihood activities – are not guaranteed (CERD/C/COD/CO/15, 17 August 2007, paragraphs 18 and 19). ***The Committee urges the Government once again to take measures with a view to ensuring equality of opportunity and treatment of the Bambutu, Batwa and Bacwa in employment and occupation, and to indicate the steps taken in this regard. The Government is also requested to indicate the measures taken to ensure that these indigenous groups enjoy their right to engage in their traditional occupations and livelihoods without discrimination.***

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

## Djibouti

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)***

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

*Articles 1 and 2 of the Convention. Legislative developments. ... The Committee asks the Government to provide information on the implementation and enforcement of section 137 of the new Labour Code, including information on the measures taken or envisaged to raise awareness of these provisions among workers and employers and their representatives and public officials responsible for the enforcement of the labour legislation. In this regard, the Committee also asks the Government to provide information on whether any cases concerning section 137 have been dealt with by the responsible authorities and the manner in which they have been resolved, including any remedies provided or sanctions imposed.*

*Article 2(c). Collective bargaining.* The Committee notes from the Government's report that salaries in the private sector are determined by way of collective agreements. Section 258 of the new Labour Code provides that collective agreements may determine the salary applicable to each occupational category. Section 259(4) provides that collective agreements cannot change the modalities of the application of the principle of "equal salary for equal work", irrespective of the origin, sex or age of the worker. The Committee notes that section 259 is not in conformity with the Convention as it refers to equal salary for equal work rather than to equal salary for *work of equal value*, and is also at variance with section 137 of the Labour Code. ***The Committee asks the Government to take the steps necessary to amend section 259(4) to bring it into alignment with the provisions of section 137 and to bring it into conformity with the Convention. The Committee also asks the Government to provide examples of collective agreements, as well as indications as to how the agreements implement the principle of equal remuneration for men and women for work of equal value.***

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

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

## Dominican Republic

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)***

The Committee notes the observations received on 31 August 2011 from the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Unions (CASC) and the National Confederation of Dominican Workers (CNTD), reporting that although more women than men undergo higher education, there is a 27 per cent wage differential between men and women. ***The Committee asks the Government to send its comments on this matter.***

The Committee notes that the Government's report contains no reply to its previous comments in a number of important aspects. It is therefore bound to reiterate its previous observation on the following matters:

*Articles 1 and 2 of the Convention. Equal remuneration for work of equal value.* In its previous comments, the Committee noted that the tripartite committee appointed by the Labour Advisory Council in July 2007 had drafted an amendment to section 194 of the Labour Code with a view to including in the legislation the concept of equal remuneration for men and women for "work of equal value". The Committee notes that the Government's report does not provide any information on the progress made with this draft text. It recalls that it has been commenting on this subject for many years and that section 194 in its current wording does not give full effect to the Convention as it does not include the concept of "work of equal value".

The Committee also notes that, in the same way as section 194, section 3(4) of Act No. 41-08 of 16 January 2008 on the public service provides for: "equal wages for equal work, in terms of capacity, performance and seniority, irrespective of the person performing the work". Similarly, article 62(9) *in fine*, of the new Constitution, adopted on 26 January 2010, lays down that

“the payment of equal wages for work of equal value is guaranteed, without discrimination based on sex or other grounds and under identical conditions of capacity, effectiveness and seniority”. The Committee notes that by defining the concept of “work of equal value” in terms of “identical conditions of capacity, effectiveness and seniority”, the constitutional definition of the concept appears to be narrower than the term used in the Convention, as it should be possible to compare jobs carried out under different conditions, but which are nevertheless of the same value. The Committee notes with regret that the Government did not take the opportunity of these legislative and constitutional reforms to reflect the principle of the Convention fully.

The Committee wishes to refer in this respect to its 2006 general observation in which it emphasizes that the concept of equal remuneration for “work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and urges governments to take the necessary steps to amend their legislation 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 therefore urges the Government to take the necessary measures to ensure that the amendment of section 194 fully reflects the principle of the Convention and is adopted by the National Congress in the very near future, and to provide a copy once it has been adopted. The Committee also requests the Government to provide fuller information on wage inequalities in the public sector and on the measures taken to bring section 3(4) of Act No. 41-08, the wording of which is identical to that of section 194 of the Labour Code, into full conformity with the Convention.***

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

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1964)***

The Committee notes the observations of 31 August from the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers’ Unions (CASC) and the National Confederation of Dominican Workers (CNTD), according to which the Labour Code does not afford domestic workers the same rights and benefits as other workers and does not provide for sufficient sanctions against acts of discrimination in general; foreign workers, mainly Haitians and Latin Americans, are paid less than Dominican workers in the construction sector; and there are instances of age-based discrimination in access to employment. The abovementioned organizations also refer to other matters already under examination by the Committee, namely pregnancy and HIV/AIDS testing as a condition for access to employment and the persistence of sexual harassment cases in all sectors, including the export processing zones. ***The Committee asks the Government to send its comments on these matters.***

The Committee takes note of the discussion held in the Conference Committee on the Application of Standards in 2008. It reminds the Government that in its previous comments it noted with regret that its report contained no response to the matters raised by the Conference Committee. The Committee notes with ***deep regret*** that such information is once again absent from the Government’s report. The Committee must therefore repeat its previous observation on the following points:

...

***Discrimination on the grounds of colour, race and national extraction.*** The Committee recalls that it has been raising concerns for a number of years regarding discrimination against Haitians and dark-skinned Dominicans. The Committee notes that the Conference Committee called on the Government to address the intersection between migration and discrimination, and in particular to ensure that migration laws and policies and their implementation did not result in discrimination based on race, colour or national extraction. It noted in this respect that all migrant workers, including those in an irregular situation, must be protected from discrimination in employment and occupation. The Conference Committee also noted the Government’s intention to establish a tripartite committee to follow up the recommendations made jointly by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Independent Expert on minority issues. The Committee notes the wide range of recommendations of the Special Rapporteur and the Independent Expert, including in particular with respect to developing a national action plan against racism, racial discrimination and xenophobia; establishing an independent institution with authority to combat all forms of discrimination; adopting comprehensive legislation to combat racial discrimination; collecting relevant socio-economic data; ensuring that migration laws and their implementation protect the right to non-discrimination; monitoring sectors such as agriculture and construction, where many Haitians and Dominicans of Haitian descent are employed; targeting multiple discrimination facing minority women, particularly those who are black or of Haitian heritage (A/HRC/7/19/Add.5; A/HRC/7/23/Add.3, 18 March 2008, paragraphs 118–121, 126–128 and 131–132). ***The Committee urges the Government to take concrete measures without further delay to ensure the effective application of the Convention, in law and in practice, with respect to the grounds of race, colour and national extraction, and in this context to ensure that all migrant workers, including those in an irregular situation, are protected from discrimination in employment and occupation. The Committee requests the Government to indicate whether the tripartite committee to follow up the recommendations of the Special Rapporteur and the Independent Expert has been established, and the progress achieved in implementing the recommendations, in particular those noted above.***

***Discrimination based on sex.*** The Committee has been raising concerns regarding the persistence of cases of discrimination based on sex, including pregnancy testing and sexual harassment, and the lack of effective application of the legislation in force, and has raised the issue of pregnancy testing as a requirement to obtain or keep a job in export processing zones. It notes in this regard the Government’s indication to the Conference Committee that the Secretary of State for Labour had created an office responsible for monitoring gender policies in the field of employment, and the Gender Office had submitted a draft amendment to the Labour Code to the Labour Advisory Council with a view to improving labour legislation regarding medical examinations prior to or during employment. Regarding sexual harassment, the Government indicated that the Labour Code was being amended to make sexual harassment a criminal offence carrying a severe penalty. The Conference Committee, while noting this information, questioned the adequacy of the legislation and the complaints mechanisms to address such discrimination, and called on the Government, in collaboration with the workers’ and employers’ organizations, to take additional steps to strengthen protection against discrimination in law and in practice, and in particular to ensure that complaints

mechanisms were effective and accessible for men and women working in enterprises where no unions existed. *The Committee urges the Government to ensure that the existing anti-discrimination legislation is effectively applied, and in this context to take proactive measures, in collaboration with employers' and workers' organizations, to prevent and investigate both sexual harassment, and the requirement of pregnancy testing as a condition for obtaining or maintaining employment. The Committee also asks the Government to take the necessary measures to reinforce the sanctions for sexual harassment and mandatory pregnancy testing as well as the dispute resolution machinery related to discrimination in employment and occupation, to ensure that it is effective and accessible in practice to all workers, including those in export processing zones. The Committee also asks the Government to provide information on the following:*

- (i) *the status of the adoption of the proposed amendments to the Labour Code regarding sexual harassment and pregnancy testing;*
- (ii) *measures taken to support and protect victims of sexual harassment and pregnancy testing, including facilitating access to complaints procedures;*
- (iii) *awareness raising regarding discrimination, including sexual harassment and pregnancy testing, and building the capacity of labour inspectors, relevant government authorities, and the judiciary to detect and address violations in this regard;*
- (iv) *any specific measures taken to improve the detection of sexual harassment and pregnancy testing in export processing zones; and*
- (v) *any cases of sexual harassment or pregnancy testing reported to or detected by the labour inspectorate and any relevant administrative or judicial decisions, including the remedies provided and the sanctions imposed.*

*HIV testing.* Regarding its previous comments relating to HIV testing as a condition to be hired or keep a job, and the lack of enforcement of the prohibition of such testing, the Committee notes the Government's indication to the Conference Committee that involuntary HIV testing is prohibited in all enterprises, there is an HIV/AIDS technical unit within the labour inspectorate, and regular inspections are carried out but no cases concerning discrimination have been reported. *The Committee requests the Government to reinforce its efforts to address HIV testing as a condition to be hired or to keep a job in practice, including taking measures to protect workers who lodge complaints, stepping up enforcement by labour inspectors, and building their capacity to detect and address such violations. Please provide detailed information of measures taken in this regard, as well as with respect to any cases of involuntary HIV testing reported to or detected by the labour inspectorate, and any relevant court or administrative decisions.*

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

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

*[The Government is asked to supply full particulars to the Conference at its 101st Session and to reply in detail to the present comments in 2012.]*

## Ecuador

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

The Committee notes the adoption of the new Constitution in September 2008 following its approval by referendum. The Committee notes with interest that article 11(2) of the Constitution includes new grounds on which discrimination is prohibited, including migration and being HIV positive. It also notes that article 43 provides that the State shall guarantee that pregnant women are not discriminated against on grounds of pregnancy in the educational, social and labour fields. The Committee further notes that article 47(5) of Constitution recognizes the right of persons with disabilities to work under conditions of equality of opportunity with a view to developing their capacities and potential, through policies for their integration into public and private entities. *The Committee asks the Government to provide information on the measures adopted or envisaged to give effect to these provisions.*

*Article 2 of the Convention. National equality policy.* The Committee notes that Executive Decree No. 1733 (*Official Bulletin* No. 601 of 29 May 2009) abolished the National Women's Council (CONAMU) and established the Transition Commission to determine the public institutions that will guarantee equality between women and men, and which is entrusted with responsibility to prepare draft legislative reforms for the establishment of the National Gender Equality Council. The Committee notes that, in addition to the CONAMU, changes have also been made to the Council for the Development of the Peoples and Nationalities of Ecuador (CODENPE), the Afro-Ecuadorian Development Corporation (CODAE), the Council for the Development of the Coastal Montubio People (CODEPMOC), the Council for Children and Young Persons (CNA) and the National Disability Council (CONADIS). *The Committee requests the Government to provide information on the outcome of this process of transition and on the institutions established in accordance with articles 156 and 157 of the new Constitution which are entrusted with responsibilities related to guaranteeing equality of opportunity and treatment in employment and occupation.*

*National policy on gender equality.* The Committee notes the concern expressed by the Committee on the Elimination of Discrimination Against Women in its concluding observations of November 2008 about the high rates of women's underemployment and unemployment, especially in rural areas, and cases of gender discrimination in the workplace, including dismissals relating to maternity, and discriminatory labour practices against women, especially indigenous and migrant women and those of African descent (CEDAW/D/ECU/CO/7, 7 November 2008, paragraphs 34–36). *The Committee once again requests information on the results achieved in the prevention and eradication of work by women under conditions of exploitation which, as noted by the Committee in its previous comments, was one of the objectives of the Equal Opportunities Plan 2005–09 (PIO). The Committee also requests the Government to provide detailed information on the policies and*

**programmes intended to ensure equality of opportunity and treatment in employment and occupation for women, especially indigenous women, migrant women and women of African descent, and their impact.**

*Promoting the access of women to public sector employment.* With reference to its previous observation, in which it noted with interest the conclusion of a Framework Inter-institutional Cooperation Agreement with a view to ensuring that effect is given to the principles of equality and equity between men and women in the processes of institutional modernization and the re-evaluation of work in public institutions in Ecuador, the Committee notes that, according to the Government's report, in the context of the above Agreement, gender was included in the Integrated Human Resources Information System (SIIRH) developed by the National Technical Secretariat for the Development of Human Resources and Remuneration in the Public Sector (SENRES) and the study "Public employment in Ecuador: A gender view" was published. It notes that the Transition Committee has also worked to introduce gender as a cross-cutting issue in the law and standards issued by the SENRES with the objective of promoting the access of women to public employment. **The Committee requests the Government to provide further information on the introduction of gender as a cross-cutting issue in the standards issued by the SENRES with the objective of women gaining access to public employment and the impact of this measure. Noting that the Framework Inter-institutional Cooperation Agreement expires in December 2009, the Committee requests the Government to provide information on the measures envisaged to continue ensuring the application of the principle of the Convention in the public sector. The Committee also refers to its comments on the application of the Equal Remuneration Convention, 1951 (No. 100).**

*Legislation.* The Committee notes that, according to the information provided by the Government, the draft amendment of the Cooperatives Act is before the National Assembly. **With reference to its previous comments, the Committee urges the Government to take this opportunity to repeal section 17(b) of the Regulations of the Cooperatives Act, under which married women require the authorization of their husbands to be members of agricultural housing and family garden cooperatives. The Committee hopes that the Government will be in a position to provide information on the progress achieved in this respect in its next report.**

*Sexual harassment.* The Committee notes that the Gender and Youth Unit of the Ministry of Labour is preparing a compendium on sexual harassment in the fields of education, labour, politics and domestic work which includes basic definitions, practical cases, national and international legislation and the contact details of support bodies and organizations. The Committee also notes the draft constitutional proposal of February 2008 to discourage situations of harassment, which involves the termination of officials who commit repeated offences of sexual and psychological harassment and abuse of authority. **The Committee requests the Government to provide information on the impact that this compendium has had in terms of preventing sexual harassment in the working environment and to provide information on other measures that are being adopted to raise awareness of the harmful effects of harassment at the workplace. The Committee invites the Government once again to take appropriate legislative measures to prohibit sexual harassment in employment and occupation which include both quid pro quo and hostile work environment harassment.**

*Afro-Ecuadorian peoples.* The Committee notes that the National Development Plan 2007–10 contains a component with the objective of combating historical disparities which hinder the human development of Afro-Ecuadorian persons. It notes that according to the statistics contained in the Plan, the racial prejudice index against Afro-Ecuadorian persons is 75.9 per cent. It also notes that, according to the living conditions survey of 2006, while a white person can obtain average monthly income from employment of US\$316.60, an Afro-Ecuadorian person only obtains US\$210.80. With regard to the urban unemployment rate, the Committee notes that it is 11 per cent for Afro-Ecuadorian persons, compared with a national average of 7.9 per cent, and 17.5 per cent for Afro-Ecuadorian women. It further notes that 92.8 per cent of Afro-Ecuadorian persons do not reach university level. **The Committee requests the Government to provide detailed information on the results and impact of the various types of action envisaged in the plan referred to above, including the application of affirmative action measures, the development of the "Work without discrimination" programme and the action taken to promote and increase the access of young Afro-Ecuadorian persons to university. The Committee also requests information on the measures promoted, as envisaged in the Plan, to monitor and punish any act of racial discrimination against Afro-Ecuadorian persons on the labour market.**

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

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

## Ethiopia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)**

*Legislation. Grounds of discrimination.* For a number of years, the Committee has been raising concerns regarding the absence of legislative protection against discrimination on the grounds of social origin and national extraction, particularly with respect to the Labour Proclamation No. 377/2003 and the Federal Civil Service Proclamation No. 262/2002. The Committee notes the adoption of the Federal Civil Servants Proclamation No. 515/2007. However, the Committee notes that the new Federal Civil Servants Proclamation still does not include social origin or national extraction as prohibited grounds of discrimination. **The Committee recalls that where legal provisions are adopted, they should include at least all the grounds of discrimination specified under Article 1(1)(a) of the Convention, and asks the Government to take appropriate measures to amend the Federal Civil Servants Proclamation and the Labour Proclamation, with a view to including social origin and national extraction as prohibited grounds of discrimination.**

*Scope of application.* The Committee had previously noted the importance of amending the Labour Proclamation, with a view to explicitly providing that workers and candidates for employment, including citizens and non-citizens, are protected against discrimination. The Committee notes that the Government generally reiterates reference to provisions of the Constitution and the Labour Proclamation, stating that there is no form of distinction, exclusion or preference in law or in administrative practice, or in practical relationships in employment and occupation, including employment service (whether public or private). The Committee recalls that, for the purpose of achieving the objectives of the Convention, it is important to acknowledge that no society is free from discrimination and that continuous action is required to address it,

including the review and revision of laws. ***The Committee therefore asks the Government to take steps to ensure that workers and candidates for employment, including non-citizens, are protected against discrimination in all aspects of employment and occupation, and to provide information on any progress made in this regard.***

***Additional grounds of discrimination.*** The Committee notes with *interest* the adoption of the Proclamation to provide for the right to employment of persons with disability, No. 568/2008, which prohibits discrimination against persons with disabilities in recruitment, promotion, placement, training, transfer and other employment conditions. The Proclamation also requires preference to be given to workers with disabilities to occupy a vacant post or participate in training, and provides that affirmative action to create equal opportunities for persons with disabilities is not discrimination (sections 4 and 5). It also acknowledges the multiple discrimination faced by women with disabilities, and places specific responsibilities on the employer in this regard (section 6). The right to institute an action for infringement of the provisions of the Proclamation can be brought by those claiming their rights have been violated, by an association of persons with disabilities, the trade union, or at the initiative of the body entrusted to implement the Proclamation (section 10). The Committee also notes that section 13(1) of the Federal Civil Servants Proclamation No. 515/2007 provides that there shall be no discrimination among jobseekers or civil servants in filling vacancies through recruitment, promotion transfer or deployment, including on the grounds of disability and HIV and AIDS. ***The Committee asks the Government to provide information on the practical application of the Proclamation to provide for the right to employment of persons with disability, including any affirmative action measures taken, and any cases of discrimination brought before the courts. Please also indicate whether a body has yet been established to implement the Proclamation. The Committee also asks the Government to provide any information on the application of section 13(1) of the new Federal Civil Servants Proclamation, in particular with respect to cases alleging discrimination based on disability or HIV and AIDS and the results thereof.***

***Education and training.*** The Committee notes the statistical information provided by the Government that the gross enrolment rate for primary education has reached 90.7 per cent for girls and 97.6 per cent for boys, and among the total enrolment in technical and vocational education and training in 2008–09, 50 per cent were girls. The Committee also notes the Government's indication that the Micro and Small-scale Enterprises Development Policy, Youth Development Package, Women's Development Package and other measures are in place aimed at employment creation and income generation in particular for youth and women. In this connection, the Committee notes that the Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern regarding regional disparities and low enrolment rates of women in general education, as well as in traditionally male dominated fields of technical and vocational education. It called on the Government to take measures to ensure enrolment, retention and completion of women and girls at all levels of education, and to encourage women and girls to choose non-traditional fields of education and careers (CEDAW/C/ETH/CO/6-7, 27 July 2011, paragraphs 30 and 31). ***Recalling the importance of vocational training and education in determining the actual possibilities of gaining access to employment and occupations, the Committee asks the Government to provide information on the measures taken to address unequal access of women to training and education at all levels, including statistical data on the participation of men and women in the various courses, and the results achieved through such measures. The Committee also requests information on the impact of policies with respect to employment creation and income generation.***

***Equality of opportunity and treatment irrespective of race and colour. Indigenous communities.*** The Committee notes the Government's indication that the development policy and strategy for the pastoral areas is envisioned under short- and long-term perspectives; in the short term the needs of pastoralists will be clearly reflected in all national policy and planning frameworks; in the long term the livelihood of pastoral communities will be stabilized through the facilitation of gradual and voluntary transition toward permanent settlement. The Government also indicates in general terms that so far the results observed in the pastoral areas show the policy and strategy are moving in the right direction in improving the livelihood of the pastoralists. ***The Committee asks the Government to indicate to what extent consideration is given to the land-based pastoralists' livelihood and way of life in establishing and implementing the national policy and planning frameworks, with a view to tailoring them to pastoralists' specific needs. It also asks the Government to indicate how the traditional land rights of pastoralist communities are safeguarded under the national policy, particularly in the context of private land ownership and large-scale industrial farming projects that could be or are being implemented in rural areas. Please also provide any information on the role of the pastoralist communities in the process of development and implementation of the national policy and planning frameworks, as well as the long-term strategy.***

***Follow-up to the recommendations made by the Tripartite Committee (representation made under article 24 of the ILO Constitution).*** The Committee recalls its previous comments having noted that the proceedings of the Ethiopia Eritrea Claims Commission were at the phase of determining damages. The Committee also notes that the final award for damages claims was rendered on 17 August 2009, while the Claims Commission, in its decision of 27 July 2007, recognized that each State party had full authority to determine the use and distribution of any damages awarded to it. The Committee further notes the Government's indication in its latest report that all cases were entertained and the claims were already settled by the Ethiopia–Eritrea Claims Commission. The Committee has not yet, however, received any details regarding whether and, if so, how the award of the Claims Commission of August 2009 has been distributed to benefit

individual workers. *The Committee therefore asks the Government to provide specific information on the actual relief or remedies granted to the workers displaced following the outbreak of the 1998 border conflict.*

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

## Fiji

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2002)***

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

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2011 and the resulting conclusions of the Conference Committee. The Committee notes that the Conference Committee, while noting that the People's Charter for Change, Peace and Progress provided a good basis for further action to promote equality of opportunity and treatment in employment and occupation, urged the Government to ensure that the principles contained therein were translated into concrete action and called upon the Government: (i) to amend or repeal all racially discriminatory laws and regulations, including the Education (Establishment and Registration of Schools) Regulations, 1966; (ii) to effectively address discriminatory practices; (iii) to ensure equality in employment, training and education for all persons of all ethnic groups. The Conference Committee urged the Government to provide detailed information on the concrete action taken to implement the People's Charter and the National Sexual Harassment Policy, and the results secured by such action, in the public and private sectors. It also urged the Government to take such measures in consultation with the social partners. The Conference Committee noted concerns regarding the difficulty in exercising the right to freedom of association in the country, and called upon the Government to establish the conditions necessary for genuine tripartite dialogue, with the assistance of the ILO, with a view to addressing the issues related to the implementation of the Convention.

Noting the Government's indication that an anti-discrimination law was to be adopted, the Conference Committee asked the Government to provide information regarding this law. It also asked the Government to take concrete measures to promote gender equality in the public and private sectors, given the low labour force participation of women and their high unemployment levels. With respect to the exclusion of government employees, including teachers, from the scope of Employment Relations Promulgation No. 37 of 2007 further to its amendment by the Employment Relations (Amendment) Decree 2011 (Decree No. 21 of 2011) and thus from its non-discrimination provisions, the Conference Committee urged the Government to ensure that government employees had the same rights to non-discrimination and equality in employment and occupation as other workers covered by the Employment Relations Promulgation, and had access to competent judicial bodies to claim their rights and to adequate remedies. The Conference Committee asked in particular that the impact of Decree No. 21 be reviewed in this context. The Committee notes that the Government's report has not been received, and thus there is no reply to the conclusions of the Conference Committee. *The Committee asks the Government to provide information regarding the issues raised by the Conference Committee.*

In addition, as the Government's report has not been received, the Committee must therefore repeat its previous observation which read as follows:

*National policy to promote equality of opportunity and treatment.* The Committee notes with interest the adoption on 15 December 2008 by the National Council for Building a Better Fiji (NCBBF) of the Peoples Charter for Change, Peace and Progress, which aims to build a society based on equality of opportunity for all Fiji citizens and on peace. The Charter, which was drafted on the basis of the findings and recommendations contained in the Report on the State of the Nation and the Economy (SNE Report) and after consultations held throughout the country, proclaims that equality and dignity of all citizens, respect for the diverse cultural, religious and philosophical beliefs, social and economic justice, equitable access to the benefits of development, and merit-based equality of opportunities for all shall be leading principles and aspirations. The Charter also sets out key measures and actions to be taken, such as the promulgation of an Anti-Discrimination Act, the development of education, vocational training and job placement, the promotion of multicultural education and the gradual phasing out of institutional names that denote racial affiliations, and the elimination of racial and inappropriate categorization and profiling in government records and registers. Other measures also include the increase of the participation of women at all levels of decision-making, the enactment of a code of conduct for public servants and persons who hold statutory appointments, the reform of the public sector, including the removal of any political interference and the compulsory training of civil servants, the development of cooperation between the Government and the private sector, and the introduction of a national minimum wage. The Charter also contains specific measures concerning indigenous peoples and their institutions. In this respect, the Committee notes that the NCBBF made a number of recommendations in the SNE Report, such as the need to promulgate legislation prohibiting discrimination based on race, religion and sexual orientation, as well as legislation protecting the rights of minority ethnic groups (Indians, Pacific Islanders, Chinese, European and landless Fijians), especially with the view to improving access to land. *The Committee requests the Government to provide information on the implementation of the measures envisaged in the Peoples Charter for Change, Peace and Progress to prohibit and eliminate discrimination, in particular racial discrimination, and to promote equal opportunities for all in relation to access to education, vocational training and employment in both the private and the public sectors.*

*Sexual harassment.* The Committee notes with interest the adoption by the Government of the 2008 National Policy on Sexual Harassment in the Workplace, which was developed in consultation with the tripartite social partners. It notes in particular that the Policy provides for a definition of sexual harassment and a list of acts that constitute sexual harassment, and establishes the employer's responsibilities: every employer must have an internal written policy and a grievance procedure on sexual

harassment at the workplace, which are to be developed by both staff and managers (paragraph 5.1). The Committee further notes that the Policy highlights the consequences of sexual harassment not only for the victim but also for the entire staff and the enterprise itself and describes the complaint mechanisms available under the Human Rights Commission Act 1999, section 154 of the Penal Code and Part 13 of the Employment Relations Promulgation 2007. ***The Committee requests the Government to provide information on the manner in which the 2008 National Policy on Sexual Harassment is implemented at the workplace level, indicating in particular any internal written policies adopted and grievance procedures put in place and any preventive measures taken by employers. The Committee further requests the Government to provide information on cases of sexual harassment identified by or referred to the labour inspectorate or any disputes concerning sexual harassment brought before the competent bodies, either under the Human Rights Commission Act 1999, section 154 of the Penal Code or Part 13 of the Employment Relations Promulgation 2007.***

*Equal access to education and training.* The Committee notes that the People's Charter for Change, Peace and Progress contains numerous proposed measures to ensure access to education for all, including the establishment of a statutory body for community and non-formal learning, the strengthening of early childhood education – especially in rural areas – the enhancement of skills and vocational training and the promotion of entrepreneurship training, the facilitation of job placement in partnership with the private sector and the introduction of a grant system. The Committee further notes that the SNE Report emphasizes the need for the education system to include the teaching and understanding of various cultural groups in order to foster unity and to develop an inclusive based education system.

The Committee understands from the information in the SNE Report and the provisions of the People's Charter that the education system will undergo an extensive reform. ***As a consequence, the Committee requests the Government to clarify whether the system established under the Education (Establishment and Registration of Schools) Regulations, 1966, providing that in the admission process preference may be given to pupils of a particular race or creed, will still be in force. If so, the Committee reiterates its previous request for information on the application of these provisions in practice and for statistical information on the number of schools applying race or creed as an admission requirement as well as the number of pupils enrolled in these schools. Please also provide information on the implementation of the reform of the educational system, in particular on the measures taken to ensure the equal access of boys and girls, men and women from all ethnic groups to education and vocational training and their results.***

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

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

## France

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)***

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

*... Non-discrimination and equality of opportunity and treatment. Legislative developments.* The Committee notes with interest the amendment of article 1 of the Constitution by an Act of 23 July 2008 and the adoption of Act No. 2008-496 of 27 May 2008 issuing various provisions adapting the national legislation to community law in the field of combating discrimination, which implements and completes the transposition of five European Directives and amends the Labour Code, among other texts. Article 1 of the Constitution now explicitly provides that “the law shall promote the equal access of women and men to electoral mandates and elected functions, as well as to professional and social responsibilities”. Furthermore, following the adoption of Act No. 2008-496 of 27 May 2008, the Labour Code refers to the definition of direct and indirect discrimination in employment given in that Act (see below L.1132-1 and L.1134-1) and includes provisions specifying the conditions in which differences of treatment are possible without infringing the principle of the prohibition on discrimination (sections L.1133-2 and L.1142-2). The Act, which applies to all public or private persons, including those engaged in a self-employed activity, also provides that the instruction to discriminate constitutes discrimination and contains provisions on the protection of victims and the witnesses of discriminatory acts against any retaliatory measures, the burden of proof and moral or sexual harassment. ***Noting this information, the Committee requests the Government to provide information on the application of article 1 of the Constitution and the provisions of Act No. 2008-496 of 27 May 2008 in practice.***

*Discrimination on the basis of race and national extraction.* The Committee notes that in 2009, “origin” was the ground of discrimination referred to most often in complaints concerning employment received by the High Authority to Combat Discrimination and Promote Equality (HALDE) and that a high percentage of the deliberations of this body also concern this ground. It also notes that, according to a report published in November 2010 by the National Institute of Statistics and Economic Studies entitled “France – Social portrait 2010”, during the period between 2005 and 2008, on average 86 per cent of French men aged between 16 and 65 years and 74 per cent of women had a job when both of their parents were of French birth, whereas the employment rate was 65 per cent among men and 56 per cent among women where at least one of their parents was an immigrant originally from a Maghreb country. The study emphasizes that these disparities are not entirely due to discrimination, but recalls that recent surveys have shown the existence of discrimination on the basis of “origin” during recruitment.

The Committee notes the information provided by the Government concerning awareness raising and the training of public and private actors on the prevention of discrimination, particularly in the public employment service, temporary employment agencies, consular chambers managing training, enterprises which have signed partnerships and trade union organizations. In its report, the Government also mentions preventive activities carried out by the commissions for the promotion of equal opportunities and citizenship at the departmental level and mentions the existence of town contracts which include measures to combat racial discrimination. The Committee notes the Government's indication that ownership by local actors of measures to combat discrimination still needs to be broadly established. With regard to measures to combat discrimination in recruitment faced by young persons with immigrant parents, the Government indicates that activities have been carried out focusing on three areas: measures to support young persons in their search for employment, particularly through sponsorship, support for the creation of enterprises or skills development; raising the awareness of enterprises of the need to diversify their recruitment; and combating professional down-grading by seeking a better match between qualifications and employment levels for higher education graduates.

Emphasizing the particularly important role of workers' and employers' organizations in promoting equality in employment and occupation, the Committee notes that the Inter-Occupational Agreement on Diversity in Enterprises, which was signed in 2006 by the social partners and made obligatory in 2008, provides for the implementation of action focusing on the commitment of managers of enterprises, awareness raising and combating stereotypes. The Committee also notes that in May 2009, an action programme and recommendations on diversity and equal opportunities were drawn up by the Commissioner for Diversity and Equal Opportunities and that it contains a list of measures to be taken to promote equal opportunities in education and employment. Finally, it notes from the concluding observations of the United Nations Committee on the Elimination of Racial Discrimination (CERD) that France is drawing up a national plan to combat racism (CERD/C/FRA/CO/17-19, 27 August 2010, paragraph 9). **The Committee hopes that the national plan to combat racism will include a section on employment and occupation, including education and vocational training, developed in collaboration with employers' and workers' organizations, and asks the Government to provide information in this regard.**

The Committee also notes the report of the United Nations independent expert on minority issues following her visit to France in September 2007. Noting that members of minority communities are confronted with serious racial discrimination, she issued a number of recommendations, such as the need to establish more severe penalties so that they are sufficiently dissuasive in cases of discriminatory practices and the importance of putting in place robust affirmative action policies to counter the effects of long-term discrimination (A/HRC/7/23/Add.2, 4 March 2008, paragraphs 78 and 79). Furthermore, the CERD noted with regret in its concluding observations that "notwithstanding recent policies to combat racial discrimination in housing and employment, persons of immigrant origin or from ethnic groups ... continue to be the target of stereotyping and discrimination of all kinds, which impede the integration and advancement at all levels of French society" (CERD/C/FRA/CO/17-19, 27 August 2010, paragraph 13).

**Noting this information and the numerous measures and schemes established at both the national and local levels to combat discrimination on the basis of race, national extraction or ethnic origin, the Committee expresses concern at the fact that these measures do not appear to be producing sufficient results and requests the Government to strengthen its action to combat effectively discrimination on the basis of race or national extraction and to actively promote equality in employment and occupation. The Committee requests the Government to provide statistics allowing the Committee to assess the impact of the measures to promote equal opportunities and treatment in employment, including in education and vocational training, irrespective of race or national extraction. The Government is also requested to provide information on the following points:**

- (i) **any measures taken to promote tolerance and respect among all members of the population and to combat the persistent stereotypes and prejudices suffered by persons from an immigrant background or members of ethnic groups, including in the overseas departments and regions;**
- (ii) **the follow-up to the action programme and recommendations of the Commissioner for Diversity and Equal Opportunities in Employment and Occupation;**
- (iii) **the measures taken to combat discrimination on the basis of race, national extraction and ethnic origin in employment in the context of the future national plan to combat racism; and**
- (iv) **the action taken by the social partners to implement the Inter-Occupational Agreement on Diversity in Enterprises made obligatory in 2008 and to promote collective bargaining on this issue.**

**Promotion of equality of opportunity and treatment in the public service.** The Committee notes that a Charter for the promotion of equality in the three branches of the public service was signed in December 2008 by the Minister responsible for the public service and the President of HALDE. The aim of the Charter is to establish recruitment conditions that are tailored to needs without discrimination, make career paths more dynamic, raise the awareness of and train employees of the administration and disseminate good practices. The Committee notes that the first assessment of the implementation of the Charter, given in the annual report on the state of the public service (Policies and practices 2009–10), shows progress in the mobilization of Ministries and the start of social dialogue, the opening up of the public service following the establishment of various integrated preparatory classes (CPI) and the development of mentoring mechanisms, and several good practices to encourage professional development. The assessment also shows a poorer mobilization with regard to human resources management and access to training, as well as weaknesses relating to the establishment of diagnostic assessments on existing inequalities and alert mechanisms. The Committee notes that, according to the recommendations made by HALDE on this matter, there is a need to continue and intensify the efforts made, particularly with regard to training and informing staff to help them to identify potentially discriminatory situations and for the identification of sources of discrimination, the necessary procedures to verify the objectiveness of decisions, support for the victims of discrimination and overall follow-up of the measures taken. The Government also indicates that it has implemented a system of allowances for diversity aimed at persons preparing for a competitive entrance examination (categories A and B) and a scheme ("the Pact") providing poorly qualified young persons with alternative training with a view to obtaining employment in category C. The Committee also notes that, in its report, the United Nations independent expert on minority issues considers that the public sector must lead by example in promoting and ensuring equality and that the Government should undertake more aggressive strategies to increase the number of people with immigrant background in the public service, particularly the police, civil service and the judiciary, and that these efforts should be evaluated on the basis of results or outcomes (A/HRC/7/23/Add.2, 4 March 2008, paragraph 86). **Noting the efforts made not only to combat discrimination in the public service, but also to promote equal opportunities and treatment, the Committee requests the Government to provide information on the implementation of these measures and schemes, including the Charter of 2008, as well as of any action plan adopted to promote equality in employment and occupation, the obstacles encountered and the evaluation of the overall results of these measures, including appropriate statistics, on access by all to the public service without discrimination on the basis of any of the grounds prohibited by the national legislation and the Convention.**

Furthermore, the Committee notes the comments communicated in May 2010 by the National Union of Scientific Researchers and the National Autonomous Union of Sciences concerning the career reorientation programme following a restructuring established under Act No. 2009-972 of 3 August 2009 on mobility and career paths in the public service. The trade union organizations emphasize the potentially discriminatory nature of the programme which would allow changes of jobs and even of employer within the public service without competitive entrance examinations. **Noting the Government's reply received in November 2010, according to which the career reorientation programme is based on ongoing dialogue between the administration and the employee concerned, the Committee requests it to ensure that the implementation of this programme in the event of a restructuring of the public service does not give rise to discriminatory practices prohibited by the legislation and the Convention.**

*Discrimination on the basis of religion.* In its previous comments, the Committee urged the Government to provide information on the application of Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 concerning the prohibition of wearing in public schools any conspicuous religious signs or apparel on pain of disciplinary measures including expulsion. ***In the absence of a reply from the Government on this point, the Committee is bound to repeat its request to provide information on the following points:***

- (i) *any court ruling or administrative decision concerning the application of the above legislation;*
- (ii) *the numbers of boys and girls who have been expelled from school on the basis of the Act; and*
- (iii) *the measures taken to ensure that the pupils who have been expelled nonetheless have adequate opportunities to acquire education and training.*

*The Committee also requests the Government to ensure that the application of this Act does not have the effect of reducing the opportunities of girls to find employment in the future.*

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

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

## Gambia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2000)***

*Article 1(1)(a) of the Convention. Discrimination in employment and occupation. Legislation.* The Committee recalls its previous comments in which it pointed out that the provisions of the Constitution regarding discrimination did not include any reference to the prohibition of direct and indirect discrimination in employment and occupation and only concerned discriminatory treatment by public officials (section 33(3)). The Committee had also noted that the Labour Act 2007 neither defines nor prohibits discrimination in employment and occupation on the basis of any of the grounds enumerated in the Convention, except in the case of dismissal and disciplinary action (section 83(2)). The Committee notes that the Government provides no response to its request regarding the need to amend the legislation. The Committee recalls once again that, although general constitutional provisions regarding non-discrimination are important, they are generally not sufficient to address specific cases of discrimination in employment and occupation, and comprehensive anti-discrimination legislation is generally needed to ensure the effective application of the Convention, based on at least all the grounds of discrimination listed in *Article 1(1)(a)* and in all areas of employment and occupation. ***The Committee asks the Government to take steps in order to include legislative protection against direct and indirect discrimination at all stages of employment and occupation based on, as a minimum, all of the grounds enumerated in the Convention, namely, race, colour, sex, religion, political opinion, national extraction and social origin. The Committee also asks the Government to include in legislation provisions establishing dissuasive sanctions and appropriate remedies in cases of discrimination. Please provide specific information on progress made in this regard.***

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

## Georgia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)***

*Articles 1 and 2 of the Convention. Legislation.* The Committee has for a number of years been raising concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that while the Labour Code of 2006 in section 2(3) contains a general prohibition of discrimination in labour relations, and article 14 of the Constitution provides broadly for equality before the law, neither refers specifically to the principle of the Convention. The Committee notes that the Government refers to the adoption on 26 March 2010 of the Law on Gender Equality, providing a broad legal framework for gender equality, including prohibiting direct and indirect discrimination in labour relations (section 6). However, the Committee notes with ***regret*** that, once again, the Government did not take the opportunity to include a specific provision giving full expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that while general non-discrimination and equality provisions are important, they will not normally be sufficient to give effect to the Convention, as they do not capture the key concept of “work of equal value”. This concept encompasses work that is of an entirely different nature but is nevertheless of equal value. The Committee notes that legal provisions that do not give expression to the concept of “work of equal value” hinder progress in eradicating gender-based pay discrimination. The Committee also notes that pursuant to section 12 of the Law on Gender Equality, the Council for Gender Equality is established, which is mandated to analyse legislation and draft proposals for overcoming gender inequalities. ***The Committee urges the Government to take concrete steps in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring full and effective implementation of the Convention. The Committee asks the Government to provide information in this regard, including any proposals made by the Council for Gender Equality.***

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

## **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)**

*Legislative developments.* The Committee notes with *interest* the adoption of the Law on Gender Equality on 26 March 2010, which promotes equality between women and men in a range of areas namely: employment; general, vocational and higher education; health care; social protection; family relations; access to information; and in the political sphere. Section 6 expressly prohibits both direct and indirect discrimination in employment, with a specific prohibition of sexual harassment. The Committee also notes that section 7 of the Law guarantees equal access to general, vocational and higher education, and obliges the State to ensure equal conditions in receiving general, vocational or higher education by women and men in all educational institutions “including participation in the implementation of educational and scientific processes”. **The Committee asks the Government to provide information on the practical application of the Law on Gender Equality with respect to non-discrimination and equality between men and women in employment and occupation. The Committee also asks the Government to provide information on any cases dealt with by the courts or administrative bodies regarding the application of the Law on Gender Equality. Please also provide information on any measures taken to prevent and address sexual harassment in employment and occupation in practice.**

*Articles 1, 2 and 3 of the Convention. Prohibition of discrimination.* The Committee had previously noted section 2(3) of the Labour Code, which prohibits discrimination “in employment relations”, and asked the Government to indicate whether the provision covered direct and indirect discrimination, and discrimination at the stage of recruitment and selection. The Committee notes the Government’s statement that section 2(3) of the Labour Code, prohibits both direct and indirect discrimination. The Committee also notes that the Government again states that the Georgian legislation protects the population from any kind of discrimination, referring to article 14 of the Constitution, sections 2(3) and (4) of the Labour Code, section 142 of the Penal Code, and non-discrimination provisions contained in a number of other laws. With respect to discrimination at the stage of recruitment and selection, the Committee notes the Government’s statement that the Georgian legislation does not need to be amended since, according to the Government, the Labour Code ensures adequate protection against any kind of discrimination in labour relations including recruitment and selection processes. The Committee further notes that the Government has no information concerning cases lodged before the court under the Labour Code. **Noting that the Government again states that the legislation is intended to cover both direct and indirect discrimination in employment and occupation, including discrimination in respect of recruitment and selection, the Committee asks the Government to consider taking steps to clarify the existing non-discrimination provisions of the Labour Code by including a specific definition and prohibition of direct and indirect discrimination at all stages of employment and occupation, including the recruitment and selection stage, and to provide information in this regard. The Committee also asks the Government to take steps to raise the awareness of the judiciary, labour inspectors and other public officials, as well as the public in general regarding the prohibition of direct and indirect discrimination in employment and occupation, and to provide information on any relevant cases addressing discrimination.**

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

## **Ghana**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)**

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

*Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee had asked the Government to provide information on the progress made with a view to amending section 68 of the Labour Act 2003, which provides only for equal pay for equal work, so as to ensure full conformity with the principle of equal remuneration for work of equal value set out in the Convention. Section 10(b) of the Labour Act is expressed in the same terms. The Committee notes from the Government’s report that due to a change of government, the Committee’s comments in this respect are still being examined by the new Minister responsible for Labour. **With reference to its previous comments and recalling its 2006 general observation on the principle of equal remuneration for work of equal value, the Committee trusts that the Government will take the necessary measures in the near future with a view to amending sections 10(b) and 68 of the Labour Act 2003 in order to give full legislative expression to the principle of the Convention.**

*Remuneration in the public sector.* The Committee notes that the job evaluation exercise undertaken to determine the value of all public sector jobs, one of the objectives of which is to ensure that jobs within the same job value range are paid within the same pay range, was completed in April 2009. As a result, a single spine pay structure was adopted. The Committee also notes that the ultimate goal for the National Job Analysis and Evaluation Exercise, as set out in the briefing notes on the public sector pay policy attached to the Government’s report, “was to enable government to reward its employees in accordance with the principle of “equal pay for equal worth” consistent with article 24(1) of the 1992 Constitution of Ghana and section 10(b) of the Labour Act”. Both the Constitution and the Labour Act refer however to “equal pay for equal work”. The evaluation has been made on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort) which were subdivided into 13 sub-factors and it has used the point factor method. The Committee notes that during the consultative workshop held in May 2009 on the single spine pay policy, the Ministry of Employment and Social Affairs and the Ghana Trade Union Congress agreed that the policy should be implemented, as of 1 January 2010, while efforts are being made to address concerns and challenges that may arise from its implementation. It also notes that the unions and associations were to submit outstanding issues or concerns to the Fair Wages and Salaries Commission. **The Committee asks the Government to ensure that the principle of equal remuneration for men and women for work of equal value will be duly taken into account and recognized as an explicit objective in the implementation of the public sector pay policy. It also asks the Government to**

*provide information on the implementation process of this policy, including on the issues dealt with by the Fair Wages and Salaries Commission and the steps taken by this Commission to ensure full application of the principle of the Convention in the public service. The Government is requested to provide a copy of the single spine pay policy and of the single spine pay structure adopted.*

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

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

## Greece

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

The Committee notes the observations made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply to the GSEE's first communication, received on 16 May 2011. The Committee also notes the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece, including the *Equal Remuneration Convention, 1951 (No. 100)*. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the Mission in its understanding of the situation [*Provisional Record* No. 18, Part II, pages 68–72]. The Committee takes note of the report of the high-level mission which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* The Committee recalls that in its 2010 observations the GSEE had expressed the view that the measures implemented in the framework of the structural reforms had an impact on the application of the Convention as they entail a far-reaching reform in the area of wages and the related system of collective bargaining, social security and security of employment, which could result in increasing discrimination in pay. The GSEE was also concerned that the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures adversely affected the negotiating power of women, and would lead to their over-representation in precarious low-paid jobs. The GSEE further drew attention to the possible deterioration of wages of domestic workers and workers in agricultural undertakings, excluded from the scope of the labour law protection. The Committee notes that in its 2011 communication the GSEE expresses concerns that following new legislative reforms the minimum protection level of some workers is being significantly weakened while the risk of abusive practices against them has increased, particularly for working women, and workers, men and women, in flexible forms of employment, as well as those workers not protected by the labour law, including domestic workers.

The Committee notes the detailed information provided by the Government to the high-level mission on the range of legislative measures taken in the framework of the support mechanism since May 2011, notably Act No 3845 of 6 May 2010, Act No. 3846 of 11 May 2010, Act No. 3863 of 8 July 2010, Act No. 3899 of 17 December 2010, Act No. 3986 of 1 July 2011 and Act No. 3996 of 5 August 2011. It also notes the Act No. 3833 of 15 March 2010 on the "Protection of the national economy – Emergency measures to tackle the crisis", adopted prior to the establishment of the support mechanism, and that on 27 October 2011, Parliament adopted Act No. 4024 of 27 October 2011 "Provisions concerning pensions, the common pay-scale and grading system [in the public sector], the labour reserve and other provisions for the implementation of the mid-term fiscal strategy 2012–15". With respect to the effects of the abovementioned measures on equality of opportunity and treatment of men and women in the labour market in general, the Committee refers to its comments on the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*.

*Impact on the gender pay gap in the public sector.* The Committee notes that the abovementioned measures taken in the framework of the support mechanism subsequently introduced substantial wage reductions in the wider public sector, froze new recruitment in the core public sector and reduced recruitment on the basis of private law contracts and external collaboration contracts. It notes the information in the report of the high-level mission that Act No. 3986/2011 and Act No. 4024 of 27 October 2011 introduce and further define the system of "labour reserve" in the core and wider public sector, and that pursuant to Act No. 4024/2011 the "labour reserve" is a form of retrenchment and concerns those employees who work in the public sector under private law contracts without limit of time, as well as those employees in public entities that had been affected by Act No. 4002 of 22 August, 2011 abolishing and merging a number of public entities. Employees placed in the labour reserve receive 60 per cent of the base salary for one year. The Committee notes from the information received during the high-level mission that in the public sector, wages have been reduced through legislative measures by at least 20 per cent, while taxation and social security contributions have increased. Pensions are also being reduced. The Committee also notes that according to information received from the Office of the Ombudsman during the high-level mission, of the 770,000 employees in the wider public sector registered in a recent census, the vast majority were women and that the measure of the labour reserve was likely to have an impact on female unemployment. The Committee further notes from the report of the high-level mission that Act No. 4024 of 27 October 2011 also

introduced a new public service statute, a new job classification and a new harmonized wage scale resulting in wage cuts of up to 50 per cent in certain cases. *With a view to assessing the impact of the measures taken in the framework of the support mechanism on the application of the Convention in the public sector, the Committee asks the Government to provide full information, disaggregated by sex, on the distribution of men and women in the various occupations of the core and the wider public sector and the corresponding levels of remuneration, allowing an assessment of the evolution of the gender pay gap since 2009, as well as statistics of the number of male and female employees who have respectively been dismissed or who have been put in the “labour reserve”. The Committee also asks the Government to provide information on the new public service statute, new job classification and wage scales and on the specific method that has been used for the evaluation of the different jobs with a view to ensuring the application of the principle of the Convention. Please collect and provide information on the distribution of female and male employees in the new job classification and wage scales of the public service.*

*Gender pay gap in the private sector.* The Committee notes that Act No. 3846 of 11 May 2010 on “financial management and responsibility” institutionalized a range of flexible forms of employment including telework, part-time work, subcontracting by temporary employment agencies, rotation work, suspension of work, etc., while providing certain safeguards. The Committee notes from the high-level mission report that wages are reportedly reduced significantly through the replacement of fixed term employment contracts paid at the full rate, by part time, rotation and other flexible forms of employment with lower pay. According to unpublished data collected and provided by the labour inspectorate during the high-level mission, for the period January–September 2011, part-time work had increased by 5 per cent and rotation had increased by 12 per cent; rotation work introduced in agreement with the parties had increased by 430 per cent, while rotation work introduced unilaterally by the employer had increased 1,192.39 per cent in relation to 2010. On average, wage reductions in the private sector due to the introduction of various forms of flexible employment are, according to the labour inspectorate, approximately 30 per cent. The Committee notes from information by the Office of the Ombudsman received during the high-level mission, that women have been identified as the ones most often offered flexible forms of employment, notably part-time or rotation employment – which reduced wages. After the adoption of Act No. 3846/2010, part-time work had grown exponentially and in many cases, flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced. Especially working mothers returning from maternity leave have been offered part-time and rotation work, reducing their levels of pay. While full statistical and sex-disaggregated data still have to be provided on the use of part-time work, rotation work or flexible forms of employment, the Committee is nevertheless concerned at the reportedly disproportionate impact of the legislative measures regarding flexible forms of employment on women’s levels of pay. *The Committee asks the Government to take the necessary measures to monitor the evolution and impact of the austerity measures on the remuneration of men and women in the private sector with a view to determining the most appropriate measures to avoid a widening of the gender pay gap and address existing wage differentials between men and women. To this end, the Committee also asks the Government to collect and provide comprehensive information on the following:*

- (i) *statistics disaggregated by sex, showing an evolution of the levels of remuneration of men and women in full-time and part-time employment, in the various economic sectors, industries and occupations, with an indication of the economic sectors and industries most affected;*
- (ii) *the number of men and women, in particular working mothers returning from maternity leave, who have suffered from pay reductions due to a change in their working arrangements (forms of employment, i.e. part-time work, suspension of work, rotation work or subcontracting by temporary employment agencies) with an indication of the number of workers upon whom the employer has unilaterally imposed the conversion of employment with full pay to rotation work or part-time work with lower pay; and*
- (iii) *information, disaggregated by sex, showing an evolution of the wage levels of domestic workers and workers in agricultural undertakings.*

*Articles 2(2)(c) and 4. Collective agreements and cooperation with social partners.* The Committee recalls the Government’s previous indication that it was promoting social dialogue and collective bargaining as a means of improving the remuneration in occupations and sectors predominantly employing women. The Committee notes that according to the GSEE the national general collective agreements had provided a fundamental institutional guarantee of equality between men and women as regards minimum standards of wages and conditions of work, and contributed significantly to restraining the gender pay gap in Greece. The Committee notes that the high-level mission took note of the important link between collective bargaining and wages and noted that the basic reference wage in Greece is based on the national general collective agreement in force. The Committee also notes that the high-level mission received information that sectoral agreements used to have provisions aimed at promoting equal pay for work of equal value. *Recalling that collective agreements have been a principal source of determining rates of remuneration, the Committee refers to its comments on Convention No. 98 and calls upon the Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex.*

*Developments on equal pay legislation and enforcement.* The Committee notes the Government’s indication that Act No. 3896/2010 transposing Directive 2006/54/EC of the European Parliament and the Council (Recast Directive)

replaces the previous legislation regarding equality (Act No. 3488/2006 and Act No. 1414/1984) and enhances the principle of equal remuneration for men and women. The Committee recalls the need for effective enforcement of the legislation applying the Convention. The Committee notes that Act No. 3896/2010 strengthens the competencies of the Greek Office of the Ombudsman (Gender Equality Department) to address gender equality, including equal pay, and to collaborate with the labour inspectorate, including during mediation, joint inspections and provision of advice. The Committee notes from the Special Report of the Office of the Ombudsman on equal treatment of men and women in employment and labour relations (November 2009) that 25.99 per cent of the cases regarding unfair treatment related to pay. The Committee notes from the high-level mission report that the labour inspectorate is entrusted with supervision of the legislation on equality between men and women (section 2(2)(g) of Act No. 3996/2011), but does not appear to have the ability to address effectively equality cases. The Committee refers in this regard to the comments made on the *Labour Inspection Convention, 1947 (No. 81)* and recalls the importance of adequate training programmes for labour inspectors to increase their capacity to prevent, detect and remedy instances of wage inequalities between men and women. ***The Committee asks the Government to indicate on how it is working with the Office of the Ombudsman to monitor and ensure the application of the Convention, and the results achieved, and to collect and provide information on the number and nature of cases regarding pay discrimination between men and women handled by the Office of the Ombudsman, as well as information on instances of wage inequalities between men and women detected and remedied by the labour inspectorate and cases handled by the courts.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1984)***

The Committee notes the observations made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply to the GSEE's first communication, received 16 May 2011. The Committee also notes the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece, including the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the Mission in its understanding of the situation [*Provisional Record No. 18, Part II, pages 68–72*]. The Committee takes note of the report of the high-level mission which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* Further to its observations on the *Equal Remuneration Convention, 1951 (No. 100)*, the Committee recalls that in its 2010 communication the GSEE had expressed the view that the reforms introduced by the measures taken in the framework of the support mechanism have a direct impact on the application of Convention No. 111 and are likely to lead to an increase in multiple discrimination on the grounds of gender, ethnic or racial origin, age, family responsibilities or disability. The Committee notes that in its 2011 communication the GSEE expresses concerns that following new legislative reforms the minimum protection level of some workers is being significantly weakened while the risk of abusive practices against them has increased particularly for working women and workers with family responsibilities, workers in flexible forms of employment, and workers not protected by labour law, including domestic workers and workers in agricultural undertakings. The Committee refers to its comments on Convention No. 100 regarding detailed information noted by the high-level mission on the range of legislative measures taken prior to and in the framework of the support mechanism since March 2010.

*Articles 2 and 3 of the Convention. Equality between men women in the public sector.* The Committee notes that the abovementioned measures have a major impact on employment in the wider public sector, froze new recruitment in the core public sector and reduced recruitment on the basis of private law contracts and external collaboration contracts. The Committee notes that according to the information received from the Office of the Ombudsman during the high-level mission, of the 770,000 employees in the wider public sector registered in a recent census, the vast majority were women. The high-level mission also noted that the Government has announced the dismissal of 30,000 public employees and that this measure was likely to have a high impact on female unemployment. Regarding Act No. 3986 of 1 July 2011 and Act No. 4024 of 27 October 2011 introducing and further defining the system of "labour reserve" as a form of retrenchment in the core and wider public sector, the Committee refers to its comments on Convention No. 100 and notes that this measure is also likely to have an impact on female unemployment, in particular public sector employees with family responsibilities. The Committee further notes that from the report of the high-level mission, that Act No. 4024 of 27 October 2011 introduced a new public service statute and a new job classification. ***Recalling that pursuant to Article 3(d) of the Convention the Government is required to implement equality of opportunity and treatment between men and women in respect of employment under the direction of a national authority, the Committee asks the Government to take the necessary measures, in cooperation with the social partners and the Office of the Ombudsman,***

*to monitor closely the impact of the measures taken in the framework of the support mechanism on male and female employment in the public sector, so as to address any direct or indirect discrimination based on sex. To this end, the Committee also asks the Government to provide information, disaggregated by sex, on employment in the various occupations of the core and wider public sector, with an indication of the number of male and female workers that have been placed in the labour reserve, the number of dismissals, and the sectors most affected. The Committee also asks the Government to provide further details on the new public service statute.*

*Equality between men and women in the private sector.* The Committee recalls that Act No. 3846 of 11 May 2010 on “financial management and responsibility” institutionalizes a range of flexible forms of employment while providing certain safeguards. The Committee refers to its comments on Convention No. 100 in which it already noted the exponential growth of part-time work and the significant increase in rotation work after Act No. 3846/2010, especially the dramatic increase of the number of full-time contracts of employment that have been unilaterally converted by the employer into rotation contracts. The number of cases of workers already in a job having their working arrangements changed had increased by 110 per cent. The Committee notes from information provided by the Office of the Ombudsman during the high-level mission that women, especially pregnant women and mothers, were very much affected by the recent legislative measures introduced in order to increase flexibility in the labour market, especially measures enabling employers to unilaterally convert full-time contracts into contracts for reduced-term rotation work. The law provided for consultations with the workers but this did not appear to have taken place in practice. The Committee also refers in this regard to its comments on the *Workers with Family Responsibilities Convention, 1981 (No. 156)*. The Office of the Ombudsman had also observed, since May 2008, a constant and dramatic increase of complaints concerning unfair dismissals due to pregnancy or maternity leave and sexual harassment. The Committee further notes from the report of the high-level mission and that on 9 November 2011 overall unemployment was at 16.7 per cent, with 20.3 per cent female unemployment and 42.9 per cent youth unemployment (Eurostat data). However, according to the information received from the Office of the Ombudsman during the high-level mission a large part of women had joined the ranks of the «discouraged» workers who are not accounted for in the statistics. Small and medium-sized enterprises (SMEs), which constituted an important source of female and youth employment, had been closing down on a massive scale. ***The Committee asks the Government to take the necessary measures, in cooperation with the social partners and the Office of the Ombudsman, to monitor the evolution and impact of the austerity measures on equality of opportunity and treatment in private sector employment with a view to determining the most appropriate measures to address any direct or indirect discrimination based on sex with respect to access to employment and occupation, terms and conditions of work, and security of employment. To this end, the Committee asks the Government to provide information on the following:***

- (i) statistical data, disaggregated by sex, on the number of workers employed in full-time and part-time employment and on the number of workers who have had their working arrangements changed (into part-time work, rotation work, etc.). Please indicate in this regard the number of workers whose full-time contracts have been unilaterally converted by the employer into contracts for reduced-term rotation work;***
- (ii) statistical data, disaggregated by sex, showing an evolution of employment, in the various economic sectors, industries and occupations, with an indication of the economic sectors and industries most affected.***

*Impact of the measures with respect to other grounds.* The Committee recalls Act No. 3304/2005 on the “Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation”, protecting against discrimination on these grounds in employment and occupation. The Committee also previously noted the Integrated Action Plan for the social integration of vulnerable groups (Roma and Greek Muslims), and the Integrated Action Plan for the integration of third-country nationals legally residing in the Hellenic territory (2007–13). ***The Committee hopes, however, that the Government will make every effort to ensure that the action taken and progress achieved to promote equality of opportunity and treatment of certain religious or ethnic minorities such as Roma and Greek Muslims as well as migrant workers, will not be adversely affected, and asks the Government to monitor carefully the impact of the austerity measures on the employment situation of ethnic and religious minorities as well as migrant workers who are particularly vulnerable to the impact of the economic crisis, and to indicate the specific measures taken in this regard. Please also provide information on the specific measures taken or envisaged, including those in cooperation with the social partners and the Office of the Ombudsman, to address discrimination against certain minorities, including Roma and Greek Muslims, as well as migrant workers, on the grounds of the Convention.***

*Enforcement.* The Committee recalls the need for effective enforcement of the legislation applying the Convention. The Committee notes from the information provided by the Government that with respect to gender equality, Act No. 3896/2010 replaces the previous legislation (Act No. 3488/2006 and Act No. 1414/1984) and establishes a new regulatory framework regarding equality of opportunity and treatment between men and women in employment and occupation. The Committee welcomes that the mandate of the Office of the Ombudsman (Gender Equality Department) to monitor and address gender discrimination in the public and private sector has been strengthened, including the collaboration with the labour inspectorate and social partners. The Office of the Ombudsman also has the mandate to continue its mediation efforts on complaints related to gender discrimination cases which are pending before the courts. The Committee notes, however, from the information received during the high-level mission that while the labour

inspectorate is entrusted with the supervision of the legislation on equality between men and women (section 2(2)(g) of Act No. 3996) the disproportionate impact of the crisis on women is reportedly exacerbated by the inability of the labour inspectorate to effectively address equality cases; delays in the administration of justice also discourage workers from having recourse to the courts. With respect to Act No. 3304/2005, the Committee recalls that the Office of the Ombudsman examines complaints for alleged violations of the principle of equal treatment by public services, while the labour inspectorate monitors the implementation of the Act in the fields of occupation and employment, with respect to cases other than those falling within the competence of the Office of the Ombudsman. The Committee refers to its comments on the *Labour Inspection Convention, 1947 (No. 81)* noting that the labour inspectorate appears to be primarily focused on detecting undeclared work (social security contribution collection), while more priority should be given to non-discrimination. ***The Committee asks the Government to provide data on the progress made as well as the obstacles encountered in monitoring and enforcing effectively the application of the national non-discrimination and equality legislation. The Committee also asks the Government to provide information on the specific activities of the Office of the Ombudsman, including those in collaboration with the labour inspectorate and the social partners, to promote and ensure the application of the Convention. The Committee also asks the Government to provide detailed statistics on the nature and number of violations of the national non-discrimination and equality legislation detected by the labour inspectorate based on the grounds of the Convention, as well as complaints handled by the Office of the Ombudsman and the courts. Noting that the Office of the Ombudsman is to publish data on the impact of the crisis in its 2011 report to be issued in January 2012, the Committee asks the Government to provide a copy of the report which it hopes will contain full information on the impact on discrimination and equality in employment and occupation and on obstacles encountered in effectively enforcing the legislation and the principles of the Convention.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1988)**

The Committee notes the observations made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply to the GSEE's first communication, received on 16 May 2011. The Committee also takes note of the discussion that took place in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission (HLM) proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece, including the *Workers with Family Responsibilities Convention, 1981 (No. 156)*. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the Mission in its understanding of the situation [*Provisional Record* No. 18, Part II, pages 68–72]. The Committee notes the report of the HLM which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Conference Committee.

*Impact of the measures on the application of the Convention.* The Committee notes that the majority of measures in the framework of structural reforms that impact on gender equality, including workers with family responsibilities, have been addressed under the *Equal Remuneration Convention, 1951 (No. 100)*, and the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, and it refers to its comments on these Conventions for a more detailed analysis. The Committee notes that in its 2010 communication the GSEE expressed general concern at the effect of the austerity measures on the situation of workers with family responsibilities, including increasing the burden of family responsibilities on women due to gender stereotypes and as a result of uneven sharing between men and women of child and family care responsibilities. The Committee notes that in its 2011 communication GSEE expresses further concerns that the risk of abusive practices against workers with family responsibilities may have increased. The Committee refers to its comments on Convention No. 100 regarding the detailed information noted by the high-level mission on the range of legislative measures taken prior to and within the framework of the support mechanism since March 2010.

*Articles 4 and 5 of the Convention. Needs with regard to terms and conditions of employment, childcare and family care services.* The Committee recalls that the national general collective agreement and certain sectoral agreements contained provisions aimed at safeguarding the rights of workers with family responsibilities, which could be undermined due to the impact of the measures taken in the framework of the support mechanism on industrial relations and collective bargaining. With respect to collective bargaining the Committee refers to its comments on Convention No. 98 and recalls that the GSEE expressed concern that in undermining sectoral agreements, such provisions would also be affected. The Committee recalls the importance of measures taken to promote social dialogue and tripartite cooperation in order to strengthen the laws, measures and policies giving effect to the Convention. With respect to Act No. 3863/2010 on the "New social security system and relevant provisions", the Committee notes that the GSEE expressed concern that the drastic increase in the retirement age of women could adversely impact on working mothers of minors, especially in the light of inadequate and inefficient public social care support for mothers and working parents. While welcoming, generally, measures to equalize the retirement ages for men and women, the Committee recalls the importance of

measures aimed at providing adequate, affordable and accessible childcare and family care services, as means to assist male and female workers to reconcile work and family responsibilities and to remain in the labour market. **The Committee requests the Government to provide information on the measures taken and the results achieved in providing sufficient, accessible and affordable childcare services and facilities, including for children up to three years of age, for working parents, both men and women, and parents wishing to enter or re-enter the labour force, as well as statistical information on the number of existing childcare facilities (private and public) and their capacity.**

*Articles 6, 7 and 8. Measures to enable re-entry and remaining in the labour market, educational programmes, and termination of employment.* The Committee notes that of Act No. 3896/2010 (section 20) and Act No. 3996/2011 provide specific protection against unfair dismissals and extend to 18 months the period of time during which working mothers cannot be dismissed after their return from maternity leave. Despite these protective provisions, the Committee notes from the information provided by the Office of the Ombudsman during the high-level mission that working mothers returning from maternity leave have in particular been offered part-time and rotation work. Mothers returning from maternity leave were asked to work one day per week whereas the other workers continued regular work (or worked more days in the week). The Committee also notes, however, that according to the Office of the Ombudsman, it was very difficult to find in favour of the employee in a dispute on this matter because it was virtually impossible to verify whether the decision was based on a true decrease in economic activity. Low skilled female workers were the most affected by this situation. The Committee recalls that *Article 7* of the Convention provides for the adoption of measures to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities. The Committee emphasizes that promoting the reconciliation of work and family responsibilities as a matter of concern to men and women is crucial for making progress in achieving effective gender equality, as envisaged in *Article 6* of the Convention. It also draws the attention of the Government to the importance of addressing gender stereotypes regarding roles of men and women with respect to family responsibilities, so that working mothers are not automatically considered for rotation work and part-time work. **The Committee, therefore, calls upon the Government to make every effort to ensure that the progress achieved by previous action taken to address the needs of workers with family responsibilities in respect of access to free choice of employment, vocational training, terms and conditions of work and social security, as well as childcare and family services, will not be reversed. The Committee encourages the Government to intensify its efforts to promote a broader understanding of the principle of gender equality and awareness of the rights and needs of workers with family responsibilities, and to address gender stereotypes regarding the role of men and women with respect to family responsibilities. The Committee also asks the Government to monitor carefully the impact of the austerity measures on the employment situation of both male and female workers with family responsibilities and provide information, disaggregated by sex on the number of workers with family responsibilities affected by rotation employment and part-time work, including working mothers returning from maternity leave, whose contracts have been converted into part-time contracts and on whom the employer has unilaterally imposed rotation employment or part-time work. The Committee asks the Government to collect and provide information on cases of direct or indirect discrimination, including termination of employment, concerning family responsibilities that have been handled by the Office of the Ombudsman, the labour inspectorate services and the courts.**

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Grenada

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)**

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

*Discriminatory Minimum Wage Order.* The Committee previously raised concerns regarding the discriminatory nature of the Minimum Wage Order SRO 11 (2002), which provides different wages for female and male agricultural workers. The Committee noted previously that the Grenada Employers' Federation and the Grenada Trade Union Council had agreed with the Committee's comments and that the Department of Labour had proposed an amendment to provide for the same wage rate for male and female agricultural workers. **The Committee regrets that the Government has not replied to the Committee's previous observation on this matter and, therefore, it must urge the Government to take steps, without further delay, to ensure that the Minimum Wage Order no longer provides different wages for male and female workers. The Committee also asks the Government to provide a copy of the revisions once they are adopted. Please also provide copies of any other minimum wage orders currently in force for the various trades, industries and occupations, as well as information on the criteria used for fixing the applicable minimum wages.**

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

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

## Guatemala

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1961)**

*Gender wage gap.* The Committee notes the statistics supplied by the Government, revealing that the wage for women is approximately 90 per cent of that of men. *Noting that these statistics show that the wage gap between men and women has increased from 6 per cent in 2009 to 10 per cent in 2011, the Committee asks the Government to provide information on the measures envisaged within the framework of the National Policy for the Advancement and Development of Women and the Equal Opportunity Plan (2008–23) and the Institutional Strategic Gender Plan to reduce the gender wage gap. The Committee asks the Government to continue providing up-to-date statistics on the rates of remuneration for men and women in the various sectors of activity, disaggregated by occupational category and job, to enable the Committee to evaluate the progress achieved.*

*Article 1 of the Convention. Equal remuneration for work of equal value. Legislation.* The Committee has been referring for a number of years to the importance of adopting measures to give legislative expression to the principle of equal remuneration for men and women for work of equal value. In this connection, the Committee notes the Government's statement that the Committee for the Analysis and Examination of the implementation of obligations arising from ILO Conventions has been set up, and is due to function until 31 December 2011. The Committee notes that the Government provides information on the training activities carried out by the Department for the Advancement of Women Workers, stating that the disseminated documents refer to the principle of equal remuneration for equal work performed with respect to equal conditions, efficiency and seniority. In this respect, the Committee refers to its 2006 general observation, indicating 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 principle of equal remuneration for equal work performed with respect to equal conditions, efficiency and seniority is more restrictive than the principle of the Convention. *The Committee therefore stresses the importance of reflecting fully the principle of the Convention and asks the Government to provide information on any progress made by the Committee for the Analysis and Examination of the implementation of obligations deriving from ILO Conventions with respect to the adoption of measures giving legislative expression to the principle of remuneration for work of equal value. The Committee encourages the Government to request technical assistance from the Office in this respect.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)**

*Discrimination on ground of pregnancy.* The Committee has for many years been referring to the discriminatory practice of requiring pregnancy testing and dismissing pregnant women, particularly in the *maquila* sector and the public administration. The Committee referred in particular to the hiring of workers under item 29 of the General Budget of Revenue and Expenditure which allowed the dismissal of pregnant women. The Committee notes that the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG), refers to this matter in its observations of 28 August 2009, which the Committee noted in its previous observation. The Committee notes in this connection the Government's statement that various protective measures and inspection procedures (Ministerial Decision No. 128-2009) have been adopted to verify and investigate reports of incidents of dismissals due to pregnancy or during the period of breastfeeding. The Government also sends statistical information on the number of reports of such dismissals and the action taken on them. It observes that the Government refers to numerous cases of failure by employers to comply with inspectors' decisions, and indicates that most cases were resolved through conciliation between the parties. *Given that discrimination based on pregnancy is a serious form of sex discrimination, the Committee urges the Government to continue to take specific measures, in consultation with the social partners, to secure effective protection for women against discrimination due to pregnancy in access to employment and retention of jobs, and against reprisals for reporting discrimination, including measures to raise awareness among judges, lawyers, labour inspectors and bodies responsible for enforcing the relevant provisions. The Committee also asks the Government to provide information on any cases alleging discrimination based on pregnancy and the results thereof, including any remedies provided or penalties imposed. It further requests the Government to provide information on the penalties imposed on employers for failure to comply with the decisions of labour inspectors in these cases and to send specific examples of such instances together with details of the outcome of conciliation proceedings arising from reports of such discrimination.*

*Discrimination on grounds of race and colour. Indigenous peoples.* The Committee notes the Government's statement that under the *Programa de Gratuidad* and the *Mi familia progresa* programme, scholarships have been granted which allow access to education for indigenous children living in poverty, as well as access to other social and health benefits. The Government also refers to the strengthening of bilingual education, deemed to be more effective than monolingual education, and an increase in the budget allocated to it. The Government also reports on the training and awareness-raising activities conducted by the Department for Indigenous Peoples. The Committee observes, however, that the Government provides no information on the specific measures adopted in the area of employment and occupation to reduce the disparity between indigenous and non-indigenous persons. *The Committee requests the Government to*

continue to adopt specific measures in education, including measures to promote bilingual education, and to provide information in this regard. Please also provide information on the measures and policies adopted or envisaged to address the gaps between indigenous and non-indigenous persons in employment and occupation and in working conditions, indicating in particular the impact of such measures on narrowing such gaps.

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

## Guinea

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1960)

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. Prohibition of discrimination.* The Committee recalls its previous comments regarding section 20 of the Order of 5 March 1987 on the general principles of the public service, which prohibits discrimination only on the basis of philosophical or religious views and sex. *Recalling that where legal provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in Article 1(1)(a) of the Convention, the Committee asks the Government to amend section 20 and to indicate the steps taken in this regard.*

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

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

## Guyana

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)**

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

*Legislation.* The Committee recalls that section 9 of the Prevention of Discrimination Act No. 26 of 1997 imposes the obligation on every employer to pay equal remuneration to men and women performing work of equal value, while section 2(3) of Equal Rights Act No. 19 of 1990 provides for "equal remuneration for the same work or work of the same nature", which is a narrower concept than that required by the Convention. Further, the Committee recalls that section 28 of the 1997 Act stipulates that the Act shall not derogate from the provisions of the Equal Rights Act of 1990 but that the Government previously stated that the 1997 Act takes precedence over the 1990 Act. In light of the fact that section 2(3) of the 1990 Act falls short of the requirements of the Convention, the Committee remains concerned about the inconsistency between the above provisions concerning equal remuneration. *Noting that no progress has been made concerning this matter for a number of years, the Committee asks the Government once again to amend the legislation in question with a view to ensuring that it is in accordance with the Convention and to avoid any uncertainties as to the interpretation of the provisions concerned, for instance, through expressly providing that the 1997 Act, in case of conflict, takes precedence over the 1990 Act. The Committee asks the Government to indicate any measures taken or envisaged in this respect.*

*Application in practice.* The Committee recalls its previous comments asking the Government to provide information on the measures taken or envisaged to promote and supervise the application of the equal remuneration provisions of the Prevention of Discrimination Act. The Committee also recalls the communication received from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 which was forwarded to the Government on 13 January 2004 and again on 1 June 2006, and to which the Government has not yet replied. The ICFTU raises concerns regarding the promotion and effective enforcement of equal pay legislation. In this context, the Committee notes the Government's statement that there were no cases of male and female workers receiving different pay for the same work and that it was a long established fact that men and women received equal remuneration both in the public and private sectors. The Committee draws to the Government's attention the fact that the principle of equal remuneration for men and women for work of equal value does not merely require equal pay for the same or equal work but also equal pay for different work that is nevertheless of equal value, as established on the basis of an objective evaluation of the content of the work performed. The absence of differential wage rates for men and women, while necessary in order to apply the Convention, is not sufficient to ensure its full application. *Concerned that the Government's report indicates misunderstandings as to the scope and meaning of the Convention's principle, the Committee considers that training concerning the principle of equal remuneration for labour inspectors and judges, as well as workers' and employers' representatives is essential to effectively ensure the application of the Convention. It asks the Government to indicate in its next report any measures envisaged or taken to ensure the application of the equal pay legislation and the Convention through training and awareness raising and to indicate any steps taken to seek the cooperation of workers' and employers' organizations in this regard. Further, the Committee reiterates its request to the Government to provide information on any judicial or administrative decisions relating to the equal pay provisions of the Equal Rights Act No. 19 of 1990 and the Prevention of Discrimination Act of 1997.*

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1975)

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

The Committee recalls its previous observation in which it noted the communication from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)) pointing to the low representation of

women in traditionally male-dominated areas of work, the weak labour force participation of Amerindian women, and the lack of effective procedures dealing with complaints of discrimination. The Committee notes the Government's reply that more and more women are undergoing training and are entering areas of work that had previously been dominated by men. Women are now engaged in technical fields including working as electricians, mechanics and masons, and they make up a large percentage of employees of security firms. Women also represent the largest portion of graduates of the University of Guyana. The Government refers in this regard to statistics showing the number of women in areas of study that were traditionally male. However, these statistics were not attached to the Government's report. The Government concludes that persons are free to choose whatever field of occupation they desire and that the various branches of education are accessible to all.

The Committee notes the developments on women's employment and training mentioned by the Government but wishes to point out that without reliable statistics disaggregated by sex or any other information on the participation of women, as compared to men, in a wide range of occupations and vocational training courses, it is difficult for the Committee to assess whether progress has been made in achieving the objectives of the Convention. The Committee recalls that while some women may in theory be free to choose the occupations or training courses they desire, discrimination often flows from social stereotypes that deem certain types of work as suitable for men or for women. As a result, persons may apply for jobs based on work deemed to be suitable for them, rather than on actual ability and interest. Such stereotypes channel women and men into different education and training and subsequently into different jobs and career tracks which may not be in keeping with their ability or interest. Lastly, the Committee recalls the importance of effective complaints procedures to enforce legislation on non-discrimination and equality in employment and occupation. **The Committee, therefore, requests the Government to provide in its next report information on the following points:**

- (i) *statistical data disaggregated by sex on the participation of men and women, including Amerindian women, in the various occupations and sectors of the economy as well as their participation in vocational training courses;*
- (ii) *the measures taken or envisaged to ensure that policies and plans under its control are not reinforcing stereotypes on the roles of men and women in employment and occupation;*
- (iii) *the measures taken or envisaged, including in the area of vocational training and education, to encourage women to consider a wider choice of trades and occupations; and*
- (iv) *the measures taken to ensure that the existing complaints procedures allow for effective implementation of the legislation prohibiting discrimination in employment, including on the measures taken or envisaged to prevent delays in litigating complaints. Please also indicate whether any cases alleging discrimination on the grounds set out in the Convention have been brought to the courts, and the outcome thereof.*

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

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

## Honduras

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)**

*Article 1 of the Convention. Work of equal value.* The Committee has been referring for many years to the need to amend section 44 of the Equal Opportunities for Women Act (LIOM), which establishes the requirement for equal wages for equal work. In this respect, the Committee notes that on 3 December 2008 Regulations under the Act were adopted, but that the Regulations do not contain any provision expanding section 44. The Committee however observes that strategic objective 1.3 of the II<sup>nd</sup> Gender Equality and Equity Plan, 2010–22, refers to the right to equal remuneration for work of equal value. **The Committee once again asks the Government to give full legislative expression to the principle of equal remuneration for men and women for work of equal value and to provide information on any progress achieved in this respect. The Committee also asks the Government to indicate any measure adopted in accordance with the II<sup>nd</sup> Gender Equality and Equity Plan, 2010–22.**

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, in relevant parts, as follows:

...

*Objective job evaluation. Articles 2 and 3.* The Committee notes that, in relation to the objective evaluation of jobs, the Government refers only to evaluations relating to those seeking jobs, and not evaluations of jobs in themselves. The Committee further notes the indication by COHEP in its communication that it is not aware of public or private initiatives undertaken for the purpose of the objective evaluation of jobs. The Committee also notes COHEP's concern regarding the absence of a job classification system for the civil service, in accordance with sections 12 to 15 of the Civil Service Act, and their indication that there are significant wage disparities in the public sector. According to COHEP, the absence of a harmonized national classification of occupations with tripartite approval makes it difficult to undertake comparisons between jobs and it is not feasible to establish a comparison of the value of the various tasks. The Committee notes that, according to COHEP, at the end of 2006, an inter-institutional working group was established, composed of representatives of the Secretariat of State for the Labour and Social Security Offices, the National Institute of Statistics, the National Institute of Vocational Training, the Secretariat of State for the Education Office, the Honduran Export Processing Association (AHM) and COHEP, to undertake the revision and harmonization of existing classifications.

**The Committee asks the Government to take steps to ensure progress is made in developing a national classification system, based on objective and non-discriminatory criteria free from gender bias. The Government is also asked to provide specific information on the progress made in formulating a job classification system for the civil service, and to undertake an examination of the nature and extent of any wage disparities between men and women in the public sector. Please also provide information on the progress made by the inter-institutional working group in undertaking the revision and harmonization of existing classifications.**

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

## ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1960)***

*National Solidarity Plan for Anti-Crisis Employment.* The Committee notes the observations of 31 August 2010 by the Single Confederation of Workers of Honduras (CUTH), the General Federation of Workers (CGT) and the Workers' Central Union of Honduras (CTH). It also notes the observations of 31 March 2011 by the CUTH and the CGT. On 22 August 2011 the CUTH, the CGT and the CTH sent a further joint communication. In all three communications the abovementioned federations referred to the National Solidarity Plan for Anti-Crisis Employment, adopted by Decree No. 230-2010 of 4 November 2010 which, they allege, will introduce flexibility in minimum conditions in work relationships and lead to the casualization of wage employment owing in part to the reduction of workers' wages and benefits. Lastly, the Committee notes the CUTH's observations, received on 19 September 2011, on the application of the Convention. The Committee notes the communication of the Government, received 30 November 2011, indicating that the National Solidarity Plan for Anti-Crisis Employment is part of the Government's programme for 2010–14 and is temporary in nature. Its objective is the eradication of poverty and increasing employment opportunities for the population; to maintain existing jobs, avoid an increase in unemployment and under-employment, and promote capacity building and vocational training. While acknowledging that it is important to adopt specific measures to overcome the current economic and financial crisis and remedy the prevailing unemployment situation, the Committee draws attention to the importance of closely monitoring how the legislative measures adopted to address the crisis are affecting the employment situation of groups that are particularly vulnerable to discrimination so as to deal appropriately, on the basis of the criteria laid down in the Convention, with all direct and indirect discrimination that may arise in employment and occupation. The Committee also considers it essential to ensure that progress achieved through previous measures to promote equality of opportunity and treatment for men and women and for certain minority ethnic groups such as indigenous peoples is not affected. ***The Committee requests the Government to send its observations on all the abovementioned comments and, in particular, to provide information on the impact of Decree No. 230-2010 on equality and non-discrimination policies. So that it may examine the Decree's impact on equality more thoroughly, the Committee asks the Government to send statistical information on the employment and unemployment rates, employment by economic activity or sector in the public sector and the private sector, wage rates and the number of lay-offs.***

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

## **Indonesia**

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)***

*Gender wage gap and occupational segregation.* The Committee had previously noted from the statistical data of 2008 that wage inequalities existed in each region. The Committee notes from the statistics provided by the Government that, in February 2011, a wide gender wage gap was observed in many sectors, including in the agriculture, forestry, hunting and fishing sector, where the gender wage gap was 48.4 per cent, and in the mining and quarrying sector which recorded a gender wage gap of 44.3 per cent. The statistics also reveal that occupational segregation persists in Indonesia and women continue to be under-represented in higher paying jobs and senior management positions. The Committee also notes that in order to disseminate the Equal Employment Opportunity (EEO) Guidelines of 2005, the Government established a tripartite task force by Decree No. 60/SJ/111/2011 on 16 March 2011, which, inter alia, has the responsibility of mapping out preventive measures on discrimination in the workplace. ***The Committee asks the Government to provide information on measures taken by the tripartite taskforce in order to disseminate the EEO Guidelines of 2005, and more particularly to address the gender wage gap in the private and public sectors, and the impact thereof. Recalling that wage inequalities are related to the segregation of men and women into certain sectors and occupations, the Committee asks the Government to provide information on measures taken or envisaged to improve the access of women to a wider range of job opportunities at all levels, including sectors in which they are currently absent or under-represented, with a view to reducing inequalities in remuneration that exist between men and women in the labour market.***

*Legislation.* The Committee has been noting for a number of years that the Manpower Act (No. 13/2003), does not provide for equal remuneration for work of equal value, but rather contains a general equal opportunity provision ("any manpower shall have the same opportunity to get a job without discrimination" section 5) and a general equal treatment provision ("every worker/labourer has the right to receive equal treatment without discrimination from their employer" section 6), and in this regard provides less protection than the previous Manpower Act of 1997. The Committee recalls that these provisions, while important, are not sufficient to give effect to the Convention, as they do not include the concept of "work of equal value". The Committee notes that the Government again merely refers to the existing provisions, without providing information on any steps taken in consultation with social partners to give full expression to the principle of equal remuneration for work of equal value in the Manpower Act. In the context of the wide gender wage gap and the occupational gender segregation, as well as the lack of other measures to fully apply the Convention, the Committee considers that giving full legislative effect to the principle of equal remuneration for men and women for work of equal value is of particular importance to ensuring effective application of the Convention. ***The Committee asks the***

***Government to take steps in order to review and amend the current legislation, including the Manpower Act (No. 13/2003) in order to give explicit legislative expression to the principle of equal remuneration for women and men for work of equal value and to provide information on any consultations held with social partners in this regard.***

*Discriminatory provisions.* The Committee previously noted that Decree No. 37 of 1967 and Decree of the Minister of Agriculture No. 418/KPTS/EKKU/5/1981 provide for disparate treatment between men and women in relation to payment of employment-related benefits and asked the Government to clarify whether and how these instruments have been revised. The Committee notes the Government's indication that Decree No. 37 of 1967 was amended and that the rules contained in the Decree are no longer applicable. The Government, however, does not indicate clearly whether Decree No. 37 of 1967 has been repealed and does not provide any information on revisions or amendments of Decree No. 418/KPTS/EKKU/5/1981. The Committee also previously expressed concern over the possible discriminatory impact of section 31(3) of the Marriage Act (No. 1/1974) on women's employment-related benefits and allowances, which provides that the husband is the head of household. The Committee notes that the Government is currently conducting a study on the Marriage Act (No. 1/1974), involving all the stakeholders. ***The Committee asks the Government to indicate clearly whether Decree No. 37 of 1967 has been repealed and to provide information on any measures taken to revise or repeal Decree No. 418/KPTS/EKKU/5/1981. The Committee further asks the Government to provide information on the results and impact of the study being conducted on the Marriage Act (No. 1/1974) and to take measures in order to ensure that women do not face direct or indirect discrimination in practice with respect to family allowances and employment-related benefits.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)***

*Discrimination on the grounds of race, colour and national extraction. Transmigration programmes.* The Committee previously noted the adoption of Act No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination under which the National Human Rights Commission (Komnas HAM) is responsible for supervising efforts aimed at eliminating all forms of racial and ethnic discrimination, including through monitoring and assessing government policies considered a potential cause of racial and ethnic discrimination. The Committee notes that the Government does not provide information on measures taken to promote equality of opportunity and treatment in employment and occupation of all ethnic groups of the population, including indigenous peoples, irrespective of race, colour and national extraction but rather refers to article 28(i)(2) of the Constitution which provides for a general prohibition of discrimination based on "any grounds whatsoever". ***The Committee asks the Government once again to provide information on the practical application of Act No. 40 of 2008, including any relevant administrative and judicial decisions. The Committee also asks the Government to indicate whether the Komnas HAM has taken or envisaged any measures to monitor the effectiveness of government policies aimed at eliminating racial and ethnic discrimination faced by different ethnic groups, including indigenous peoples, and whether the effectiveness and alleged discrimination of transmigration programmes have been evaluated. The Committee asks the Government to provide information on any measures taken or envisaged by the Government, at national and regional levels, to promote equality of opportunity and treatment in employment and occupation of all ethnic groups of the population, including indigenous peoples, irrespective of race, colour and national extraction, and on the results of such action.***

*Discrimination based on political opinion.* The Committee has for many years been requesting clarification from the Government on section 18(1) of the Recruitment of Civil Servants, Government Regulation No. 98/2000 of 10 November 2000, section 8 of Regulation No. 5/1999, and section 2(2) of Regulation No. 37/2004, providing for dismissal of civil servants upon becoming members and/or leaders of political parties. The Committee notes the Government's indication that under section 8 of Regulation No. 5/1999, permanent civil servants who become members of political parties keep benefiting from their political rights and do not lose their civil servant status but rather remain on a "temporary pause". The Committee also notes that the Government indicates that the provisions of Regulations Nos 98/2000 and 37/2004 cannot be amended as they are a result of national agreements aimed at ensuring that public servants remain neutral with respect to political opinion. The Committee recalls that while it may be admissible for the responsible authorities to bear in mind the political opinions of individuals in the case of certain limited higher level posts which are concerned directly with developing government policy, it is contrary to the Convention for such conditions to be laid down generally for all civil service employment. The Committee also recalls that under the Convention, protection against discrimination based on political opinion extends to membership in political organizations or parties. ***The Committee again requests the Government to take steps in order to amend Regulations Nos 5/1999, 98/2000 and 37/2004 in order to ensure that workers are not discriminated against based on political opinion and that any limitations on prohibitions on becoming members and/or leaders of political parties are limited to the inherent requirements of the job, as strictly defined.***

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

## Iraq

**Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)**

*Equal remuneration for work of equal value. Legislation.* The Committee recalls its previous comments, drawing the Government's attention to the need to revise section 4(2) of the Labour Code to give full expression to the principle of equal remuneration between men and women for work of equal value, as the provision limits equal remuneration to work of the same nature and the same volume performed under identical conditions. The Government had previously indicated that section 4 of the draft Labour Code provided for equal remuneration for men and women for work of equal value, and that the draft text would be discussed by the State Consultative Council. The Committee notes that the Government does not refer in its most recent report to any progress made in revising the Labour Code, stating generally that there is no discrimination in work undertaken by men and women, in law or in practice, and that the value of the work is determined by the occupation. The Committee again draws the Government's attention to the fact that, in applying the principle of the Convention, jobs that are of an entirely different nature must be able to be compared to determine whether the jobs are of equal value. This is particularly important given the occupational sex segregation, which characterizes the Iraqi labour market. The Committee stated in its general observation of 2006 that 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, because they do not give expression to the concept of "work of equal value". ***Noting from the Government's report under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that the revision of the Labour Code appears to be ongoing, the Committee urges the Government to ensure that in the revision process, full legislative expression is given to the principle of equal remuneration for men and women for work of equal value, without limiting it to work of the same nature and same volume performed under identical conditions, and ensuring that the principle applies to all workers, whether skilled or unskilled. Please provide specific information on the steps taken and progress made in this regard.***

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

## Ireland

**Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)**

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

*Articles 1 and 2 of the Convention. Equality of opportunity and treatment of men and women.* The Committee recalls its previous comments concerning article 41.2 of the Constitution of Ireland which provides that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and that "the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home". The Committee expressed concern that these provisions might encourage stereotypical treatment of women in the context of employment, contrary to the Convention and requested the Government to consider reviewing them. In this regard, the Committee notes that the All-Party Oireachtas Committee on the Constitution revisited the issue of article 41.2 of the Constitution in its Tenth Progress Report of 2006, concluding that a change of these provisions was desirable and recommending amendments. ***The Committee requests the Government to continue to provide information on the progress made with regard to the recommended revision of article 41.2 of the Constitution with a view to eliminating any tension between this provision and the principle of equality of opportunity and treatment of men and women in employment and occupation.***

...  
*Article 1(2). Inherent requirements of the job.* The Committee recalls that section 2 of the Employment Equality Act provides that "persons employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons" are not considered employees under the Act as far as access to employment is concerned. The term "personal services" includes "but is not limited to services that are in the nature of services in loco parentis or involve caring for those residing in the home" (section 2). The Committee notes that these provisions deprive certain domestic workers from protection against discrimination in respect of access to employment. Noting from the Government's report that this exception is meant to balance the competing rights to respect of one's private and family life and to equal treatment, the Committee notes that these provisions, in practice, would appear to have the effect of allowing employers of domestic workers to make recruitment decisions on the basis of the grounds listed in section 6(2) of the Act, without such decisions being considered discriminatory.

The Committee recalls that the Convention is intended to promote and protect the fundamental right to equality of opportunity and treatment in employment and occupation and that it only allows for exceptions from the principle of equal treatment as far as they are based on the inherent requirements of the particular job. It therefore considers that the right to respect for one's private and family life should not be construed as protecting conduct that infringes on this fundamental right (including conduct consisting of differential treatment of candidates for employment on the basis of any grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job in question). The Committee also notes that the definition of personal services affecting private or family life contained in section 2 of the Act appears to be broad and non-exhaustive, and open for extensive interpretation. The Committee considers that the exclusion of domestic workers from the protection against discrimination in respect to access to employment, as currently provided for in section 2, may lead to discrimination against these workers contrary to the Convention. ***The Committee requests the Government to provide information on the practical application of these provisions, including information on any relevant administrative or judicial decisions. It also requests the Government to indicate whether it is considering amending the relevant parts of section 2 of the***

*Employment Equality Act to ensure that decisions concerning the recruitment of all domestic workers cannot be based on any of the grounds contained in section 6(2) of the Act except where this is justified on the basis of inherent job requirements.*

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

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

## 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 recalls that it has been asking the Government for a number of years to take steps to revise section 2 of the Employment (Equal Pay for Equal Work) Act 1975 as it does not give full legislative expression to the concept of “work of equal value” set out in the Convention, and it is limited to comparing “similar” or “substantially similar” job requirements. The Committee recalls that “equal remuneration for work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and encompasses in addition work that is of an entirely different nature, but which is nevertheless of equal value. The Committee notes the Government’s indication that the review of the Employment (Equal Pay for Equal Work) Act 1975 is still in process. *The Committee again urges the Government to take this opportunity to revise section 2 of the Act, in order to incorporate in the legislation the concept of “work of equal value” and give full expression to the principle of equal remuneration for men and women for work of equal value, and asks the Government to provide specific information of progress made in this respect.*

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

## Jordan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1966)**

*National Steering Committee for Pay Equity.* The Committee notes with *interest* the official launching of the Jordanian National Steering Committee for Pay Equity in July 2011. The Committee notes that the National Steering Committee for Pay Equity (NSCPE) is co-chaired by the Ministry of Labour and the Jordanian National Commission for Women, and includes representatives of workers’ and employers’ organizations, as well as of civil society organizations. The Committee notes that the NSCPE’s mandate is to promote cooperation among its members in implementing a pay equity national action plan and to coordinate activities aimed at achieving pay equity for work of equal value. In this regard, two subcommittees have already been established, namely a legal subcommittee focusing on enhancing policies and legislation for equal pay and on making recommendations regarding legislative amendments; and a research subcommittee focusing on conducting in-depth research on pay-based discrimination to inform policy and programmes. *The Committee asks the Government to provide information concerning the measures taken by the NSCPE to develop and implement a pay equity action plan, including specific information on the work of the various subcommittees. The Committee welcomes the initial focus on addressing legislation, and asks the Government to provide the NSCPE with all the necessary support to carry out its mandate.*

*Article 1(a) of the Convention. Additional allowances in the public service.* The Committee recalls that section 25(b) of the Civil Service Regulations No. 30 of 2007 provides that a male public service official is entitled to a family allowance regardless of whether or not his wife works in a governmental institution, and that a female public service official is entitled to such an allowance only if she is the “breadwinner” or if her husband is deceased or has a disability. The Committee had expressed concern that under the legislation female public servants would in practice be disadvantaged with respect to family allowances. The Committee notes the Government’s indication that there have been no amendments to the Civil Service Regulations, and that the Government will provide information on any revisions or amendments. The Committee notes that no information is provided on the practical application of section 25(b) of the regulations. *The Committee asks the Government to take the opportunity afforded as a result of the legislative review being undertaken by the NSCPE to review and revise the provisions of the Civil Service Regulations No. 30 of 2007 so as to ensure that female public service officials are treated on an equal basis with male public service officials with regard to all allowances, including family allowances, and to continue to provide information in this regard.*

*Article 1(b). Work of equal value.* The Committee notes that for a number of years it has been pointing out that the provisions of the Constitution do not give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that section 23(ii)(a) of the Constitution provides that workers shall receive wages commensurate with the quantity and quality of the work, and that the Labour Code does not include any provisions of particular relevance to the principle of the Convention. The Committee notes that although the Labour Code was amended in 2010 (Act No. 26/2010), the opportunity was not taken to include a provision incorporating the principle of the Convention. *The Committee urges the Government to work closely with the NSCPE to develop appropriate amendments to the Labour Code or to draft other legislation, with a view to giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, without further delay. The Committee asks the Government to ensure that such legislation covers not only situations where men and women are performing the same or similar work, but also where they carry out work that is of an entirely different nature but*

*is nevertheless of equal value. The Committee further asks the Government to indicate how in practice it is ensured that the criteria used to determine levels of earnings are free from gender bias.*

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

***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)***  
***(ratification: 1963)***

*National policy and legislation. Prohibition of discrimination based on all the grounds listed in the Convention.* The Committee recalls that in implementing a national policy designed to promote equality of opportunity and treatment in employment and occupation with a view to eliminating discrimination in accordance with *Articles 2 and 3 of the Convention*, attention should be given to all the grounds set out in *Article 1(1)(a)*. The Committee notes, however, that for a number of years, the Government has persistently failed to provide information on measures taken to promote and ensure equality of opportunity and treatment in employment and occupation, and to address de facto inequalities which may exist with respect to the grounds covered by the Convention, other than sex. The Committee notes that in its most recent report, the Government, referring to sections 6 and 23 of the Constitution and section 2 of the Labour Code, merely states that the provisions of the law apply to all workers regardless of sex, nationality, race, colour and religion and that any other rights and privileges specified in the law apply to all workers without discrimination. The Committee notes that sections 6 and 23 of the Constitution guarantee for all Jordanians the right to work and their equality before the law without discrimination based on race, language and religion, and that section 2 of the Labour Code defines a “worker” as being a “any person, male or female, who performs work in return for wages or who is attached to an employer, and under his order, including young persons, and persons who are under probation or training”. The Committee must observe, however, that the above provisions fall short of effectively prohibiting discrimination on the grounds enumerated in *Article 1(1)(a)* and with respect to all aspects of employment and occupation. The Committee draws the Government’s attention to the importance of reviewing continually the protection afforded by the national legislation to ensure that it remains appropriate and effective. ***In the absence of a clear legislative framework, the Committee asks the Government to take all necessary measures to ensure effective protection, in law and in practice, against discrimination in employment and occupation with respect to the grounds of race, colour, national extraction, religion, political opinion and social origin. In this regard, and recalling that providing for effective legislative protection against discrimination is an important step in implementing a national equality policy, the Committee strongly encourages the Government to adopt legislative provisions specifically prohibiting and defining direct and indirect discrimination based on at least all the grounds enumerated in Article 1(1)(a) of the Convention and in all areas of employment. The Government is further requested to indicate all measures taken to address any de facto inequalities that may exist with respect to the grounds covered by the Convention in respect of access to vocational training and guidance, access to employment and particular occupations, including recruitment, as well as with respect to all terms and conditions of employment.***

*Access of women to the civil service.* The Committee recalls that for a number of years it has been pointing out the persistence of occupational segregation of women in the civil service and has pointed out that the criterion of seniority, when applied for purposes of promotion into higher posts, should not lead to indirect discrimination against female civil servants. The Committee had urged the Government to take effective steps to address occupational gender segregation, and to address the issue of women having an insufficient number of accumulated years of experience and knowledge. The Committee notes from the statistics provided by the Government, which unfortunately do not provide an indication of the particular year they cover, that women continue to be underrepresented in the civil service, especially at higher levels, such as in leading posts where they account for only 10.1 per cent of workers at that level, and in supervisory posts, where they represent 37.9 per cent of workers, the majority of whom are in the education sector (60.45 per cent). The Committee notes that the Government once again does not provide information on the specific steps taken to address occupational segregation, to ensure an equitable application of the criterion of seniority and to promote women to higher level posts, but rather indicates that the Civil Service Regulations ensure equal opportunities for men and women in all positions, including in high-ranking, leading and supervisory posts and that the criteria used to appoint officials in the civil service ensures equality between men and women. The Committee stresses that the Government has the obligation, under the Convention, to address both direct and indirect discrimination based on sex, with respect to employment and occupation in the civil service. ***The Committee, therefore, urges the Government to take immediate and effective steps to address occupational gender segregation in the civil service, including taking measures to overcome the problem of women having an insufficient number of accumulated years of experience and knowledge, and to promote women to higher level posts. Please continue to provide up-to-date statistics on the distribution of male and female employees in all posts of the civil service enabling the Committee to make an assessment over time of the progress made in promoting access of women to all levels of the civil service.***

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

## Kazakhstan

### **Equal Remuneration Convention, 1951 (No. 100) (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:

*Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value.* In its previous comments, the Committee drew the Government's attention to the fact that the right to equal remuneration set out in section 7(2) of the 1999 Labour Act was narrower than the principle of equal remuneration for work of equal value set out in the Convention. In this regard, the Committee notes that the new Labour Code of 2007 contains the same provision in section 22(15) providing that the employee shall have the right to "equal payment for equal labour without any discrimination". In addition, section 7(1) prohibits sex discrimination in the exercise of labour rights.

The Committee recalls its general observation of 2006 in which it emphasized that the concept of "work of equal value" includes but goes beyond equal remuneration for "equal", the "same" or "similar" work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee urged countries still retaining legal provisions that are narrower than the principle of the Convention to amend their legislation to ensure that it not only provides for equal remuneration for equal, the same or similar work, but also prohibits pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.

The Committee notes that the Government has failed to take these comments into account when adopting the Labour Code of 2007. It also notes that the Committee on the Elimination of Discrimination against Women had similarly called on Kazakhstan to introduce legislative provisions on equal pay for work of equal value (CEDAW/C/KAZ/CO, 2 February 2007, paragraph 24). ***The Committee urges the Government to take the necessary steps to bring the legislation into conformity with the Convention, providing for the right of men and women to equal remuneration for work of equal value. It asks the Government to provide information on the measures taken to this end.***

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

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)**

The Committee notes with *interest* the adoption of Law No. 223-IV of 8 December 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women. The Law states the main objectives of the state policy to ensure equal rights and opportunities for men and women (section 3) and outlines the competence of Government, and the central and local executive bodies regarding, among others, the development and implementation of the state policy, and the development of regional programmes and proposals to improve legislation and promote the observance of equal rights and opportunities for men and women (sections 6–8). The Law further guarantees equal access to the public service for men and women (section 9) and equal rights and equal opportunities in the context of labour relations (section 10), and in education and training. It also provides that gender equality shall also be ensured through the equal sharing of responsibilities between men and women in the upbringing of children (section 11). ***The Committee asks the Government to provide full information on the practical application of the Law of 2009 on State Guarantees on Equal Rights and Equal Opportunities of Men and Women, including the specific measures taken to ensure equal access to the public service. Recalling the adoption of the Strategy for Gender Equality 2006–16, the Committee also requests the Government to provide full details, including statistics disaggregated by sex, on all the measures taken to implement the Strategy, and on the results achieved.***

The Committee further notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

*Articles 1 and 2 of the Convention. Legislative developments. Prohibition of discrimination.* The Committee notes that the new Labour Code, which was adopted on 15 May 2007, includes a number of provisions which give effect to the Convention. Section 4 declares the prohibition of discrimination to be the principle of the labour legislation of the Republic of Kazakhstan, while section 7 sets out this prohibition in more detail:

- section 7(1) provides that everyone shall have equal opportunities to exercise their rights and freedoms in the sphere of labour;
- section 7(2) provides that no one may be subjected to any discrimination in exercising their labour rights based on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations; and
- section 7(3) provides that differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state's concern for people in need of increased social and legal protection, do not constitute discrimination.

The Committee notes that these provisions cover all prohibited grounds listed in *Article 1(1)(a)*, of the Convention, except the ground of colour. It also notes that section 7(2) also includes a number of additional grounds, as envisaged in *Article 1(1)(b)* of the Convention (such as age, physical disability, tribe and membership in a public association). The Committee regrets that the ground of citizenship, which was included as a prohibited ground in the previous Labour Code has been removed. ***The Committee requests the Government to provide information on the implementation of the above provisions, including information on any activities undertaken to make these known and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate. In the absence of such information, the Committee requests the Government to take the measures necessary to collect such data, and to indicate the measures taken to that end. The Committee recommends that the prohibited ground of colour is added to section 7(2).***

*Equality of men and women in employment and occupation.* The Committee notes with interest that the new Labour Code grants paid leave to adoptive parents (either the mother or the father) to care for a newly born adopted child (section 194) and unpaid childcare leave until the child reaches the age of three at the parents' choice, either for the father or the mother (section 195). **The Committee welcomes these measures, in particular those that are available to women and men on an equal footing, and requests the Government to provide information on the extent to which this entitlement is being used by men and women.**

However, the Committee notes that under section 187 of the Labour Code the employer is prevented from either engaging in night work or overtime work women with children under the age of seven years and other persons bringing up children under the age of seven years without a mother, or sending them on business trips or to perform rotational work, without their written consent. Under sections 188 and 189, fathers have the right to child-feeding breaks and to part-time work only in respect of children without a mother. The Committee notes that, in accordance with the principle of gender equality, measures aimed at facilitating the reconciliation of work and family responsibilities should be available on an equal footing for women and men. Provisions which reflect an assumption that caring for a child is the primary role of women prolong and reinforce gender inequality in society and the labour market. **The Committee therefore requests the Government to amend these provisions accordingly.**

*Special measures of protection.* The Committee notes that, under section 186(1) of the Labour Code, it is prohibited to engage women to perform heavy work or work under harmful and hazardous working conditions. Under section 186(2), it is prohibited for women to lift and move manually weights in excess of the maximum standards established for them. The list of jobs for which it is prohibited to engage women and the maximum weights for women to lift and move manually shall be determined by the state labour authority in agreement with the health authorities. The Committee recalls that special protective measures for women should be limited to safeguarding maternity, and should be proportional to the nature and scope of the protection needed. **The Committee requests the Government to provide a copy of the list referred in section 186 of the Labour Code for examination by the Committee.**

*Practical application.* The Committee notes that the Government has not yet replied to a number of requests for information made by the Committee with regard to the application of the Convention in practice. **The Committee therefore once again requests the Government to provide the following:**

- (i) *detailed information on the specific measures taken to promote and ensure equality of opportunity and treatment of women and men in employment and occupation, including measures to promote women's access to occupations and employment in areas where they are currently under-represented, including within the civil service;*
- (ii) *statistical information on the participation of men and women in the labour market (private and public sectors), branch of economic activity, occupational group and status of employment;*
- (iii) *information indicating how the principle of gender equality has been integrated into the programmes and measures to promote employment, including statistical information on the number of women who have benefited from employment promotion measures;*
- (iv) *statistical information on the position in the labour market of men and women belonging to ethnic or religious minorities, including information on their participation in employment in the civil service; and*
- (v) *information on the measures taken to plan and implement activities to raise awareness of the principles of equality, in cooperation with workers' and employers' organizations as envisaged under Article 3(a) and (b) of the Convention.*

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

## Kenya

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)**

*Articles 1 and 2 of the Convention.* The Committee notes with *interest* the promulgation on 27 August 2010 of a new Constitution which includes a comprehensive Bill of Rights and contains numerous provisions providing protection against discrimination, including provisions that the State or a person "shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth" (article 27(4) and (5)), thus broadening the list of prohibited grounds of discrimination. The Constitution also aims at promoting equality and diversity and it requires the State to take legislative and other measures such as affirmative action programmes and policies "designed to redress any disadvantage suffered by individuals or groups because of past discrimination" (article 27(6)). It creates a National Human Rights and Equality Commission, one of the functions of which is to promote gender equality and equity generally and to receive and investigate complaints (Part 5). The Committee further notes that the Constitution expressly states that the values and principles of public service include, inter alia, representation of Kenya's diverse communities and affording adequate and equal opportunities for appointment, training, advancement, at all levels of the public service, of men and women, the members of all ethnic groups, and persons with disabilities (article 232(1)(h) and (i)). **The Committee requests the Government to provide information on the practical application of the provisions of the 2010 Constitution on non-discrimination and equality, in particular on any legislative or practical measures taken or envisaged providing for affirmative action in favour of disadvantaged groups of the population and on any measures taken or envisaged to promote equal opportunity and treatment for all in the public service, including in the police and armed forces, and the results achieved.**

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

## Republic of Korea

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

The Committee notes the comments from the Federation of Korean Trade Unions (FKTU), attached to the Government's report.

*Gender wage gap.* The Committee recalls the high and persistent overall gender wage gap, especially when comparing data on the hourly total wages of regular and non-regular male and female workers. The Committee notes from the statistics provided by the Government that in 2009 the average monthly wages of female permanent workers in establishments with five or more full-time workers remained 33.5 per cent lower than men's, with the gender wage gap (monthly wages) for women in their forties and fifties amounting to 40–45 per cent. The Committee welcomes the comprehensive data, disaggregated by sex, on hourly wages, and disaggregated by industry and occupation compiled in the 2009 Survey Report on Labour Conditions by Employment Type. The data show that when comparing hourly regular wages of male and female regular and non-regular workers, female non-regular workers earn 70.7 per cent of male non-regular workers and 48.6 per cent of male regular workers. When comparing data on the wage structure of permanent workers, according to occupation, the Committee notes that for most occupations, the total wage gap between men and women is largely over 30 per cent, and is particularly high for health, social and religion related occupations (46 per cent) in which women represent 80 per cent of the workers, and for education, professional and related occupations (40 per cent). Women represent 42 per cent of the clerks where the gender wage gap is 37.8 per cent; for service workers, where women constitute 61 per cent of the workers with the majority in hairdressing, wedding and medical assistance services, or cooking and food service occupations, the gender wage gap is 31 per cent. With regard to industries, the Committee notes that women are concentrated in manufacturing (which is the largest industry) with a gender wage gap of 36.8 per cent, in human health and social work activities (42 per cent wage gap), accommodation and food services (27.3 per cent wage gap), education (43 per cent wage gap), business facilities and support services (35 per cent wage gap), financial and insurance activities (36 per cent wage gap) and wholesale and retail trade (34.5 per cent wage gap). In the electricity, gas, steam and water supply, where women only represent 11 per cent, the total gender wage gap is as high as 45.8 per cent.

The Committee notes the comments by the FKTU that about 70 per cent of the non-regular workers are women and that to find trends in the gender wage gap one should look at the wages of all male and female workers, including non-regular workers. The Committee notes that in 2009, the hourly wage gap between regular and non-regular workers was the highest in wholesale and retail trade, manufacturing, and human health and social work, all industries employing a large number of women. With respect to occupations, the wage gap between regular and non-regular workers was 53.1 per cent for sales workers and 37.2 per cent for clerks and 27 per cent for service workers, where women also represent a high proportion among the workers. The Committee further notes that in a communication regarding the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) the Korean Confederation of Trade Unions (KCTU) also draws attention to data from Statistics Korea (March 2010) indicating that the ratio of female to male wages was 61.6 per cent in 2010. Wages of male non-regular workers were 47.9 per cent of male regular workers' wages, while female non-regular workers earned only 38.3 per cent of what male regular workers earned. ***The Committee encourages the Government to continue to collect and provide comprehensive data on the hourly wages of men and women, regular and non-regular workers, according to industry and occupation, so as to enable a continual assessment of the evolution of the gender wage gap with a view to determining appropriate measures to address wage differentials between men and women. Given the particularly high gender wage gap in certain sectors and occupations in which women are predominantly employed, the Committee asks the Government to indicate any measures taken or envisaged to ensure that the wages in these sectors and occupations are not set on the basis of gender-biased undervaluation of the work performed in these sectors.***

*Articles 1, 2 and 3 of the Convention. Equal remuneration for work of equal value – comparing remuneration of jobs of a different nature.* The Committee recalls that the Ministry of Labour's Equal Treatment Regulation (No. 422), limiting the possibility of comparing work performed by men and women to "slightly different" work, appears to unduly limit the full application of the principle of equal remuneration for men and women for work of equal value as set out in the Convention. It also recalls that the Supreme Court in its ruling of 14 March 2003 (2003DO2883) accepted the restrictive understanding of the concept of work of equal value in Regulation No. 422. The Committee notes the Government's statement that the Equal Treatment Regulation was revised on 22 June 2010 to add non-discrimination in recruitment and hiring, wages and other money and valuable goods, education, assignment and promotion, and retirement age, retirement and dismissal. The Committee points out however that the prohibition of sex-based discrimination in wages will normally not be sufficient because it does not include the concept of "equal pay for work of equal value". The Committee recalls that the principle of the Convention encompasses work of an entirely different nature which is nevertheless of equal value. ***Given that the amendment of Regulation No. 422 does not appear to broaden the restrictive scope of comparison and given the very wide and persistent gender wage gap, the Committee urges the Government to take steps to amend Regulation No. 422 with a view to bringing it in to full conformity with the Convention, and to report on the progress made in this regard.***

*Application in job-based wage systems.* The Committee notes the results of the research conducted by the Ministry of Labour emphasizing the importance of the principle of equal remuneration for work of equal value, and the use of job

evaluation, in the context of job-based pay systems. Attention is drawn to wage discrimination between men and women or between regular and non-regular workers that may result from job-based pay schemes when jobs are separated according to gender and employment status, or in the case of partial job-based pay schemes in which wages are also determined by other factors (years of consecutive service, performance, etc.). The research confirms the shift towards job-based pay schemes since the adoption of the Act on the Protection, etc., of Fixed-term and Part-term Employees. However, it also draws attention to the introduction of a separate job category system linked to job-based pay schemes by some employers, thus creating job categories to which only men or women are assigned resulting in gender discrimination in terms of hiring, recruitment, assignment and so on. The Committee further notes that the Workplace Self-check Manual for Equal Pay for Work of Equal Value is being distributed to employers to use on a voluntary basis, and to prevent unfavourable treatment of workers in terms of employment and wages. ***The Committee asks the Government to indicate the follow-up given to the findings of the research on job-based wage systems, including measures to address the assignment of men and women to separate job categories. Please indicate the number of enterprises that have adopted job-based wage systems and in which sectors, and the number that have undertaken objective job evaluation exercises to this end. Given the very high and persistent gender wage gap, the Committee also asks the Government to provide further details on any other measures taken to promote the application of the principle of the Convention at enterprise level in the context of human resource management and pay systems, and to indicate the results secured by such action.***

***Application of the principle beyond enterprise level.*** The Committee recalls that the reach of comparison should be as wide as allowed by the level at which wage policies, systems and structures are coordinated (General Survey of 1986, paragraph 72). The Committee notes that, according to the FKTU, no progress has been made with respect to measures taken or envisaged in this regard and that it is necessary to institutionalize the application of equal remuneration for work of equal value at industry as well as enterprise level. ***The Committee asks the Government to indicate any steps taken to promote and ensure the application of the principle of equal remuneration for men and women for work of equal value beyond the level of the enterprise, and to report on the progress made in this regard.***

***Enforcement.*** The Committee notes the Government's statement that since the Supreme Court's ruling (2003DO2883) no court decision has been given on the principle of equal remuneration for men and women for work of equal value. It also notes the Government's indication that guidance and inspection has continued to ensure compliance with the principle of equal pay for work of equal value, and that in April 2010, a team was set up by the Korea Labour Foundation to promote discrimination-free workplaces in six regions through counselling of women and fixed-term workers on various forms of discrimination in the workplace, and education of workers and employers on how to prevent it. In 2009, inspection covered 1,272 workplaces with female workers resulting in the detection of 5,679 violations, almost all of them settled through administrative proceedings resulting in redress. However, out of these, only one violation concerned wage discrimination while 4,737 violations were classified as "other violations" and were apparently unrelated to discrimination issues. The Committee further notes that, according to the FKTU, the legislation is not being strictly enforced. ***The Committee asks the Government to take additional measures to improve the enforcement of the legislation concerning equal pay and to increase the capacity of the labour inspectorate to detect and address cases of wage discrimination. The Committee also asks the Government to provide information on the specific activities of the labour inspectorate, the training they receive and the nature and substance of the cases addressed. The Committee also asks the Government to provide information on the results of the counselling and educational activities launched by the Korea Labour Foundation that specifically relate to promoting the application of the principle of the Convention. Please also continue to provide information on any new court decisions regarding the principle of equal remuneration for men and women for work of equal value as guaranteed under the Equal Employment Act.***

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)***

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the resulting conclusions of the Conference Committee. It also notes the observations from the Federation of Korean Trade Unions (FKTU), attached to the Government's report, and the communications from the Korean Confederation of Trade Unions (KCTU) and the International Trade Union Confederation (ITUC), as well as the Government's reply thereto.

***Articles 1 and 2 of the Convention. Migrant workers.*** The Committee recalls the importance of ensuring the effective promotion and enforcement of legislation to ensure that migrant workers are not subject to discrimination and abuse, contrary to the Convention. The Committee notes that the Conference Committee concluded that the issue of protecting migrant workers from discrimination and abuse required the Government's continued attention and requested the Government to pursue, and where necessary, to intensify efforts in this regard. It had also called on the Government to review the functioning of the current arrangements for workplace changes, and the proposals in the Bill amending the Act on employment, etc. of foreign workers, in consultation with workers' and employers' organizations, with a view to determining how best to achieve the objective of reducing migrant workers' vulnerability with regard to abuse and violations of their labour rights.

The Committee notes that section 25(1)(4) of the amended Act on employment, etc. of foreign workers allows a change of workplace when “the working conditions or the workplace are different from the terms of the labour contract and in case it is difficult to maintain a labour contract in a context of conventional wisdom due to unfair treatment by the employer, such as violations of the working conditions”. The Committee further notes that the possibility for workers under the Employment Permit System (EPS) to change their workplace remains limited to a maximum of three times, but that pursuant to section 25(4) a change of workplace which is requested due to “a reason not attributable to the foreign worker (section 25(1)(2))” would no longer be counted among the total of the three changes permitted. The Committee understands that a Constitutional Court decision of September 2011 ruled that restricting migrant workers to three changes of workplace within a work permit issued under the EPS did not violate their freedom of occupation under the Constitution. The Committee notes from the Government’s report that since the entering into force of section 25(1)(4) on 10 December 2009, the total number of transfers granted from January to March 2010 was 16,315, with 13,443 transfers for reason of cancelation or refusal of work permit (section 25(1)(1)), 2,768 due to business shutdown, closure, etc. (section 25(1)(2)), 16 due to the fraudulent acquisition of a work permit (section 25(1)(3)), and 49 due to unfair treatment (section 25(1)(4)). The Committee notes that according to the KCTU, the explanations provided in the Manual of the Ministry of Employment and Labour regarding the situations covered by section 25(1)(4), in practice, cover the most common problems arising at workplaces employing migrant workers. The KCTU states that, therefore, as they constitute violations of the law on the part of the employer, they should not be counted among the total of workplace transfers. The KCTU further expresses concern that in practice migrant workers are still dependent on the employer notifying a change in workplace (notification of change of workplace), and workers who wish to change workplaces due to labour law or rights violations face severe difficulties because of their employers’ refusal to make the proper notification. The FKU considers that the conditions for change of workplace under section 25 are still too strict and suggests that procedures should be in place respecting migrant workers’ desire to transfer workplaces when renewing or extending their labour contract. ***The Committee requests the Government to confirm whether section 25(1)(4) would provide a direct basis for migrant workers to request a transfer in the case of discrimination and to clarify whether such requests would be counted among the total of transfers permitted or would fall under the exception provided by article 25(4) of the Act on employment, etc. of foreign workers. The Committee also asks the Government to provide information on the number of migrant workers that have successfully applied for a change of workplace during the reporting period, indicating the reasons for granting such a change. Please indicate all measures taken to raise awareness among workers and employers, as well as the migrant workers support centres, about the new provisions in the Act on employment, etc. of foreign workers, and the procedures for dispute settlement and redress, including the rule that changes of workplace not attributable to the migrant workers would not be counted against them. The Committee also asks the Government to assess on a regular basis whether in practice the EPS allows for appropriate flexibility for migrant workers to change their workplaces so as to avoid situations in which they become vulnerable to abuse and discrimination on the grounds set out in the Convention, and to report on any measures taken in this regard.***

With regard to the enforcement of the anti-discrimination provisions in respect of migrant workers, the Committee notes that the Conference Committee had recommended that the Government further strengthen the enforcement of the labour legislation, including through labour inspection, to protect migrant workers’ labour rights. The Government indicates that additional migrant support centres have been created and that the number of complaints filed by foreign workers with local labour offices was 4,181 in 2008, 5,234 in 2009 and 2,058 by the end of May 2010, most of which were resolved through guidance. During 2009 and the first half of 2010, 6,210 workplaces were inspected among which 1,736 were found committing violations. The Committee notes that the large majority of the violations related to the employment permit (2,393 violations in 2009, and 1,529 in 2010). In 2009 and 2010, 160 violations related to working conditions, including wages; 115 violations related to non-respect of the minimum wage; and 173 violations related to violations of the Immigration Control Act. The Committee notes the information on the complaints about discrimination and human rights violations submitted by foreign workers to the National Human Rights Commission, between March 2008 and June 2010, all of which were either rejected or dismissed. The KTUC draws attention to the low number of inspections of workplaces that employ foreign workers (5–6 per cent of roughly 75,000 workplaces) and states that there is a large amount of evidence of labour law violations at workplaces employing migrant workers, including differences in pay in violation of section 6 of the Labour Standards Law, and numerous cases of sexual harassment of women migrant workers left unaddressed. The KCTU draws attention to the importance of sending female inspectors to workplaces where women migrant workers are employed and undertaking systematic investigation and supervision of implementation of measures to prevent and remedy sexual harassment and abuse. According to the FKU the emphasis of guidance and inspection efforts on investigating illegal employment makes it difficult to reveal and detect discrimination against immigrant workers and violations of their working conditions. The ITUC, concerned by reports that abuse and discrimination persist against migrant workers, states that complaints by migrant workers of changed working conditions upon arrival and wage inequality highlights the need for collective representation to ensure that similar conditions of work apply to all categories of workers. ***The Committee requests the Government to take the necessary measures to ensure that the legislation protecting migrant workers from discrimination and abuse is fully implemented and enforced, including measures to address more effectively sexual harassment of women migrant workers, and to report on the action taken in this regard. Please continue to provide information on the number of inspections of enterprises employing migrant workers and the number and kind of violations detected and the remedies provided, as well as the***

***number, content and outcome of complaints brought by migrant workers before labour officers, the courts and the National Human Rights Commission.***

*Equality of opportunity and treatment of women and men.* The Committee notes that the Conference Committee called on the Government to step up its efforts and to seek cooperation with the employers' and workers' organizations, to increase the low level of women's participation in the labour market and reduce the gender pay gap. With respect to the gender pay gap, the Committee refers to its observation on the Equal Remuneration Convention, 1951 (No. 100). The Committee notes from the Government's report that the number of workplaces subject to an affirmative action scheme has further increased and that out of the 1,607 workplaces subject to the scheme in 2009, 902 were required to submit a plan and to report on its implementation by March 2011. The proportion of female managers in workplaces with 500–1,000 workers and those with more than 1,000 workers rose to 13.62 and 14.84 per cent respectively in 2009. However data from the 2009 Survey on Labour Conditions and Employment Type confirm the occupational gender segregation of the labour market and the low representation of women among managers overall (8.2 per cent). With regard to the public sector, the Government provides data indicating that the proportion of female public officials rose from 38.8 per cent in 2006 to 41 per cent in 2009, without giving further information on the position of men and women in the different occupations and levels of the public service. ***The Committee asks the Government to continue to provide information on the results achieved following the adoption and implementation of affirmative action plans in the public and private sectors, and to indicate whether this has led to an improvement of women's participation in a wider range of jobs including those in which they are under-represented. Please provide statistical data, disaggregated by sex, on employment at the different levels and occupations in the private and public sectors. The Committee also asks the Government to indicate the measures taken, in cooperation with the workers' and employers' organizations, to promote and ensure gender equality in opportunity and treatment, and the results secured by such action.***

*Discrimination on the basis of sex and employment status.* The Committee notes that the Conference Committee requested information concerning the difficulties encountered with the enforcement of the Act on the protection, etc. of fixed-term and part-time employees (Act No. 8074 of 21 December 2006), which prohibits discriminatory treatment of these workers based on their employment status. It also requested information on whether trade unions were authorized to bring complaints on behalf of victims of such discrimination, and called on the Government, in consultation with the workers' and employers' organizations, to improve the legislative protection against discrimination based on employment status, which disproportionately affected women. The Committee notes that according to the Government an opinion survey of May 2008 indicated that 73 per cent of the large companies and 46.1 per cent of the medium-sized companies had improved treatment of fixed-term workers since the Law came into effect. It also notes from the Government's report that in March 2010 the number of fixed-term (contingent) and part-time workers protected by the Act on the protection, etc. of fixed-term and part-time employees of 2006 was 3,202,000 and 1,525,000 respectively, representing 19.3 and 9.2 per cent of the total wage workers. The KCTU and the ITUC continue to express concern at the increasing wage discrepancy between regular and non-regular workers (with an overall wage gap of 46.2 per cent in 2010), poor working conditions and the low participation rate of non-regular workers in various social insurances. With regard to the wage gap between regular and non-regular workers of 46.2 per cent, the Government states that when factors such as gender, age, the length of service and number of working hours are controlled, the wage gap is 15.7 per cent (2009 Survey on Labour Conditions and Employment Type). The KCTU and the ITUC are also of the view that dispatched and subcontracted workers should be covered by the prohibition of discrimination in the Act, and insist on the importance of authorizing trade unions to bring complaints on behalf of fixed-term, part-time and dispatched workers under the existing anti-discrimination legislation. The Committee notes the Government's reply that it goes against the adversarial system under the litigation procedure law to authorize trade unions to bring complaints on behalf of their members. The Committee notes that from 1 July 2007 until 31 May 2010, a total of 2,280 cases were filed with the Labour Relations Commission to seek redress, of which 2,216 cases were handled. A correction order was issued for 125 cases; 494 cases were settled through mediation or arbitration; 693 cases were rejected or dismissed; and 904 withdrawn. The Government further indicates that the amendments to the Act on the protection of fixed-term and part-time employees, which would extend the period for fixed-term workers from two to four years and the amendment of the Act on the protection, etc. of dispatched workers, have yet to be discussed in the General Assembly, and that it will consult workers and employers with a view to resolving differences regarding these amendments. The Committee draws the Government's attention to the importance of allowing trade unions to bring complaints as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action.

The Committee notes that the Conference Committee also expressed concern that the large majority of non-regular workers were women. In this regard, the KCTU states that measures to eliminate discrimination based on gender and employment status have been insufficient and that discrimination on the basis of employment status is particularly severe for women resulting from the fact that 70 per cent of women in the labour force are non-regular workers; the quality of women's employment has also deteriorated as jobs were created by expanding part-time work after the current economic crisis. The Government states that the purpose of the Act is not so much to achieve gender equality but to reduce undue discrimination against fixed-term and part-time workers. The Committee refers to its observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), noting that women account for 74.2 per cent of those in part-time jobs, including in the public sector. Given the high proportion of women among non-regular workers, especially in part-time jobs, the Committee draws the Government's attention to the fact that employment and labour market policies

promoting predominantly female occupations as suitable for part-time jobs constitute indirect discrimination based on sex, and need to be effectively addressed under the Convention.

*The Committee asks the Government to continue to examine the nature and extent of discrimination against fixed-term and part-time workers, particularly women, on the basis of employment status. Considering the particular vulnerability of non-regular workers to discrimination, the Committee asks the Government to consider taking serious steps to allow trade union representation with respect to complaints on behalf of fixed-term, part-time and dispatched workers under the existing anti-discrimination legislation. The Committee also asks the Government to provide information on all the steps taken to ensure the effective enforcement of Act No. 8074 of 2006 generally, including information, disaggregated by sex, on the number and nature of complaints filed with the Labour Relations Commissioner regarding discrimination based on employment status, and their outcome. Please provide information on the progress made regarding the amendments of the Act on the protection, etc. of fixed-term and part-time employees and the Act on the protection of dispatched workers. The Committee urges the Government to make special efforts to address direct and indirect discrimination based on sex of fixed-term and part-time workers, and to ensure the effective enforcement of the Act on the protection, etc. of fixed-term and part-time employees of 2006, particularly in industries and occupations in which women are predominantly employed.*

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156)** (ratification: 2001)

The Committee notes the communication received on 29 August 2011 from the Korean Confederation of Trade Unions (KCTU), and the observations by the Federation of Korean Trade Unions (FKTU) and the Korea Employers' Federation (KEF), annexed to the Government's report, as well as the Government's replies received on 30 August 2011 and 26 October 2011, respectively.

*Article 3. National policy.* The Committee notes with *interest* the legislative measures to give effect to the provisions of the Convention, in particular, the adoption of the Act on the Promotion of the Economic Activities of Career-break Women, etc. No. 9101 of 2008, and the Act on the Promotion of Creation of Family-friendly Social Environment No. 8695 of 2007, as last amended in 2010. It notes that, under the Career-break Women Act, the term "career-break women" is defined as those who want to be employed, among women who have discontinued their economic activities for such reasons as pregnancy, childbirth, childcare or taking care of their family member (section 2); the State and local governments shall establish comprehensive measures to promote the economic activities of career-break women, employers shall make efforts to create a working environment for promoting the economic activities of career-break women (section 3), and the Minister of Gender Equality and Family and the Minister of Labour shall establish a basic plan on the promotion of economic activities of career-break women (section 4). The Committee also notes that, under the Family-friendly Social Environment Act, the State and local governments shall establish and implement comprehensive policies necessary to create a family-friendly social environment (section 3), which is defined as an environment where members of society are able to harmonize work and family life, and the responsibility of raising children and supporting family can be shared at the social level (section 2(1)); employers shall endeavour to create a family-friendly working environment (section 4), which is defined as a working environment where a family-friendly system helps workers to harmonize work and family life (section 2(2)); and the Minister of Gender Equality and Family shall formulate basic plans every five years for creating a family-friendly social environment (section 5). With regard to the family-friendly company certification system under the Act (section 11), the Government indicates that 65 companies were granted certification as of the end of May 2011, and that these certified companies are being provided with various incentives such as additional points when evaluating business for government procurement, and a preference is given in loan support for industrial accident prevention facility expenses.

The Committee further notes the amendments to the Act on Equal Employment and Support for Work-Family Reconciliation No. 3989 of 1987, including section 6-2, which provides that the Minister of Labour shall establish a basic plan on the realization of equal employment and the reconciliation of work and family life. In this regard, the Government indicates that it established the Second Basic Plan for Healthy Family (2011–15) and the Second Basic Plan on Low Birth Rate and Aging Society (2011–15), and is making efforts to foster a family-friendly social climate and an environment favourable toward childbirth and childcare. The Government further indicates that more efforts are being made to foster an environment favourable for workers with dependants by planning to enact the "Smart Work Promotion Act". *The Committee asks the Government to provide information on the practical application of the Career-break Women Act and the Family-friendly Social Environment Act, as well as the Second Basic Plan for Healthy Family (2011–15) and the Second Basic Plan on Low Birth Rate and Aging Society (2011–15), in the context of workers with family responsibilities. It also asks the Government to provide information on the process of enacting the Smart Work Promotion Act. Please also continue to provide information on the initiative to promote family friendly corporate management, including the family-friendly company certification system, and the results achieved.*

*Article 4. Leave entitlements for men and women workers with family responsibilities.* The Committee had previously noted that the Equal Employment Act 1987 provides childcare leave for a maximum of one year before the child turns three. It notes the Government's indication that, according to the amendment in February 2010, the child's age

has been extended up to six years of age, and that male and female workers may each take a year of childcare leave, thus amounting to a total of two years for a married couple. The Government indicates that from January 2011, a worker covered by employment insurance has been granted childcare leave of 30 days or more with childcare leave benefits of 40 per cent of the monthly wages; employers are given subsidies to ease the burden due to granting childcare leave or working hour reductions, and to support the use of a substitute workforce. The Committee also notes that section 18-2 of the Equal Employment Act introduced three days paternity leave for a worker whose spouse gives birth. The Government indicates that, under the Second Basic Plan on Low Birth Rate and Aging Society, the Government has drawn up an amendment Bill to change the unpaid paternity leave of three days to paid leave, and if necessary, extend it to 5 days (2 days unpaid). The Committee further notes the statistical information provided by the Government indicating that the rate of childcare leave benefit recipients (men and women) compared to the number of maternity benefit recipients significantly increased from 42.5 per cent in 2008 and 50.2 per cent in 2009, to 55.1 per cent in 2010 (a total of 41,732 workers). However, the statistical information also indicates that less than 2 per cent of the childcare leave beneficiaries are men. The Government states that the number of men taking childcare leave is not high but is rapidly on the rise. In this regard, the Committee notes the comments from the KCTU that, when compared to the number of total newborns, the childcare leave usage rate remains low (7.8 per cent in 2009 and 8.7 per cent in 2010); men's childcare leave usage rate stands at 2 per cent (out of those who took maternity leave), and when compared to the number of total newborns, it is 0.17 per cent in 2010. In response, the Government indicates that the level of childcare leave benefits has continued to be raised within the available budget and that the Amendment Bill to the Equal Employment Act, which would grant the childcare leave to non-regular workers, was submitted to the National Assembly in September 2011. ***The Committee asks the Government to continue to provide information on the leave entitlements in practice, including statistical information, disaggregated by sex, on the number of beneficiaries of such entitlements. Noting the very low number of male beneficiaries of childcare leave, and recalling the importance of equitable sharing of family responsibilities between men and women, the Committee asks the Government to indicate the underlying causes of the low number of men taking childcare leave, and to take measures to promote the exercise of childcare leave particularly by men, as well as to indicate the results achieved by such measures. Please also provide information on the progress of adopting the Amendment Bill to the Equal Employment Act.***

***Working time arrangements.*** The Committee notes section 19-2 of the Equal Employment Act, which provides that the employer may grant a reduction of working hours instead of childcare leave, if a worker is eligible to ask for childcare leave pursuant to section 19(1) of the Act; according to section 19-5, an employer shall make efforts to take measures including adjusting business opening and closing time, restricting overtime, adjusting working hours and other measures necessary to support childcare or the worker. The Government indicates that the Ministry of Employment and Labour is in the process of seeking to provide the right to reduced working time during childcare periods through the amendment of the Act. In this connection, the Committee notes the statement of the KCTU that, a worker entitled to a reduction of working hours may still work from 27 up to 42 hours a week, thus nullifying the effect of the working-hour reduction. In this regard, the KEF states that the use of the shorter working time for childcare is very low, and employers and workers are not willing to accept a flexible working hour system for fear of losing teamwork and increased workload for co-workers. In response, the Government refers to section 19-3(3) of the Equal Employment Act prohibiting overtime work, but allowing overtime work not exceeding 12 hours a week, if the worker makes an explicit request.

The Committee had previously asked the Government to provide information on any measures taken to address excessive overtime work which is an obstacle to reconciling work and family responsibilities. It notes the Government's indication that the Working Hours and Wage System Improvement Committee was established and operated to discuss ways to improve practices and systems related to working hours from June 2009 to June 2010, and the tripartite agreement for improving long working hour practices and advancing work culture was adopted in June 2010. The Government states that it devised "comprehensive measures for improving long working hours" in December 2010, and has been carrying out the measures including the flexible working hour system and working hour saving system. It also indicates that it is seeking to adopt flexible working hours at all public institutions. ***The Committee asks the Government to provide detailed information on the use of the flexible working hour system and working hour saving system, including statistical information, disaggregated by sex, on the number of beneficiaries of such systems, as well as their impact on employment of both female and male workers with family responsibilities and their ability to reconcile work and family responsibilities in practice. Recalling that paragraph 18 of the Workers with Family Responsibilities Recommendation, 1981 (No. 165), emphasizes the importance of the progressive reduction of daily hours of work and the reduction of overtime, the Committee also asks the Government to provide information on the process of amendment to the Equal Employment Act with a view to providing the right to reduced working time during childcare periods. Please also provide information on the trends in the average number of hours worked by men and women, and on any measures taken to address excessive overtime work.***

***Part-time work.*** The Committee recalls that section 7(1) and (2) of the Act on the Protection, etc. of Fixed-term and Part-time Workers provides for the moving of workers with family responsibilities from full-time work to part-time work, and vice versa. In this connection, the Committee notes the statement of the KCTU that, while part-time work is promoted by the Government as a priority measure to spread the flexible work system within a variety of childcare working-hour reduction systems, female workers account for 74.2 per cent of part-time jobs, which shows that the gender gap in part-time jobs is significant. The KCTU also states that the Government mainly presents female-dominant

occupations as jobs suitable for part-time work, aggravating the trends of women taking non-regular jobs, and maintaining that women are mainly responsible for family duties. The Committee also notes that according to the FKTU most public servants working part-time are female, and most of the workers who fill the vacancies due to the shift to part-time work are also women. The Committee notes the Government's response with regard to the protection of part-time workers and measures supporting companies employing them. The Government indicates that "decent part-time jobs" promoted by the Government are regular jobs, and that the only difference between full-time and part-time workers would be the shorter working hours in order to balance work with family responsibilities. The Committee recalls that the assumption that the main responsibility for family care and the household lies with women, thus reinforcing stereotypical attitudes regarding the roles of men and women and existing gender inequality, runs counter to the objectives of the Convention, and draws the Government's attention to the Committee's comments made under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). ***The Committee asks the Government to indicate how the Fixed-term and Part-time Workers Act has facilitated the moving of workers with family responsibilities from full-time work to part-time work, and vice versa, with an indication of the number of men and women using this option and the number of women moving back to full-time work. Please also indicate how the issue of female concentration in part-time work is addressed in the context of reconciling work and family responsibilities.***

*Article 5. Childcare and family services and facilities.* The Committee notes the statistical information provided by the Government and the KEF indicating that the number of childcare facilities has increased 30 per cent (23.1 per cent for public facilities) from 29,233 facilities (1,643 public facilities) in 2006, to 38,021 facilities (2,023 for public facilities) in 2010; the capacity of childcare facilities rose 21.6 per cent (19.4 per cent for public facilities) from 1.28 million children (129,000 for public facilities) in 2006, to 1.56 million children (154,000 for public facilities) in 2010; and for the employees at small and medium sized enterprises and smaller businesses, the Government established and has been operating 24 public childcare facilities. The number of government-fostered childcare service providers is likely to increase from around 7,000 persons in 2010 to 10,000 persons in 2011. The Committee further notes that the Enforcement Rule of the Infant Care Act was amended in 2006 to include working married couples who may preferentially use public childcare facilities, thereby increasing the access to childcare facilities for workers. In addition, it notes the Government's indication that at-home childcare services are provided, and the service was drastically expanded in 2011; the number of households receiving the support is expected to reach 32,000 in 2011, from 13,000 households in 2010. According to the Government, the number of children receiving government support for expenses spent on childcare facilities rose 52.3 per cent from 577,000 children in 2006 to 879,000 children in 2010, and therefore the cost borne by parents is constantly decreasing. With regard to the childcare facilities established by employers according to section 21 of the Equal Employment Act and section 14 of the Infant Care Act, the Committee notes the Government's indication that, in 2010, the maximum amount of subsidies for workplace childcare facilities and loans was raised, and grants are provided when a new childcare facility is built. The Government indicates that as of the end of 2010, there were 401 workplace childcare centres (total for both private and public).

The Committee notes the statement of the KCTU that childcare policies are mainly aimed at providing childcare grants to low-income families, therefore such policies are not targeting working parents. It also states that only 5.2 per cent of childcare facilities are run by the central and local governments, therefore constant expansion of public centres is needed. Among children using the facilities, 69.2 per cent (795,121) are given childcare benefits, however, when compared to the total preschool children, the figure drops to 29.5 per cent, leaving about three fourths of children without access to the benefits. According to the FKTU, the proportion of public childcare centres has never exceeded the 5 per cent range since 2003. It points out that if the Government continues to take a market-based approach that allows for profit private childcare centres to act as main service providers, the public nature and stability of such a protection scheme will not be guaranteed, and there will be limited control of the cost burdens on service users. Regarding workplace childcare centres, 41 per cent of the workplaces which are required to set up a workplace childcare centre do not fulfil the obligation. In response to the observations by the FKTU, the Government states that it is providing support for the establishment of public childcare centres to ensure the public nature of childcare and to establish childcare infrastructure, and that it has also provided, since July 2011, private childcare facilities that are recognized for their excellence with subsidies for their operation expenses. The Government also adds that subsidies for childcare expenses are provided to all households in the lowest 70 per cent of the income scale, and to the highest 30 per cent, taking into consideration the necessity for childcare; from March 2012, a programme will be introduced providing all households with a five-year-old child with childcare subsidies regardless of their income levels. ***Recalling the importance of ensuring that family services and facilities meet workers' needs and preferences, the Committee asks the Government to continue to provide detailed statistical information on the availability of and accessibility to affordable childcare services and facilities including their utilization that would allow the Committee to assess the progress made over time. It also asks the Government to indicate how it is ensured that sufficient public childcare services are provided, and that the cost incurred by employers in order to provide childcare facilities would not adversely affect the employment of workers with family responsibilities.***

*Article 11. Employers' and workers' organizations.* The Committee notes the observations by the KEF that several legal reforms have been made rapidly without sufficiently gathering public opinions, and that even company welfare systems, which should be decided by agreement between workers and employers have been legislated. The KEF also considers that the policy is one of overprotection, including the measures in the "Second Basic Plan for the Low Birth

Rate and Aging Society”, such as releasing the list of companies which do not install company-based childcare facilities, extending paternity leave to five days, guaranteeing the right to request working time reduction for childcare, introducing family nursing care leave system, and expanding the scope of miscarriage or stillbirth leave. The KEF indicates that strengthened protection regulations can increase the employment cost of female workers and as a consequence, this would be detrimental to female employment. In response, the Government indicates that the Work-Family Reconciliation and Female Employment Promotion Committee, in which workers, employers and the Government participated, was established and operated from November 2008 to October 2009, having collected and discussed views from various groups concerning the issues of work-family balance and female employment. ***The Committee asks the Government to provide detailed information on the mandate and activities of the Work-Family Reconciliation and Female Employment Promotion Committee. It also asks the Government to provide information on any other measures taken to promote social dialogue and tripartite cooperation in order to strengthen the laws, measures and policies giving effect to the Convention, and on the manner in which workers’ and employers’ organizations have exercised their right to participate in the design and implementation of such measures, including through collective bargaining and the adoption and implementation of workplace policies on work and family reconciliation. Please also indicate measures taken, with the cooperation of workers’ and employers’ organizations, to ensure that the legislation and its practical application would not have a negative impact on the employment of workers with family responsibilities.***

*Parts III and V of the report form.* The Committee notes the Government’s indication that there is no notable information available on relevant judicial or administrative decisions. ***The Committee asks the Government to provide information on any cases or disputes handled by courts and the National Labour Relations Commission, involving issues relating to workers with family responsibilities.***

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

## Lebanon

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)**

*Legislation.* For a number of years the Committee has been asking the Government to give full legal expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes the Government’s indication that section 56 of the draft Labour Code now provides that “the principle of equal remuneration for men and women shall apply without discrimination for work of equal value i.e. equal, the same or similar work. Discrimination shall be prohibited not be allowed if the work is different, even if it is of equal value”. The Committee recalls that the concept of “work of equal value” implies a broad scope of comparison including but going beyond equal remuneration for “equal”, “the same”, or “similar work”, and encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee considers that in referring to “equal, the same and similar work”, the wording of the draft provision continues to lack clarity as to whether it would allow a comparison to be made between work performed by men and women containing entirely different types of tasks, skills, responsibilities or working conditions. ***The Committee asks the Government to address the ambiguity in section 56 of the draft Labour Code with a view to ensuring that it permits a broad scope of comparison also encompassing work performed by men and women that is of an entirely different nature, and giving full legislative expression to the principle of equal remuneration for men and women for work of equal value.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)**

The Committee notes the observations of the Association of Industrialists, annexed to the Government’s report.

*Legislative prohibition of discrimination in employment and occupation.* For a number of years, the Committee has been encouraging the Government to take the opportunity in the context of revision of the Labour Code to introduce a comprehensive prohibition of direct and indirect discrimination in employment and occupation based on all the grounds set out in *Article 1(1)(a) of the Convention*. The Committee notes the Government’s statement that section 1 (definition of wage earner) of the draft Labour Law specifies “... without any discrimination whatsoever as to race, colour, sex, religion, national extraction, political opinion and social origin, which is likely to invalidate or weaken the application of the principle of equal opportunity or treatment in employment and occupation”. Draft section 35 (protection of women against discrimination) specifies that “... all legal provisions which regulate work without discrimination, or distinction in the same work shall apply to working women, with respect to wages, conditions of recruitment, promotion, and vocational training for the reasons mentioned in section 1 of this law ...”. The Committee must once again point out that the mere inclusion of a non-discrimination clause in the definition of “wage earner” does not offer effective protection against discrimination and falls short of prohibiting discrimination in employment and occupation as defined in the Convention. ***The Committee asks the Government to take the opportunity to insert a separate provision prohibiting direct and indirect discrimination based on at least all the grounds set out in Article 1(1)(a) of the Convention with respect to all aspects of employment and occupation. The Committee asks the Government to provide detailed information on any progress made in the adoption of the draft Labour Law.***

*Domestic workers.* For a number of years, the Committee has been following the measures taken by the Government to address the lack of legal protection of domestic workers, many of whom are female migrants, due to concerns regarding potential discrimination against these workers on the basis of sex as well as other grounds such as race, colour or ethnic origin, contrary to the Convention. The Committee recalls that “domestic servants employed in private houses” are excluded from the scope of application of the Labour Code of 1946 (section 7(1)) and that contractual relations between domestic workers and private individuals employing them to perform domestic work in their residence are governed by the Law on obligations and contracts. The Committee had previously welcomed some measures taken by the Government to improve the employment situation of female migrant domestic workers, including the establishment of a National Steering Committee (2006), Decision No. 70/1 of 9 July 2003 and Decision No. 13/1 of 22 January 2009 relating to employment agencies for foreign domestic workers, and the publication of a standard contract of employment for foreign domestic workers in 2009.

The Committee notes that section 5(1) of the draft Labour Law continues to exclude “Servants and whoever is of a similar standing performing housework and living in the homes of their employers”, from its scope of application – which would in practice largely concern foreign domestic workers due to their contractual obligation to reside in the employer’s home. The Committee also notes that a comprehensive draft Law on the regulation of domestic workers is being discussed and considers this an opportunity to improve protection of domestic workers, nationals and non-nationals, against discrimination and to regulate their working conditions in their own right. The Committee notes in this regard the Government’s decision to wait for the outcome of the deliberations on the draft ILO instruments on domestic workers in June 2011 before continuing the examination of the draft law, with a view to bringing its national legislation into conformity with international standards. ***Noting the adoption of the Domestic Workers Convention, 2011 (No. 189), the Committee asks the Government to review the draft Law on the regulation of domestic workers, which it hopes will include a specific provision expressly prohibiting direct and indirect discrimination of domestic workers in all aspects of their work. Please provide information on any progress made in the adoption of the draft Law.***

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

## Lithuania

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)***

*Gender pay gap.* In its previous comments, the Committee noted that the differential in men’s and women’s average gross hourly earnings had continued to increase from 13.2 per cent in 2002 to 17.1 per cent in 2006 and to 20 per cent in 2007 (Eurostat). The Committee notes from Eurostat that, despite another increase in 2008 (21.6 per cent), the gender pay gap significantly decreased in 2009 to 15.3 per cent. It notes however from the data provided by the Government that the labour market remains highly segregated between men and women, the latter being concentrated in health care and social work (84.6 per cent), accommodation and catering services (79.3 per cent) and education (78.6 per cent). The Committee further notes the various measures taken within the framework of the national Programme on Equal Opportunities for Women and Men (2005–09) and the extensive study carried out to assess its impact on the situation of men and women in all spheres of life, including on the labour market, where some positive developments were noted as regards the reduction of gender stereotypes and changes in traditional attitudes towards women in employment. The Committee notes with *interest* that one of the main objectives of the third National Programme on Equal Opportunities for Women and Men (2010–14) is the reduction of the gender remuneration gap, with a particular focus on analysing and addressing the causes of pay discrimination, such as horizontal and vertical occupational segregation on the labour market and vocational training counselling based on stereotypes, through a greater involvement of the social partners in gender equality issues in employment and occupation. ***Welcoming the efforts made by the Government to promote equal opportunities for men and women, the Committee asks the Government to provide information on the measures taken to further reduce the gender pay gap and implement the National Programme on Equal Opportunities for Women and Men (2010–14) with respect to equal remuneration for work of equal value. The Committee also asks the Government to continue to provide statistics on the distribution of men and women in the different sectors of the economy and their respective levels of earnings.***

*Articles 3 and 4 of the Convention. Objective job evaluation. Cooperation with workers’ and employers’ organizations.* The Committee welcomes the Government’s indication that workshops were organized in 2006 and 2007, and were planned for 2009, to introduce the methodology for the appraisal of jobs and job positions to representatives of trade unions and financial and human resources managers of private enterprises, and notes that a survey on the implementation of this methodology may be carried out in the future. The Committee notes further that the Programme for Strengthening Social Dialogue (2007–11) includes the promotion of the conclusion of branch and enterprises collective agreements, which would include provisions on remuneration. ***The Committee asks the Government to continue to provide information on the measures taken to promote the use of the methodology for the appraisal of jobs and job positions among workers, employers and their organizations and on the implementation of such methodology by enterprises, including the outcomes of any surveys carried out in this respect. The Committee further asks the Government to provide information on any collective agreements concluded at the branch or enterprise levels containing provisions reflecting the principle of the Convention.***

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

## Madagascar

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)**

*Equal remuneration for work of equal value. Legislation.* In its previous comments, the Committee emphasized that section 53 of Act No. 2003-044 of 28 July 2004 issuing the Labour Code contains provisions that are more restrictive than those of the Convention, as it limits the application of the principle of equal remuneration for work of equal value to persons in the same job and with the same vocational qualifications. The Committee notes the Government's indication that a revision of the labour legislation, including the Labour Code, is now envisaged, but that it has not yet been carried out. The Government adds that the Committee's comments concerning section 53 will be taken into account in the revision of the Labour Code. ***The Committee trusts that the Government will soon be in a position to take the necessary measures to bring section 53 of the Labour Code into full conformity with the Convention by guaranteeing equal remuneration for men and women for work of equal value and allowing for a comparison between work of a completely different nature, and asks the Government to provide information on the measures adopted in this respect.***

*Collective agreements.* The Committee recalls that, in its ruling of 5 April 2007, the Court of Appeal of Antananarivo found to be discriminatory clause XII of the Air Madagascar collective agreement concerning air crew and commercial personnel establishing the retirement age for air crew at 50 for men and 45 for women. The Committee welcomes the revision of the collective agreement concerned and notes that the new collective agreement, concluded on 28 April 2010, provides that the retirement age for air crew without distinction on grounds of sex is 55 years, beyond which age employees who wish to continue working are incorporated into the ground personnel. According to the Government, the retirement age for all personnel of Air Madagascar is 60 years, but it may be brought forward to 55 years for women staff "under the conditions envisaged by the National Social Welfare Fund (*Caisse nationale de prévoyance sociale* (CNAPS)) and at the request of the person concerned" under the terms of clause 64(1) of the above collective agreement. ***Noting this information, the Committee asks the Government to provide information on the reasons why the possibility of taking retirement at 55 years of age envisaged by the new collective agreement of 28 April 2010 is solely open to women staff and it asks the Government to provide a copy of the collective agreement. The Committee also asks the Government to provide copies of collective agreements containing clauses giving effect to the principle of equal remuneration for men and women for work of equal value.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Article 1 of the Convention. Provisions prohibiting discrimination.* For several years, the Committee has been emphasizing that neither the Labour Code nor the Civil Service Statute prohibit discrimination on all the grounds covered by the Convention and it has requested the Government to take the necessary measures to bring the legislation into conformity with the Convention. The Committee noted previously that the Labour Code penalizes any discriminatory treatment on the basis of race, religion, origin, sex, trade union affiliation and political opinion or membership of workers (section 261) and that the Civil Service Statute provides that there shall be no discrimination on grounds of sex, religion, opinion, origin, parentage, wealth, political conviction or trade union affiliation (section 5). It also noted that, according to the Government, the term "origin" used in the above legislation refers to the concept of national extraction within the meaning of the Convention. The Committee notes once again the Government's indication that the texts concerned are under examination and that measures will be taken to harmonize the Labour Code and the Civil Service Statute with the provisions of the Convention. ***The Committee trusts that the Government will take the necessary measures in the near future to add the ground of colour to the list of prohibited grounds of discrimination in the Labour Code and "race" and "colour" to those prohibited by the Civil Service Statute, in accordance with Article 1(1)(a) of the Convention. It also requests the Government to indicate the manner in which discrimination on the basis of social origin is addressed. Furthermore, with a view to completing the legislative measures protecting workers against discrimination, the Committee strongly encourages the Government to envisage the inclusion in the Labour Code and the Civil Service Statute of provisions defining and explicitly prohibiting all discrimination, including indirect discrimination. It requests the Government to provide information on the measures adopted to amend the legislation in this respect.***

*Night work.* In its previous observation, the Committee noted the communication from the Confederation of Malagasy Workers (CTM), dated 28 May 2008, in which the Confederation alleges the violation of *Articles 1 and 2* of the Convention, in view of the fact that section 5 of Act No. 2007-037 on export processing zones (EPZs) expressly provides that the provisions of the Labour Code prohibiting night work by women are not applicable in EPZs. The Committee notes that special protective measures for women should be limited to safeguarding maternity and should be proportional to the nature and scope of the protection required. The Committee notes that Madagascar has ratified the *Night Work Convention, 1990 (No. 171)*, calling for protection of both men and women working at night. The Committee notes the large number of women working in EPZs. ***The Committee asks the Government to examine what other measures would be necessary so as to ensure that women and men can access employment on an equal footing, such as improved health***

*protection of both men and women, adequate transportation and security, as well as social services and other measures to assist the reconciliation of work and family responsibilities, and to provide information in this regard. The Committee also asks the Government to provide information on the measures taken to prevent exploitative working conditions and abuses in EPZs and ensure protection against discrimination of workers in EPZs.*

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

## **Malawi**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1965)**

*Application of the principle in the public service.* The Committee has been raising concerns for a number of years regarding the male and female denominations in the civil service job grading and salary structure. The Committee recalls that such terminology reinforces stereotypes as to whether certain jobs should be performed by men or women, and may therefore result in the undervaluing of those jobs with a typically female denomination. The Committee notes with *regret* that the Government's report once again does not address this issue. The Government merely states that remuneration is determined in accordance with grades irrespective of gender, without referring to how the grades themselves are determined. The Government also indicates generally that it would ensure that equal remuneration is recognized not only for women and men performing the same job, but also for men and women performing jobs of different nature but which are, nonetheless, of equal value. *The Committee urges the Government to take concrete steps to ensure that gender-neutral terminology is used in the civil service grading system and salary structure, and to provide information in this regard. The Committee asks the Government to indicate how it is ensured that the grading structure in the public service is free from gender bias, and to provide specific information on the measures taken or envisaged to ensure that men and women receive equal remuneration for work of equal value when performing jobs of a different nature which are nonetheless of equal value.*

In its previous comments, the Committee noted the low percentage of women holding managerial posts in the public service, and asked the Government to provide information on the measures taken or envisaged to retain women in the public service with a view to encouraging their advancement towards decision-making positions. The Committee notes the Government's indication that a baseline survey on women in the public sector, the formal sector and the informal sector is being undertaken, which is intended to result in the elaboration of a Charter on Gender, which would enable women to "understudy" women in decision-making positions to prepare them for higher level positions. *The Committee asks the Government to provide information on the elaboration of the Charter on Gender, in particular with respect to the measures envisaged to promote greater access of women to higher level positions, and on any other action taken in this regard.*

*Application of the principle in rural areas and the informal economy.* In response to its previous comments regarding the wage disparities between men and women in rural areas, the Committee notes the Government's indication that sensitization and awareness-raising activities on equal pay are being intensified, and that training targeting the agricultural sector has been organized for labour inspectors and agricultural extension officers. *The Committee asks the Government to provide detailed information on the contents and results of the awareness-raising activities on the principle of equal remuneration for men and women for work of equal value in the agricultural sector. The Committee also asks the Government to provide information on the training for labour inspectors and agricultural extension officers, as well as details of any case of violation detected by the inspectors and officers relevant to the principle of the Convention. Please also provide information, as previously requested by the Committee, on the measures adopted to facilitate the reconciliation of work and family responsibilities and the equal sharing of family responsibilities, including between men and women rural workers. Noting the Government's indication that the Charter on Gender will enable women to move from the informal to the formal economy, the Committee asks the Government to provide information on the specific measures taken in this regard.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)**

*National equality policy.* The Committee notes the Government's general statement that there is no discrimination as regards vocational training, or employment and occupation, based on a person's race, colour, sex, religion, political opinion, national extraction or social origin, and that all recruitment is solely merit-based. The Committee recalls that, for the purposes of achieving the objectives of the Convention, it is important to acknowledge that no society is free from discrimination and that continuous action is required to address it. The Committee also recalls the obligation under the Convention to declare and pursue a national equality policy with a view to eliminating any discrimination in employment and occupation on all the grounds enumerated in the Convention. *Recalling that in assessing whether a country has declared and is pursuing a national policy on equality of opportunity and treatment in accordance with the Convention, the Committee is guided by the criteria of effectiveness, and under Article 3(f) there is an obligation to provide information regularly on measures taken to promote equality and also to indicate the results secured by such action, the Committee requests the Government to provide detailed information in this regard in its future reports.*

*Access to education and vocational training.* The Committee notes the Government's indication that there is no discrimination in vocational training, and that the Technical, Entrepreneurial and Vocational Education and Training Act, 1999, is designed to promote equality of opportunity and treatment in respect of occupational and vocational training. The Government also refers to the development of a National Gender Policy in this context, as well as to the training of labour officers dealing with placement, and states generally that these measures have yielded positive results. The Committee recalls that vocational training and education have an important role in determining the actual possibilities of gaining access to employment and occupation, including access to less traditionally or typically "female" professions. ***The Committee, therefore, asks the Government to provide detailed information on the measures taken to address unequal access of women to training and education at all levels, including through the National Gender Policy and the training of placement officers, and the results achieved through such measures, including whether they have led to women gaining access to traditionally "male" jobs, and higher level positions.***

*Access to soft loans and credit facilities for rural women.* The Committee understands that from 2004–09, under the women's economic empowerment programme, an average of 500 business groups have been formed and trained per year, and 600 rural business groups with more than 20 members obtained grants worth 80 million Malawian Kwacha (MWK) from UNDP Malawi while others received MWK60 million from the African Development Bank as loans. ***The Committee asks the Government to provide information on the number of men and women in rural areas that have benefited from soft loans and credit facilities. Please also provide further information on the measures taken or envisaged to facilitate access to soft loans and credit facilities for rural women, such as dissemination of information regarding soft loans and credit facilities, or any training provided on business management and various production skills.***

*Statistics.* The Committee notes that the Government is still not in a position to provide statistical information on the participation of women in training and education. The Committee also notes that the United Nations Committee on the Elimination of Discrimination against Women, in its concluding observations of 5 February 2010, expressed concern at the lack, or limited availability of data disaggregated by sex (CEDAW/C/MWI/CO/6, 5 February 2010, paragraphs 44 and 45). ***Recalling the importance of appropriate data and statistics in determining the nature, extent and causes of discrimination, and to monitor the impact of measures taken, the Committee asks the Government to take steps to collect and analyse statistical information, disaggregated by sex, regarding participation in education, vocational training, and at the various levels in the different sectors and occupations in both the public and private sectors, including in the informal economy if possible.***

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

## Malaysia

### ***Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)***

*Articles 1 and 2 of the Convention. Application in law and practice.* The Committee notes the Government's indication that the review of the country's labour law and policies is regularly considered by the Ministry of Human Resources in particular in order to provide "equitable protection for workers regardless of gender". The Committee also recalls its previous comments noting that in 2006 the Cabinet Committee established three inter-agency committees to review, among other things, the Federal Constitution and the rules and regulations related to employment with the objective of ensuring that they do not contain gender discriminatory provisions. In this regard, the Committee once again notes that the Constitution, the Employment Act and the Wages Council Act do not reflect fully the principle of equal remuneration for men and women for work of equal value; and emphasizes that 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 also notes the Government's indication that section 18 of the Industrial Relations Act, 1967 (Act 177), which provides for conciliation in cases of trade disputes would allow a trade union to lodge a complaint relating to the principle of equal remuneration for men and women for work of equal value. However, the Government indicates that no complaints have been reported to the Director General for Industrial Relations. The Committee considers that it is unclear how this provision could provide for a right to equal remuneration for men and women for work of equal value.

The Committee notes once again the Government's indication that in practice there is no discrimination in remuneration between men and women performing jobs of the "same nature and category". The Government also indicates that no complaints related to equal remuneration have been dealt with by the Department of Labour of the Ministry of Human Resources for a total of 11,044 cases; but that the principle of equal remuneration is promoted through statutory inspections by the Department of Labour and the Department of Industrial Relations. The Committee considers from the indication given in the Government's report that there may still be some misunderstanding regarding the meaning of the provisions of the Convention, their scope and application in practice. In this regard, the Committee again refers the Government to its 2006 general observation and recalls that the protection under the Convention goes beyond equal remuneration for equal, the same or similar work and includes the comparison of remuneration received by men and women in jobs that are of an entirely different nature, but are nevertheless of equal value.

Finally, the Committee notes from the Government's report that the Department of Labour of the Ministry of Human Resources initiates knowledge enrichment programmes, seminars, workshops on labour and industrial laws and practices at both regional and district levels. Gender sensitization and equal remuneration regardless of gender are among the issues addressed through these initiatives. *The Committee asks the Government as follows:*

- (i) *to review the legislation, in consultation with the social partners, with a view to incorporating expressly the principle of equal remuneration for men and women for work of equal value, and to indicate whether any steps have been taken or envisaged by the inter-agency committees with a view to giving legislative expression to the principle of the Convention;*
- (ii) *to take steps to increase the ability of judges, labour inspectors and other relevant public officials, such as members of the inter-agency committees established by the Cabinet Committee on Gender Equality, to better identify and address issues related to equal remuneration for men and women for work of equal value;*
- (iii) *to take appropriate measures to raise awareness among workers, employers and their organizations, as well as public understanding of the principle of the Convention, and to provide specific information as to how the principle of equal remuneration for men and women for work of equal value is promoted through the initiatives undertaken by the Department of Labour of the Ministry of Human Resources; and*
- (iv) *to provide information on any steps taken and results achieved regarding these points.*

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

## Malta

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1968)

*Legislative developments. Indirect discrimination.* The Committee notes with *interest* the 2009 amendments to the Equality for Men and Women Act, pursuant to which a new section, 4A, has been added, providing that "indirect discrimination may be proved by any means of evidence including statistical evidence". The Committee considers that such provisions facilitate proof of indirect discrimination and access to appropriate remedies. *The Committee asks the Government to provide information on the practical application of the new section 4A of the Equality for Men and Women Act, including any cases brought alleging indirect discrimination and the results thereof.*

*Grounds of discrimination. Social origin.* For a number of years, the Committee had been pointing out the lack of legislation to address discrimination on the ground of social origin. The Committee notes that the Government has still not provided any information on the measures taken or envisaged in law or in practice to address discrimination on the ground of social origin. *The Committee therefore once again asks the Government to provide information on any progress made in this respect, and to take the necessary measures to ensure protection against discrimination on at least all the grounds enumerated in Article 1(1)(a) of the Convention.*

*Sex discrimination.* With regard to the period of employment service of female employees accumulated prior to the time they were required to resign due to marriage, the Committee asked the Government to indicate how many women were still in service whose pensionable remuneration would be negatively affected by the fact that they had been forced to resign due to marriage prior to 1980. The Committee notes with *regret* that the Government has once again not provided a reply on this issue. *The Committee, therefore, urges the Government to take necessary measures to address the issue that the period of service before marriage is not recognized for the purposes of calculating pensions, thereby placing re-employed women at a distinct disadvantage.*

*Sexual harassment.* The Committee had previously asked the Government to provide information on the practical application of section 9 of the Equality for Men and Women Act, which defines sexual harassment in employment and occupation. The Committee also observes that section 29 of the Employment and Industrial Relations Act prohibits sexual harassment. In addition, the Committee notes that, the public service has issued "Guidelines on what constitutes sexual harassment and on the procedures to be adopted in cases of sexual harassment", which deals with, inter alia, training, assistance for victims and complaint procedures. *The Committee asks the Government to provide information on the practical application of the public service guidelines on sexual harassment, including the impact on preventing and addressing sexual harassment. Please also provide information on the number of complaints lodged pursuant to section 9 of the Equality for Men and Women Act, and section 29 of the Employment and Industrial Relations Act, as well as the remedies provided and/or penalties imposed. The Committee also requests information on measures taken or envisaged to raise awareness on sexual harassment, both quid pro quo and hostile environment, in the private sector.*

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

## Mauritania

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)**

*Article 2 of the Convention. Application of the principle. Legislation and collective agreements. Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Committee, 98th Session, June 2009).* The Committee takes note of the discussion held in June 2009 in the Conference Committee on the Application of Standards and the conclusions of the Conference Committee. It notes in particular that the Conference Committee had urged the Government to amend the Labour Code and Act No. 93-09 of 18 January 1993 on the public service so as to give full expression to the principle of equal remuneration for men and women for work of equal value, in both the private and public sectors. In its conclusions, the Conference Committee had urged the Government to examine the causes of the very high remuneration gap that existed between men and women in the country, and to take the necessary measures, including through a broader range of opportunities for education and training, in consultation with employers' and workers' organizations, to reduce this gap, including in the informal economy, and to increase women's opportunities to access a wider range of jobs and occupations, including those with higher levels of remuneration. Finally, the Conference Committee had stressed the importance of reinstating social dialogue between the workers' and employers' organizations to give effect to the Convention.

In its previous observation, the Committee had taken note of the comments made in 2008 by the General Confederation of Workers of Mauritania (CGTM), which had emphasized the marginalization still suffered by women in Mauritania, pointing out that their wages were on average 60 per cent lower than those of men. The Government states that the revision of the Labour Code is ongoing and that the Committee's concerns will be taken into consideration during this process. The Government has also decided to put in place a permanent consultation and social dialogue framework and to take the necessary steps to improve the social partners' understanding of the principle of the Convention so that it might be fully reflected in collective agreements. In this respect, the Committee notes that the Government requests the Office's assistance in training the social partners on the principle of equal remuneration for men and women workers for work of equal value.

*While noting the Government's commitments and its request for technical assistance, the Committee urges the Government to take the necessary measures, as soon as possible and in collaboration with the social partners, to amend the Labour Code and Act No. 93-09 of 18 January 1993 on public officials to ensure that both these pieces of legislation reflect the principle of equal remuneration for men and women for work of equal value, a principle that extends beyond the principle of "equal pay for equal work". The Committee asks the Government to provide specific information on legislative developments in this area. It also asks the Government to specify whether the social partners envisage revising clause 37 of the general collective labour agreement of 13 February 1974, which also confines the application of the principle of equal remuneration to equal work.*

*Application of the Convention in practice. Noting that the Government's report does not give any information on this point, the Committee, referring to the conclusions of the Conference Committee in this respect, asks the Government to undertake an examination of the causes of the wage discrepancy between men and women with a view to taking the necessary steps to remedy the situation.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)**

*Article 1 of the Convention. Discrimination on the basis of race, colour, national extraction or social origin.* With respect to discriminatory practices in recruitment and occupation to which slaves, former slaves and descendants of slaves are exposed, as raised previously by the Free Confederation of Mauritanian Workers (CLTM), the Committee notes the information provided by the Government on the implementation of the Programme for the Eradication of Remnants of Slavery (PESE). It notes in particular that the PESE has carried out more than 1,000 activities, such as establishing businesses, which have benefited 93,000 persons in the target villages, and that 45,000 casual jobs have been created. The Committee also notes that, in her report published in 2010, the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, refers to a programme started in 2008 by the Ministry of Employment and Vocational Training to provide microcredit to ex-slaves so that they can set up small businesses (A/HRC/15/20/Add.2, 24 August 2010, paragraph 77). This report also mentions that former slaves find themselves back in slavery as a result of discrimination, lack of education or vocational training and lack of the means to find an alternative livelihood, or end up in service and manual labour positions in urban areas (ibid., paragraphs 36 and 51). On the issue of the continuing existence of slavery and slavery-like practices, the Committee draws the Government's attention to the Committee's 2010 observation under the *Forced Labour Convention, 1930 (No. 29)*, in which it highlighted the importance of a global strategy to combat slavery and its vestiges. The Committee considers that, in the context of the global strategy, it is important that measures be taken to address the discriminatory practices, in particular those resulting in former slaves finding themselves back in slavery. *The Committee requests the Government to take measures, including in the context of the global strategy, to combat slavery as well as discrimination, especially on the ground of social origin, and the stigmatization to which certain segments of society are exposed, in particular former slaves and*

*descendants of slaves. The Committee requests the Government to provide information on the impact of such measures, as well as regarding the measures taken to improve access to education, vocational training, employment and various occupations. The Committee also requests the Government to supply information on all measures to educate and raise awareness on the issue of equality of opportunity and treatment in employment, in order to overcome prejudices based on race, colour, national extraction or social origin, and to promote tolerance among workers, employers, their respective organizations and the general public.*

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO). With regard to the situation of black Mauritanian workers of Senegalese origin who, in terms of their employment, have suffered the consequences of the conflict with Senegal in 1989, the Committee is continuing to examine the action taken on the recommendations adopted in 1991 by the Governing Body with regard to a representation made by the National Confederation of Workers of Senegal (CNTS) under article 24 of the ILO Constitution. In this respect, the Committee had noted in its previous comment that on 12 November 2007 the Mauritanian Government, the Senegalese Government and the United Nations Office of the High Commissioner for Refugees (UNHCR) had signed an agreement on the voluntary return of Mauritanian refugees to Senegal. In its report, the Government indicates that income-generating programmes, linked particularly to livestock farming, setting up businesses and developing cooperatives, have been implemented to benefit the repatriated families. It also states that the census launched in 2010 on state officials and employees who had been victims of the events in 1989 will enable these persons to recover their rights and be fully involved as Mauritians in the country's development process. **Taking note of these indications, the Committee requests the Government to provide information on the number of victims of the events of 1989 identified as a result of the ongoing census and on the follow-up to this procedure, particularly on the measures taken to:***

- (i) reintegrate the persons concerned into the public service or to compensate them as well as their dependants;*
- (ii) improve their chances of training and employment in the private sector; and*
- (iii) implement the agreement of 2007, through the National Agency to Assist and Integrate Refugees, with respect to employment and occupation.*

*The Committee also requests the Government to provide information on any measures taken to prevent discrimination against these persons in employment and occupation, particularly when they are recruited.*

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

## Mexico

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)**

The Committee notes the observations submitted by the National Union of Workers (UNT) on 30 August 2011, which refer to the lack of regulation prohibiting discrimination against women with respect to remuneration and the need to improve the collection of statistics with a view to better assessing the pay gap. **The Committee asks the Government to provide its comments in this respect.**

*Equal remuneration for men and women for work of equal value.* The Committee notes the Government's indication that, although no amendments have been made to the Federal Labour Act for the inclusion of the principle of equal remuneration for work of equal value, the Mexican Standard for Equality at Work between Women and Men (NMX-R-025-SCFI-2009) of 2009 has been adopted which establishes the conditions for any organization with workers in its service to be able to obtain certification and the label proving that its labour practices comply with equality and non-discrimination between women and men. The Standard includes indicators, practices and actions to promote equality of opportunity between women and men, and broadens the concept of equal wages for equal work to "equal wages for work of comparable value". According to the Government, the objective of this provision is for women engaged in "female" occupations to earn the same as men engaged in "male" occupations where the qualifications, effort, responsibilities and conditions of work are comparable. In this respect, the Committee observes that, although the adoption of Standard No. NMX-R-025-SCFI-2009 promotes compliance with the principle of equality between men and women and constitutes progress in relation to the principle of equal wages for equal work, it is not clear if the concept of "comparable work" is being used in a manner synonymous with "work of equal value". Furthermore, the Standard referred to is not of general application, but is intended for those organizations that wish to obtain certification that their labour practices are in compliance with equality between men and women, and therefore from this point of view may also be of more restricted application. **Recalling that the concept of "work of equal value" is the cornerstone of the Convention and is applicable to all workers, the Committee once again asks the Government to take measures to give full legislative expression to the principle of the Convention. Please also provide information on the measures adopted and on the impact in practice of the Mexican Standard for Equality at Work between Women and Men, and on how "comparable work" is being determined in this context.**

*Gender wage gap.* The Committee notes the statistical data provided by the Government, which show that the wage differences that exist between men and women in the labour market are largely influenced by the unequal distribution of workers between the various branches and occupations, working hours, educational level and the existence of low pay in activities where there is a high proportion of self-employment. The average gender wage gap in terms of

average income fell from 32.4 per cent in 2008 to 29.3 per cent in 2009. *The Committee asks the Government to continue providing detailed statistical data on the wages of men and women. The Committee also invites the Government to carry out studies on the reasons underlying the wage gap between men and women, and to adopt proactive measures so as to address more effectively the structural causes of the wage gap. The Committee asks the Government to provide information in this respect.*

## Mongolia

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)**

The Committee notes the comments of the Mongolian Employers' Federation (MONEF) and those of the Confederation of Mongolian Trade Unions (CMTU), which were incorporated in the Government's report.

*Articles 1 and 2 of the Convention. Work of equal value.* Recalling that it has asked the Government to take measures for the adoption of legislation to ensure equal remuneration for men and women for work of equal value in both the public and private sectors, and noting that the Law on Gender Equality has been adopted by Parliament in 2011, the Committee notes with *regret* that, according to the information given by the Government in its report, section 2 of the Law, as drafted, provides only for equal opportunities for men and women to receive the "same compensation for the same work". It also notes from the Government's report that the employer shall pay the "same compensation to male and female employees performing the same work". The Committee, therefore, points out that the provisions of the Law on Gender Equality, as drafted, which are similar to section 49(2) of the 1999 Labour Code, do not give expression to the concept of "work of equal value" in accordance with the principle of the Convention. The Committee recalls its 2006 general observation emphasizing that legislation should not only provide for equal remuneration for equal, the same or similar work, but also address situations where men and women perform work of a different nature that is nevertheless of equal value. The Committee further notes the comments of MONEF indicating that the term "same work" provided by section 49(2) of the Labour Code does not correspond to the concept of "work of equal value" laid down in the Convention, and that the Code does not provide a methodology for calculating compensation. *The Committee urges the Government to take the necessary steps to ensure that full legislative expression is given to the principle of equal remuneration for men and women for work of equal value, and to provide information in this regard. Please also forward a copy of the newly adopted Law on Gender Equality. The Committee once again asks the Government to provide information on any activities undertaken by the National Committee for Gender Equality to promote the principle of the Convention.*

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

## Morocco

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1979)**

*Articles 1 and 2 of the Convention. Application of the principle of the Convention in the private sector.* The Committee notes that according to the Government, the Ministry of Employment and Vocational Training has embarked upon a process of the institutionalization of equality between men and women in the employment, vocational training and social protection sectors. The Committee nevertheless notes that, according to a document entitled "Assessment of the situation with regard to equality/equity in the employment, vocational training and social protection sectors", which was prepared to facilitate the implementation of the process referred to above and published in June 2010, the wage gap was 5.5 per cent in the export sector and 40.3 per cent in "other sectors" in 1999 (9.6 and 28.9 per cent, respectively, in 1993). The study also shows that these wage gaps are essentially due to discrimination (the unexplained component of the wage gap). The Committee further notes that, in its previous report, the Government indicated that the Code of Practice on equality in employment, prepared with ILO support, would be made available to enterprises wishing to establish a vocational equality strategy, and notes that the Government has not provided further information on this subject. *The Committee asks the Government to indicate the measures adopted or envisaged, within the framework of the process of the institutionalization of equality between the sexes, or in any other context, with a view to eliminating wage discrimination between men and women in the private sector and ensuring compliance with the principle of equal remuneration for work of equal value, including in relation to the formulation and implementation of methods for the objective evaluation of jobs. The Government is also requested to provide information on the dissemination in enterprises of the Code of Practice on equality in employment and to indicate whether, and to what extent, vocational equality strategies, including a component on equal remuneration, have been established at the enterprise level.*

With reference more specifically to wage discrimination between men and women in the textile sector and the informal manufacturing sector, in which women workers are more numerous, the Committee notes once again that the Government's report does not contain information enabling it to assess whether measures have been taken to combat the wage disparities reported in 2003 by the International Confederation of Free Trade Unions, now the International Trade Union Confederation. *With a view to providing a basis for an adequate evaluation of the nature, extent and causes of wage disparities between men and women and the progress achieved in the application of the principles of the Convention, the Committee urges the Government to provide the fullest possible information on the measures adopted*

*to combat wage disparities, as well as the available data on the distribution of men and women and their remuneration levels in the textile sector and the informal manufacturing sector.*

*Supervision of application. Labour inspection.* The Committee notes that according to the Government's report, the system for the centralization of data does not produce statistics on violations of section 346 of the Labour Code, which prohibits any discrimination in relation to wages between men and women for work of equal value. However, it notes the Government's further indication that a system for the disaggregation of violations by sex is currently being established and that it will make available relevant data concerning equal remuneration between men and women, as well as on women's work in general. ***The Committee hopes that the Government will soon be in a position to provide specific information on the inspections carried out by the labour inspectorate in relation to equal remuneration, the violations of section 346 reported by labour inspectors and the penalties applied, particularly in the textile sector and the informal manufacturing sector.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1963)***

*Equality of opportunity and treatment between men and women in employment and occupation, including vocational training.* The Committee welcomes the carrying out, in 2010, of an assessment of the situation of equality/equity in the employment, vocational training and social protection by the Ministry of Employment and Vocational Training and the development of the Strategic Medium-Term Programme for the Mainstreaming of Equality and Gender Equity (2011–15) in these areas based on the findings of the assessment. In this respect, the Committee notes that the activity rate of women between 2006 and 2008 decreased from 27.1 per cent to 26.6 per cent. It also notes the existence of significant horizontal and vertical occupational segregation (particularly in rural areas), the importance of women's employment as family help in rural areas and of unpaid work by women (31 per cent of working women and 84 per cent of women in rural areas) and the high rate of unemployment among women graduates. With regard to vocational training, the assessment undertaken by the Ministry shows a low participation rate of girls from rural areas (22 per cent of trainees), gaps between men and women in relation to training levels, a strong concentration of young girls in a small number of subjects in training, the low diversification of training supply for girls and the difficulties experienced by women who have received vocational training in entering the labour market. The Committee notes that the Strategic Programme, which includes 14 projects, is focused around four main areas: (1) the mainstreaming of equality between men and women, thereby placing this principle at the heart of the preparation, implementation and evaluation of policies, programmes and political decisions; (2) the implementation of measures intended to integrate equality between men and women into the vocational training system; (3) the improvement of knowledge of gender gaps and constraints with a view to the adoption of the appropriate corrective measures; and (4) the promotion of the access of women to positions of responsibility and decision-making bodies. The Committee further notes that it is planned to involve workers' and employers' organizations in the implementation of this programme.

In its previous comments, the Committee also referred to the National Strategy for Equality and Gender Equity between the sexes adopted in 2006, the Strategic Plan 2008–12 for the promotion of women's rights, the gender dimension and equality of opportunities and the National Emergency Plan on Vocational Training, which envisaged numerous measures to combat discrimination based on sex, including measures to combat sexist stereotypes and to promote equality in vocational training and employment.

***Welcoming the political will and the efforts made by the Government in relation to equality of opportunity and treatment for men and women in employment and occupation, the Committee requests it to provide information on the implementation of the employment component of the National Strategy for Equality and Gender Equity, the Strategic Plan 2008–12, the National Emergency Plan on Vocational Training and the Strategic Medium-Term Programme for the Mainstreaming of Equality and Gender Equity (2011–15). Noting that evaluation mechanisms, including indicators, are planned, the Committee also requests the Government to provide information, including statistical data, on the results obtained and the impact of the measures adopted within the framework of the policies referred to above in terms of the access of women to employment in the public and private sectors, the diversification of employment opportunities, the supply of training and the improvement of working conditions.***

*Textile and apparel sectors.* The Committee notes the information provided by the Government on the achievements in the textile and apparel sectors of the Decent Work Programme, which was completed in 2008. It notes in particular the production of six guides on the use of the Labour Code for the Moroccan Association of Textile and Apparel Industries (AMITH) and the adaptation of ten training modules based on the provisions of the Labour Code, as well as the training of 60 trade union leaders on globalization, and the reactivation of the Moroccan Joint Textile–Apparel Committee. ***The Committee requests the Government to indicate the manner in which and the extent to which the achievements of the Decent Work Programme have resulted in an improvement in access to further vocational training, working conditions and remuneration for women engaged in the textile and apparel sectors, and particularly to combat precarious forms of employment and all types of discrimination, including wage discrimination. The Government is also requested to continue providing information on the tangible measures adopted to prevent discrimination and, where appropriate, remedy it in the textile and apparel sectors.***

*Equality of opportunity and treatment with respect to ethnic origin.* In its previous observation, the Committee requested the Government to study the employment situation of the Berber (Amazigh) population with a view to ensuring that the Convention is being effectively applied in law and practice to all groups of the population. The Committee notes that the Government, after recalling the legal framework applicable to racial discrimination, states that all studies or examinations of the employment situation in Morocco cover all groups of society, irrespective of their origins, and that the measures adopted in this respect do not exclude any group of the population. In this respect, the Committee notes the concern expressed by the United Nations Committee on the Elimination of Racial Discrimination that “some Amazighs continue to suffer racial discrimination in accessing employment [...], especially if they do not speak Arabic” (CERD/C/MAR/CO/17–18, of 27 August 2010, paragraph 11). **To enable the Government to take appropriate measures to combat discrimination affecting the Berber (Amazigh) population, the Committee encourages it to gather and analyse data on the situation of this group of the Moroccan population in employment and occupation. The Committee requests the Government to indicate the measures adopted to ensure that the Berber, and particularly those who do not speak Arabic, do not suffer discrimination in employment and occupation and that they benefit from equality of opportunity and treatment with other groups of the population.**

*Cooperation with employers' and workers' organizations.* The Committee welcomes the adoption of the Social Responsibility Charter, of which the component on human rights envisages the prevention of any discrimination and the promotion of equality of opportunity for men and women, and the creation of a “Corporate Social Responsibility” label by the General Confederation of Moroccan Enterprises (CGEM), attributed to enterprises which respect the principles set out in the Charter. **Noting that, according to the Government's report on the application of the Equal Remuneration Convention, 1951 (No. 100), 29 enterprises have received this label, the Committee requests the Government to provide information on the measures adopted by CGEM and the enterprises concerned to prevent, monitor and address any form of discrimination and to promote equality of opportunity, and to continue providing information on the granting of the “Corporate Social Responsibility” label.**

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

## Namibia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)**

*Article 1 of the Convention. Legislation.* The Committee recalls its previous comments in which it noted that the prohibition of unfair dismissal in section 33 of the Labour Act 2007 omitted the grounds of HIV and AIDS, degree of physical or mental disability and family responsibilities, which are listed in the general non-discrimination provision of the Labour Act (section 5). The Committee notes that one case was filed on the basis of section 5 and that many cases were filed and solved through conciliation concerning section 33 of the Labour Act. In order to ensure that there is no discrimination on the basis of HIV and AIDS, the degree of physical or mental disability and family responsibilities, the Government indicates that the Ministry of Labour and Social Welfare regularly conducts inspections at the workplace and that workers can lodge complaints with the Office of the Employment Equity Commissioner, the Office of the Labour Commissioner and the Office of the Ombudsman, though it does not appear that any cases on the grounds of HIV and AIDS, physical or mental disability or family responsibilities have yet been brought before these bodies. **The Committee asks the Government to consider including specific provisions prohibiting dismissal based on the grounds of HIV and AIDS, degree of physical or mental disability and family responsibilities, with a view to ensuring consistency between sections 5 and 33 of the Labour Act. The Committee also asks the Government to provide specific information on the practical measures taken in order to protect workers against unfair dismissal based on these grounds including information on cases brought before the Office of the Employment Equity Commissioner, the Office of the Labour Commissioner, or the Office of the Ombudsman, as well as on the steps taken to raise awareness of the available remedies.**

*Article 1(1)(b). Sexual orientation.* The Committee recalls its previous comments in which it noted with regret that the Labour Act no longer prohibited discrimination based on the ground of sexual orientation, which had been the case under the previous legislation of 1992, and with respect to which the Government had indicated that it was covered by the Convention pursuant to *Article 1(1)(b)*. The Committee notes that the Government refers to article 10 of the Constitution which prohibits discrimination based on sex, race, colour, ethnic origin, creed, and social or economic status, adding that inspections at the workplace are conducted in order to ensure that no discrimination takes place and that workers are treated equally, regardless of their sexual orientation. The Committee notes from the Report of the Working Group on the Universal Periodic Review of the United Nations Human Rights Council that while the Constitution outlaws discrimination of any kind, since independence, no cases of discrimination on the basis of sexual preference or orientation have been addressed by the courts (A/HRC/17/14, paragraph 21). The Committee recalls that where no cases or complaints are being lodged, this is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals. **The Committee asks the Government to ensure that workers have the same level of protection against discrimination on the grounds of sexual**

*orientation as provided under section 5 of the Labour Act with respect to other grounds, and to provide information on specific measures taken in this regard.*

*Articles 2 and 5. Implementation of the national policy and affirmative action.* The Committee notes from the 2008–09 annual report of the Employment Equity Commission (EEC) that the representation of previously disadvantaged groups because of race in management positions remained static. While accounting for 6 per cent of the total number of employees, those previously advantaged (whites), comprised 58 per cent of executive directors. The previously disadvantaged (blacks) comprised 28 per cent of executive directors, improving their share of representation by 2 per cent. Women accounted for 41 per cent of persons in managerial positions and 42 per cent of persons promoted to managerial positions. As to persons with disabilities, the Committee notes that they are under-represented at almost every level of employment, accounting for 0.5 per cent of the total workforce. The Committee welcomes the measures taken by the Government to raise awareness and to better implement affirmative action in employment and occupation, including, organising visits by the EEC at the workplace to provide information on affirmative action to relevant employers and workers, attending to complaints received and verifying the information contained in affirmative action reports received from relevant employers. The Government also indicated, however, that the shortage of staff remained a very serious constraint in the enforcement of the Affirmative Action (Employment) Act. The EEC indicates in its report that many complaints received alleged racial discrimination, and more specifically preference of non-Namibians above qualified Namibians by employers, referring to employers' non-compliance with section 19 of the Affirmative Action (Employment) Act, obliging employers to give priority to candidates from designated groups (namely, disadvantaged persons because of race, women, and persons with disabilities). The Committee notes that 100 cases of non-compliance were filed against employers during the review period 2008–09. ***The Committee asks the Government to continue providing information on the application of the Affirmative Action (Employment) Act, including information on the impact it has had on the representation of designated groups in management positions, and specific information on cases of non-compliance or discrimination by employers brought before the Court. Please also provide specific information on the affirmative action plans, and on the possibility to increase the number of staff with a view to better enforcement of the Affirmative Action (Employment) Act. The Committee reiterates its request for information on measures taken to ensure and promote equality of opportunity and treatment of persons from designated groups in respect of access to vocational training with a view to fostering both their career advancement and their access to a wider range of jobs.***

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

## Nepal

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)**

*Articles 1 and 2 of the Convention. Legislation.* The Committee recalls that article 13(4) of the interim Constitution, which provides that there shall be no discrimination with regard to remuneration and social security between men and women for the same work, is not in conformity with the Convention. The Committee notes the Government's reiterated statement that Rule No. 11 of the Labour Regulations, 1993, provides for equal remuneration for all irrespective of gender or sex for work of equal value. The Committee, however, notes that Rule No. 11 provides for equal remuneration between men and women for work of the same nature and therefore does not reflect the principle of the Convention which also encompasses work of a different nature but nevertheless of equal value. ***The Committee therefore once again urges 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 not only for equal work but also for work of equal value, in accordance with the Convention. Recalling that new labour legislation is currently under preparation, the Committee also urges the Government to ensure that the future labour legislation gives full expression to the principle of equal remuneration for men and women for work of equal value. It asks the Government to provide information on any progress made in this respect.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1974)**

*Articles 1 and 2 of the Convention. Legislation.* The Committee notes that the Government's report does not provide any information on the progress made with respect to the preparation and adoption of the new labour legislation and the Sexual Harassment at the Workplace Bill. The Committee however understands that the draft labour legislation is still under preparation and that the Sexual Harassment at the Workplace Bill has not yet been submitted to the Parliament. In this respect, the Committee notes that, in its concluding observations, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern about the widespread prevalence of sexual harassment in the workplace (CEDAW/C/NPL/CO/4-5, 29 July 2011, paragraph 29). ***The Committee urges the Government to ensure that the new labour legislation includes provisions defining and prohibiting direct and indirect discrimination in all aspects of employment and occupation, including recruitment, on all the grounds covered by the Convention, and promotes equality, including through proactive measures. The Committee also urges the Government to take the***

*necessary measures to ensure that the Sexual Harassment at the Workplace Bill is submitted to the Parliament for its consideration and adoption, and requests it to provide information on steps taken in this respect. The Committee asks the Government to provide information on the progress made in adopting the new labour legislation.*

The Committee notes with *interest* the ratification of the *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, by Nepal. The Committee recalls that it provides important elements for overcoming discrimination against indigenous and tribal peoples and ensuring their equality of opportunity and treatment.

The Committee notes however that the Government's report contains no reply to its previous comments on the following points. It is therefore bound to repeat its previous observation, which read, in relevant parts, as follows:

*Equality of opportunity and treatment in employment and occupation, irrespective of sex, ethnicity, indigenous origin, religion and social origin.* The Committee notes that the Minister of Finance, in his budget speech in September 2008, highlighted that pervasive socio-cultural and economic discrimination and inequality on the basis of class, caste, region and gender had become a serious problem of the country and that it was urgent to properly address the demands raised by various oppressed castes, women, *Dalits* and indigenous and ethnic groups. The Minister announced a number of measures targeting these groups. The Committee also notes from the Government's report that the current interim plan emphasizes the empowerment of women and marginalized groups, including through access to gainful employment. The adoption of a new National Employment Policy and employment generation programmes are envisaged under the ILO Decent Work Country Programme (2008–10) which stresses that all outcomes of the Programme should reach marginalized women, young people, *Dalits*, indigenous people (*Janajati*) and other minorities. *The Committee requests the Government to provide information on the following:*

- (i) *the progress made in adopting a National Employment Policy and the measures taken to ensure that it adequately addresses the situation of women, Dalits and indigenous peoples, in line with their rights and aspirations; and*
- (ii) *the specific programmes and projects aiming at promoting equality of opportunity and treatment of women, indigenous peoples, Dalits and other marginalized groups, including information on the outcomes of these programmes. In this regard, please provide statistical information on the position of men and women in the labour market, as well as statistical information indicating the progress made in addressing discrimination and inequality faced by Dalits, indigenous peoples and other marginalized groups.*

*Article 3(d). Civil service.* The Committee notes that according to the United Nations High Commissioner for Human Rights, *Mashehis, Dalits, Janajatis* and other marginalized groups continue to be severely underrepresented in most state and civil service structures, including courts, law enforcement agencies and local authorities (A/HRC/7/68, 18 February 2008, paragraph 50). The High Commissioner also reports that a Civil Service Bill adopted in August 2007 reserved 45 per cent of posts for women, *Madhesi, Janajati/Adivasi, Dalits* and disabled persons and that quotas of posts for women and marginalized groups have been established in the Nepal police and armed police force regulations. *The Committee requests the Government to provide the texts of the laws and regulations providing for reservations and quotas of posts for women and marginalized groups in the civil service, including the police. It also asks the Government to provide information on the specific steps taken by the Civil Service Commission to implement these provisions and to indicate the number of men and women from target groups that have been admitted to the civil service during the reporting period.*

*Discrimination based on political opinion.* The Committee recalls its previous comments concerning sections 10 and 61(2) of the Civil Service Act which provide that "moral turpitude" constitutes a ground for exclusion or removal from the civil service. The Committee concluded that there are no criteria established to determine what constitutes "moral turpitude". Given the vagueness of the term "moral turpitude" and the resulting possibility that it could be applied in an arbitrary manner leading to discrimination based on political opinion, the Committee had expressed the hope that these provisions would be repealed in the context of the recent amendments to the Civil Service Act. *Regretting that no information has been provided by the Government on this matter, the Committee requests the Government to indicate whether sections 10 and 61(2) of the Civil Service Act have been repealed.*

*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.

## Netherlands

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1971)**

The Committee notes the observations on the Government's report by the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Federation for Small and Medium-sized Business (MKB-NL), as well as the communication of the Netherlands Trade Union Federation (FNV).

*Measures to address the wage gap and differences in remuneration of part-time workers.* The Committee recalls its previous comments noting an average gender wage gap of 18 per cent and the need for targeted action to address the gender wage gap given that in the present national context men are usually working full time and women part time, and that some provisions in collective agreements excluding part-time workers from receiving certain bonuses, lead to inequalities between men and women. In this connection, the Committee had noted that various studies and research indicated that equal pay should be addressed in a wider context and that a Task Force Part-Time Plus had been established with the aim of making it easier for workers to combine work and care responsibilities and to encourage women, who wish to work more hours, to do so. Research undertaken on differences in remuneration and its underlying causes in various sectors had also indicated that the uncorrected difference in remuneration remained relatively high. Other research on the extent to which differences in remuneration could be tracked back to emancipation, discrimination, and sociological

or economical factors was expected to propose solutions for addressing remuneration differences. The labour inspectorate was also undertaking research on differences in remuneration.

The Committee notes that the Task Force Part-Time Plus presented its final report on March 2010. It contained recommendations on how to increase the level of participation of women in the labour market with a view to reducing pay differences, and these have been brought to the attention of the social partners. The Government states that assessing the impact of the Task Force will require the monitoring, among others things, of collective agreements regarding flexible work arrangements. The Committee notes that the FNV reaffirms that part-time work is a well-known cause of the gender pay gap and states that the Task Force Part-Time Work Plus recommended that tax policies that support women to work more hours should be more widely reported and that the Government should explore how Dutch fiscal and income legislation supports or undermines women working more paid hours; legislation should also be improved where necessary. Other recommendations included exploring the possibilities of better paid parental leave and improving childcare, during school periods as well as holidays, and enabling working people to exercise the legal right to work within flexible working hours. The FNV agrees that the social partners should be involved in implementing these recommendations but states that the Government has to take action where it is the most obvious and appropriate actor. With respect to research by the Labour Inspectorate on differences in remuneration, the FNV criticizes the methodology used in assessing the part of the gender pay gap that is due to discrimination between men and women. The FNV suspects that discrimination is more important in influencing the gender pay gap than is acknowledged by the Government, and notes that the fact that the gender pay gap is greater in the higher echelons is left unexplained.

***The Committee asks the Government to indicate the measures taken to implement, in cooperation with the social partners, the recommendations of the Task Force Part-Time Plus, including an assessment of their impact on reducing differences in remuneration between men and women relating to part-time work. The Committee also asks the Government to provide the results of any other research or studies undertaken regarding differences of remuneration and the solutions proposed, as well as indicating any action undertaken to monitor provisions in collective agreements concerning flexible working hours. The Government is also requested to provide information on the methodology used by the Labour Inspectorate to assess the gender pay gap, including the part that is due to discrimination based on sex. Please also continue to provide information, including statistics, on the evolution of the gender pay gap in the public and private sectors, covering full-time and part-time workers.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)***

The Committee notes the communication of the Netherlands Trade Union Federation (FNV).

***Discrimination based on social origin.*** The Committee recalls that social origin does not figure among the prohibited grounds of discrimination set out in the Equal Treatment Act and that the Government considers that this ground is covered by article 1 of the Constitution prohibiting discrimination “on any grounds whatsoever”. The Government also indicated previously that discrimination based on social origin was sufficiently covered by indirect discrimination based on other grounds such as race, nationality, religion or personal convictions, gender or civil status, covered by the Equal Treatment Act. The Committee also noted, however, that an explicit inclusion of social origin in the equal treatment legislation would lighten the burden of proof for persons alleging direct discrimination on the basis of social origin. The Committee notes the Government’s statement that since the Netherlands is a party to Protocol No. 12 of the European Convention on Human Rights and the International Covenant on Civil and Political Rights, the express prohibition of discrimination based on social origin contained in these instruments has been incorporated into Dutch law, thereby removing the need for its explicit inclusion in the Equal Treatment Act. ***The Committee asks the Government to examine the prevalence of direct and indirect discrimination based on social origin in employment and occupation, including whether effective complaints mechanisms and legal remedies exist to address it and to provide specific information in this regard. Please also indicate whether the Equal Treatment Commission (ETC) is competent to handle cases of direct and indirect discrimination based on social origin in employment and occupation and, if so, provide information on any cases handled by the ETC and the courts addressing discrimination based on this ground.***

***Equality of opportunity and treatment (ethnic minorities).*** The Committee previously noted that the Government was undertaking a number of projects and initiatives aimed at removing impediments faced by “non-Western minorities” in the labour market but that, despite positive trends, the labour force participation of non-Western minorities continued to be precarious and that discrimination inhibited their access to the labour market and their ability to secure permanent employment. In this context, the FNV had indicated that clear government policies and measures to eliminate discrimination were lacking and had requested data on the quality and sectors of employment with a view to assessing the effectiveness of the measures taken.

The Committee welcomes the detailed statistics provided by the Government on the quality and level of employment of non-Western minorities and native Dutch in 2009. It notes that according to the data the unemployment rate of non-Western minorities continued to be 7 per cent higher than that of native persons, and for men and women belonging to non-Western minorities, the gap with male and female native persons was 7.8 and 6.1 per cent respectively, with Moroccan men and Turkish women having the highest unemployment gap. The employment rate of non-Western

minorities was 14.4 per cent lower than native persons (54.7 per cent against 69.1 per cent) and their share in flexible jobs was 7.4 per cent higher than for native persons. The number of Turks and Antilleans/Arubans working in flexible jobs was particularly high (16.8 and 17 per cent respectively) with almost 22 per cent of the employed Turkish women working in a flexible job (against 8 per cent of the employed native women). The share of non-Western minorities working on an elementary or lower occupational level was 47 per cent compared to 28 per cent for native workers, with the highest gap for Turkish and Moroccan workers (55 per cent) and lowest for Surinamese workers (38 per cent). The Committee notes that the share of non-Western minorities aged 15–64 years with an educational level not higher than the International Standard Classification of Education (ISCED) level 2 was 49 per cent compared to 30 per cent for native Dutch. About 60 per cent of the Turks and Moroccans had an educational level not higher than ISCED level 2. Turkish and Moroccan women had the highest education gap. With regard to sectors of economic activity, almost 20 per cent of the workers of non-Western origin are in the hotel and catering industry – with an over-representation of “other non-Western minorities”, whereas Moroccans and Turks are over-represented respectively in the business sector (temporary employment agencies) and manufacturing, except construction.

The Committee notes the Government’s statement that some of the obstacles faced by non-Western minorities are directly related to their origin including discrimination and a below average command of the national language. The Government also states that the employment gap between non-Western minorities and native Dutch grew in 2009 and that factors behind the unemployment of people from ethnic minorities include poorer educational qualifications, inadequate knowledge of the language, traditional male–female roles and demographics (many young people have flexible employment contracts). The Committee notes that the Government continues to take various initiatives targeting young people and women from ethnic minorities, as well as refugees. It notes the employment plans for vulnerable young people in large cities, the creation of promotional teams to improve the image of young persons among employers and the Youth Unemployment Action Plan set up in 2009 to lessen the effects of the economic crisis, and which includes explicit activities for young people from ethnic minorities. With regard to ethnic minority women, the Committee notes the initiatives involving local authorities to improve employment participation of women belonging to ethnic minorities, including the “1001 Kracht” (1001 Power) approach designed to encourage women in this group to participate more actively in society and the labour market through voluntary work, the pilot schemes to encourage women from ethnic minorities to move from voluntary work to work, and a Guide based on these initiatives developed in 2008, as the basis of training courses with and for 23 local authorities. The Government also provides information on the projects aimed at assisting refugees in finding employment (Refugees job offensive and securing jobs offensive (2010–11)) and the “status-holders project”. The Committee notes that the FNV, while acknowledging the measures taken during the period 2008–10 to increase the employment of young people from ethnic minorities, considers that specific targets are often lacking as well as instruments to measure the effectiveness of the programmes.

***The Committee asks the Government to provide detailed information, including statistics disaggregated by sex, on the results achieved of the various measures to improve the employment situation of non-Western minorities, and in particular workers of Turkish and Moroccan origin, and to address the underlying causes of the high unemployment rates of these groups. Please also indicate any measures taken or envisaged to seek cooperation with the social partners to set specific targets in the context of projects and programmes aimed at eliminating discrimination on the basis of race, colour and national extraction, and to measure the effectiveness of these programmes.***

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

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1988)**

The Committee notes the communication dated 31 August 2011 from the Netherlands Trade Union Federation (FNV).

*Article 4. Leave entitlements for men and women workers with family responsibilities.* The Committee recalls that the Work and Care Act of 2001 provides for pregnancy and maternity leave, paternity leave, parental leave, emergency and other short-term leave to care for a sick child, foster child, partner or parent at home, and long-term leave to care for a partner, child or parent with a life-threatening illness. It notes the statistical information provided by the Government that the taking up of emergency leave by women is slightly higher than that of men (34 per cent versus 29 per cent of total employees); for short-term leave, 12 per cent of women compared with 10 per cent of men, but in 2009 it was almost equal, as 36,000 female employees and 35,000 male employees took short-term leave; the actual use of long-term leave by female employees is twice as high as that of male employees (4 per cent compared to 2 per cent); parental leave was taken substantially more by female than by male employees in 2009 (41,000 female employees and 19,000 male employees); the number of men taking parental leave was 10,000, having almost doubled in 2009, and the number of men using their entitlements is sharply increasing. The Government indicates that research shows that parental leave is one of the least favoured instruments by parents, as compared to flexible working-time arrangements and better school hours; therefore the Government sees no reason to select parental leave as an instrument to be promoted. In this connection, the Committee notes the observations by FNV that long-term care leave is hardly ever used, because it is unpaid and conditions are rigid; there are only two options: six weeks’ full-time leave or 12 weeks’ half-time leave. According to the FNV, parental leave is largely unpaid although it allows a tax reduction of a maximum of 50 per cent of the minimum

wage during the period of leave. The FNV further indicates that the Government has submitted a draft law to the Parliament to make long-term care leave and parental leave more flexible, and to allow workers to take parental leave in parts. However, the Government is proposing to abolish the tax reduction during parental leave. The FNV considers that long-term care leave and parental leave should be paid leave, and that two days' paid leave for fathers after childbirth is far too short, thus it should be increased to ten days of paid leave. ***Recalling the importance of equitable sharing of family responsibilities between men and women, the Committee asks the Government to indicate the measures taken or envisaged to address the underlying reasons for the low take up of the leave as raised by the FNV. It also asks the Government to provide information on the draft law with regard to long-term care leave and parental leave, and progress made in its adoption, as well as on whether any consideration is being given to additional paid leave for fathers after childbirth with a view to taking into account the needs of employees. Further, please continue to provide information, disaggregated by sex, on the number of employees exercising their right to the various leave entitlements under the Work and Care Act.***

***Article 5. Childcare and family services and facilities.*** The Committee notes the Government's indication that research into the use of informal and formal childcare services was conducted by Statistics Netherlands (CBS) in 2009, showing that for couples who both work full time or have part-time jobs of 24–35 hours per week, formal childcare services are becoming increasingly important. It also notes the Government's indication that informal childcare services are being used less and less; since the adoption of the Childcare Act in 2005, childcare arrangements are no longer provided for in collective agreements, and the employers' mandatory contribution constitutes almost one third of the total costs of the childcare services. In this connection, the Committee notes the observations by the FNV that, due to the adoption of the Childcare Act, some of the informal childcare arrangements have been formalized, thus decreasing the use of informal childcare. The FNV states that the costs of childcare are uncertain due to change in regulations; the quality of childcare facilities is not always good and the monitoring of the quality is insufficient; in certain parts of the Netherlands, long waiting lists still exist; and for these reasons, many parents are still making use of informal childcare. It also states that the contribution by the employers to the costs of childcare is not one third, but 22 per cent only. It further states that, due to a lack of good quality and affordable facilities, women choose to work in small part-time jobs, which hinders their careers and prevents them from acquiring financial independence. ***Recalling the importance of ensuring that family services and facilities meet workers' needs and preferences, the Committee asks the Government to provide statistical information on the availability of affordable and accessible childcare services and facilities including their utilization that would allow the Committee to assess the progress made over time, including: (i) the number of workers with family responsibilities making use of the existing child and family care institutions; (ii) the number and age of children requiring care; and (iii) any studies or surveys assessing whether the Childcare Act in fact responds to the specific needs and preferences of workers with family responsibilities of both low- and middle-income groups for childcare services and facilities. It also asks the Government to provide information on any measures taken to ensure the quality of childcare facilities and services. The Committee also requests the Government to provide information on the number and nature of services and facilities that exist to assist workers with family responsibilities regarding other dependent members of their family.***

***Article 7. Vocational guidance and training.*** The Committee recalls its previous requests regarding measures to assist women to enter, re-enter and remain in the labour force. The Committee notes the Government's indication that no reliable figures are currently available regarding the number of women with family responsibilities participating in the Working–Learning Project who have been placed and remained in the labour market. It notes the Government's indication that 3–4 per cent of women working less than 27 hours, and 14 per cent of those working 28–34 hours would like to have full-time employment (35 hours or more), according to the Dutch Labour Force Survey. The Government adds that, since 50 per cent of women working 12 hours or more were already working part time even before taking on care responsibilities for children, for a substantial proportion of women, a return to full-time employment is not relevant. It further indicates that the Taskforce Part-time Plus, which was established by the Government to encourage an increase in the working hours of women, concluded that the main factor for the strong preference of women to work part time lies in the broad social acceptance and availability of part-time work, in combination with social pressure on women to work part time, in particular in terms of care responsibilities. In this connection, the Committee notes the observations by the FNV that, according to some research, employers invest more in full-time workers, still largely men, and less in part-time workers who combine work and family responsibilities. With regard to the economic sectors for which collective agreements allow employers to deviate from the Working Hours (Adjustment) Act, the Committee notes the Government's indication that most provisions in collective agreements which are in deviation of the Act are in favour of employees; in 2009, however, two agreements were found which limited the right of employees to increase their working hours: one requires positive performance of the employee, and the other allows the employer not to take the employee's request into consideration. ***The Committee asks the Government to indicate any measures taken or envisaged to address the issues of female concentration in part-time work, and to improve educational and training opportunities for part-time workers, with a view to improving the possibilities of full-time employment and job security of workers with family responsibilities through strengthening their occupational qualifications, as well as the results achieved.***

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 comments by the New Zealand Council of Trade Unions (NZCTU) and by Business New Zealand (Business NZ) attached to the Government's report.

*Work of equal value.* The Committee has been commenting for a number of years on the fact that the Employment Relations Act, 2000 (ERA), the Human Rights Act, 1993 (HRA), and the Equal Pay Act, 1972 (EPA), limit the requirement for equal remuneration for men and women to the same and similar work, which is more restrictive than the concept of "equal value" provided in the Convention. The Committee notes the Government's indication that no laws or regulations concerning the Convention were enacted or amended during the reporting period. The Government does not, however, provide any information, as previously requested by the Committee, to indicate that the legislation concerning equal remuneration is being interpreted to apply the broader concept of work of equal value. Business NZ indicates that, in practice, men and women receive the same pay for the same work.

The Committee notes that the NZCTU expresses concern at the continuing lack of legislative mechanisms to operationalize and implement the principle of equal pay for work of equal value. It also points to the closure of the Pay and Employment Equity Unit and the termination of its work programme, as well as the discontinuing of pay investigations, as discussed below, as bringing to an end, and indeed undermining, any progress in this area. The Committee also notes the Government's acknowledgement that improvements in the gender pay gap have been slow, with very little change in the pay gap over the last decade. The Committee notes further that women are concentrated into lower paid sectors. In the context of the continuing gender pay gap and occupational gender segregation, as well as what appears to be a recent rolling back of measures aimed at promoting pay equity, the Committee considers that giving full legislative effect to the principle of equal remuneration for men and women for work of equal value is of particular importance to ensure the effective application of the Convention. ***The Committee therefore asks the Government to take steps to give full legislative effect to the principle of equal remuneration for men and women for work of equal value, and to provide information on the specific measures taken in this regard. The Committee also asks the Government to provide information on any judicial decisions relating to the principle of the Convention.***

*Applying the principle in the public service.* The Committee notes the Government's indication that the gender pay gap is wider in the public service than in the private sector (at 15 per cent and 11 per cent, respectively, in 2009), and that no information is available regarding why this difference exists. The Committee recalls that pay and employment equity reviews and response plans had been undertaken in the 39 departments, and that the findings of the reviews carried out by mid-2008 indicated the following: a gender pay gap ranging from 3 to 25 per cent, higher starting rates and performance pay for men, an under-evaluation of women's work, an under-representation of women in management and their concentration in administrative and clerical work with limited career paths, difficult career advancement for part-time workers, and workplace cultures that limited women's contributions. It notes the Government's indication that: the Five-Year Plan of Action on Pay and Employment Equity, and the pay and employment equity reviews in the public sector concluded in 2009; that the State Services Commission has a statutory responsibility to promote, develop and monitor equal opportunities policies and programmes for the public service; and that the Ministry of Women's Affairs has taken on a policy and advisory role with respect to gender and pay equity issues.

In this connection, the Committee notes the observations of the NZCTU that: due to the disestablishment of the Pay and Employment Equity Unit and the discontinuation of the pay and employment equity reviews, pay investigations that had been undertaken for two female-dominated occupations (special education support workers and social workers) were immediately affected; and that the discontinuation of the pay investigations removed policies and processes which underpinned a strategic and comprehensive approach to improving pay and employment equity. In response, the Government indicates that it has pledged continued support for the implementation of the public service departments' pay and employment equity response plans, excluding pay investigations, and is currently focused on providing support for public service chief executives, boards of trustees and chief executives in the public education and health sectors to ensure that they continue to address and respond to any identified gender inequalities. ***The Committee asks the Government to take measures to identify and address the underlying causes of the wider pay gap in the public service. The Committee asks the Government to provide information on any measures taken by the State Services Commission and the Ministry of Women's Affairs, with a view to the promotion and application of the principle of equal remuneration for men and women for work of equal value in the public service, and the impact thereof. Please also provide information on any action taken to implement the recommendations made by the pay and employment equity reviews, as well as the results achieved by the implementation of the public services departments' pay and employment equity response plans.***

*Job evaluation in the private sector.* The Committee recalls the need for governments to promote objective job evaluation methods in both the private and public sectors to ensure gender equality in the determination of remuneration. It notes the Government's indication that the Equitable Job Evaluation Tool is currently available for employers both in the public and private sectors through the Department of Labour's website; for receiving the toolkit, employers are required to report back on the results from their usage of the tool. The Committee also notes the comments by Business NZ that the value to be attributed to a job is a highly subjective concept, with the value to be attributed to a particular job likely to vary depending on the biases of the person carrying out the evaluation. Business NZ also states that any arbitrary

re-evaluation, if accompanied by a requirement to pay more as a consequence, can only lead to job loss. *The Committee asks the Government to provide detailed information on any measures taken to promote the use of the Equitable Job Evaluation Tool both in the public and private sectors, and on any other measures taken to ensure that the value of jobs is determined objectively and free from gender bias. It also asks the Government to provide information on awareness-raising activities, with the cooperation of the social partners, concerning the concept of “work of equal value” and the importance of using objective job evaluation free from gender bias.*

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 communication from the New Zealand Council of Trade Unions (NZCTU), Business New Zealand (Business NZ), and the Government’s reply thereon. With respect to the NZCTU’s observations concerning migrant workers under the Recognized Seasonal Employer (RSE) scheme, the Committee notes that the issues raised primarily relate to inequalities with respect to social security, remuneration, accommodation and trade union membership covered by the *Migration for Employment Convention (Revised), 1949 (No. 97)*. As some of the issues have been addressed by the Committee in its observation of 2007 on Convention No. 97, the Committee will examine the NZCTU’s observations on the RSE scheme together with the Government’s next report on that Convention.

*Access to employment and vocational training – Maori and Pacific Island people.* The Committee recalls its previous observation addressing issues relating to the occupational segregation of Maori and Pacific Island people into certain occupations and their generally lower education, qualifications and skills levels. It notes the Government’s indication that the unemployment rate for Maori was 13.3 per cent in the year to March 2010, which was 4.5 per cent points above its 2009 level; when compared with the unemployment rate for all people which was 6.4 per cent in March 2010, the rate for Maori has increased more sharply. In 2010, Maori were still most commonly represented in the occupational groups of plant and machine operators and assemblers, and service and sale workers. With regard to the public service, in 2009 the representation of Maori and Pacific Island people was 16 per cent and 7.4 per cent, respectively. The Committee also notes the Government’s indication that provision of employment and training opportunities to Maori and Pacific Island people continues to be an area of high priority, in particular by the Tertiary Education Commission, aiming at achieving equality in employment and vocational training; the priorities for the Tertiary Education Strategy 2010–15 make specific reference to youth and under-represented groups, including Maori and Pacific Island people; in 2010, changes were introduced to the Ministry of Social Development’s Training and Opportunities Programmes aimed at improving work skills, by putting a more explicit focus on improving literacy and numeracy skills. The Government adds that the Pacific Economic Action Plan, which was launched in 2007, and the work of which places an ongoing emphasis on developing the skill of the Pacific workforce, has been reviewed and as of May 2010 was in the final stages of being updated. However, participation of Maori and Pacific Island people remains low in industry training (as of 2009, 17.2 per cent of the total trainees were Maori, 6.9 per cent were Pacific Island people), and particularly in the Modern Apprenticeship Scheme (as of 2009, 14.22 per cent of the total apprentices were Maori and 3.08 per cent were Pacific Island people). *While acknowledging the Government’s continued commitment to improving the education levels of Maori and Pacific Island people and to increasing their training and employment opportunities, the Committee asks the Government to indicate any measures taken or envisaged to address the continuing inequalities faced by Maori and Pacific Island people in the labour market. It also asks the Government to provide information on the results achieved so far, as well as any improvements made to the various strategies, programmes and initiatives used to improve the skills levels and sustainable employment for men and women belonging to Maori and Pacific Island communities. Please also provide detailed information on the Pacific Economic Action Plan, once its update has been completed.*

*Access to employment and vocational training – women.* The Committee notes that, while there has been some progress, the participation rates of women in courses provided by industry training organizations (ITOs) and in the Modern Apprenticeship Scheme remain low (29.2 per cent and 11.67 per cent, respectively). It also notes the Government’s indication that the low proportion of women participating in industry training is due to complex historical factors related to traditional employment patterns and the segmentation of the labour market; industries that had long-standing apprenticeship traditions tended to be male dominated. The Government is currently developing policy projects and sector initiatives to address participation rates by women in vocational training; however, the numbers of women enrolled in male-dominated trades has changed little, and the Government continues to be mindful of this fact and of the need to encourage young women of all backgrounds to consider these trades as viable areas of training and employment. *The Committee asks the Government to provide information on any results achieved by its efforts to extend industry training and the Modern Apprenticeship Scheme to industries in which women predominate and to encourage women’s enrolment in courses where their participation is particularly low, as well as the results achieved by the Equal Employment Opportunities Commissioner and the Industry Training Fund to promote diversity and to promote equality of opportunity and treatment with respect to the vocational training courses offered to men and women. With respect to occupational segregation, the Committee also refers to its comments on the Equal Remuneration Convention, 1951 (No. 100).*

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

## Nicaragua

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1967)***

The Committee notes the communication from the Confederation of Trade Union Unification Confederation (CUS) from Nicaragua dated 30 August 2011 concerning acts of discrimination on the ground of political opinion. According to the CUS, 21,000 workers from the public sector were dismissed because they were not members or did not share the ideology of the political party of the Government in power. Moreover, 28 trade unions have ceased to exist. The CUS also alleges discrimination against disabled workers. *The Committee requests the Government to provide comments thereon, including information on any relevant cases.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Nigeria

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2002)***

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

*Articles 1, 2 and 3 of the Convention. Discrimination based on sex with regard to employment in the police force.* The Committee previously considered that sections 118–128 of the Nigeria Police Regulations, which provide special recruitment requirements and conditions of service applying to women, are discriminatory on the basis of sex and thus incompatible with the Convention. Accordingly, the Committee urged the Government to bring the legislation into conformity with the Convention. The provisions in question provide the following:

- Section 118 excludes women who are pregnant or married from being eligible for seeking for enlistment in the police force. It also provides for a minimum age for enlistment of 19 years, while men can apply as of 17 years (section 72(2)(b)). The minimum height requirement of 1.67 metres applies to men and women.
- Section 119 provides that a specified form shall be used for the fingerprinting of women candidates and that the medical examination of women candidates shall take place at the Police College immediately prior to enlistment.
- Section 120 provides that women candidates shall be interviewed in the presence of a woman police officer and that interviewing officers shall bring to the attention of the women candidates the provisions of these Police Regulations governing the duties of women police, and the miscellaneous conditions of service attaching to women police (as laid down in sections 123–128).
- Section 121 lists the duties that women police officers are permitted to perform, such as investigation of sexual offences against women and children, attendance when women and children are being interviewed by male police officers, searching, escorting and guarding women prisoners; school crossing duties; and crowd control, where women and children are present.
- Section 122 provides that women police officers may, in order to relieve male police officers from these duties, be employed in clerical duties, telephone duties and “office orderly duties”.
- Section 123 provides that women police officers shall not be called upon to drill under arms or take part in any baton or riot exercise.
- Section 124 requires women police officers wishing to marry to make a written request for permission to the police commissioner, providing the name, address and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character and the woman police officer has served in the force for a period of not less than three years.
- Section 125 provides that a married woman police officer shall not be granted any special privileges by reason of the fact that she is married, and shall be subject to posting and transfer as if she were unmarried.
- Section 126 provides that a married woman police officer who is pregnant may be granted maternity leave, while section 127 provides that an unmarried woman police officer who becomes pregnant shall be discharged from the force.
- Section 128 regulates the wearing of make-up as well as jewellery and hairstyles.

In its report, the Government expresses the view that sections 118–128 are not discriminatory. The Committee recalls that the Convention defines as discriminatory any distinction, exclusion or preference made on the basis of sex or other prohibited grounds which have the effect of nullifying and impairing equality of opportunity in employment and occupation. The Committee considers that sections 118–128, taken together, reflect an outdated and gender-biased approach as regards the role of women in general, and as members of the police force, in particular. The criteria and provisions relating to pregnancy and marital status contained in sections 118, 124 and 127 constitute direct discrimination. As regards the limitation of the duties that women police officers are permitted to perform, the Committee recalls that *Article 1(2)* provides that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination. Whether or not a distinction is based on inherent job requirements and is thus acceptable has to be determined on an objective basis, free from gender bias. The Committee considers that sections 121, 122 and 123 are likely to go beyond what is permitted under *Article 1(2)*. A common height requirement for men and women is also likely to constitute indirect discrimination against women.

*Recalling that each Member for which this Convention is in force, in accordance with Article 3(c), is under the obligation to repeal any statutory provisions which are contrary to equality of opportunity and treatment, the Committee once again urges the Government to bring the legislation into conformity with the Convention, and to indicate the measures taken to this end in its next report.*

*The Committee trusts that the Government, in collaboration with workers' and employers' organizations, will take the necessary measures to ensure equality of opportunity and treatment of women in the police force. It encourages the Government to have regard to the guidance concerning equality issues set out in the Guidelines on social dialogue in public emergency services in a changing environment, adopted by the ILO Joint Meeting on Public Emergency Services: Social Dialogue in a Changing Environment in January 2003.*

*Noting that the Government's report does not reply adequately to most of the Committee's previous comments, the Committee urges the Government to ensure that full information on all the pending issues is provided in its next report.*

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

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

## Pakistan

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)**

*Legislation.* The Committee recalls its previous comments stressing that provisions intended to give effect to the Convention should give full expression to the principle of equal remuneration for men and women for work of equal value, and asking the Government to continue its efforts to put in place legislation giving effect to the Convention and to ensure that the draft Employment and Service Conditions Act is in full conformity with the Convention. It also recalls that the principle of equal remuneration for men and women for work of equal value applies to both the public and private sectors. The Committee notes from the Government's report under the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)* that the draft Employment and Service Conditions Act will be sent to the provinces for consideration. *The Committee asks the Government to provide information on the measures taken to ensure that legislation giving effect to the Convention provides for equal remuneration for men and women for work of equal value, allowing comparisons of jobs which are of an entirely different nature, but which are nevertheless of equal value, and that the equal remuneration principle applies both in the public and private sectors, as well as to all aspects of remuneration, as broadly defined in Article 1(a) of the Convention. It also asks the Government to provide information on any progress made toward the adoption of the draft Employment and Service Conditions Act, and a copy of the Act, as soon as it is adopted.*

*Minimum wages.* The Committee recalls its previous comments that the tripartite nature of the Provincial Minimum Wages Board, while important, does not in itself ensure that wage rates for categories of work predominantly performed by women are not set at lower levels than the rates for work predominantly performed by men, where the work performed by men and women is, in fact, of equal value. The Committee notes that the Government reiterates that the same wages apply to the same job for men and women. The Committee recalls that there is a tendency to set lower wage rates for sectors predominantly employing women, and due to such occupational segregation, particular attention is needed in setting sectoral minimum wages to ensure that the rates fixed are free from gender bias. The fact that the same wages apply to the same jobs for men and women is not sufficient to ensure that the wage determination process is free from gender bias. *The Committee therefore asks the Government to provide information on how it is ensured that the setting of minimum wages is free from gender bias, and to indicate any steps taken in this regard in cooperation with employers' and workers' organizations, in order to promote and ensure the principle of equal remuneration for men and women for work of equal value. The Committee also asks the Government to provide copies of the minimum wage notifications currently in force, and to indicate in which of the occupational groups covered women tend to be predominantly employed.*

*Awareness raising and training.* The Committee notes the Government's indication that various training programmes are being initiated in collaboration with the ILO, and employers' and workers' organizations; in particular, the Skill Development Council provides training on gender and women in various trades. The Government also indicates that the National Vocational and Technical Training Commission (NAVTEC), the Technical Education and Vocational Training Authority (TEVTA) and other provincial organizations are working in the field to strengthen the capacity of female workers so that their remuneration does not remain less than that of men. *The Committee asks the Government to provide more detailed information on the training activities provided by the Skill Development Council, the NAVTEC and the TEVTA, including the number of courses and participants, disaggregated by sex, and the results achieved in terms of participants finding appropriate employment. It also asks the Government to provide examples of the training materials used as regards the principles of equal remuneration for men and women for work of equal value. Further, please indicate any activities specifically implemented for employers, and whether any of these activities have addressed the issue of objective job evaluation.*

*Cooperation with employers' and workers' organizations.* The Committee had previously noted that the Government had closely cooperated with the employers' and workers' organizations in the preparation of the Labour Protection Policy (2006), and that as a follow-up to this policy, the Government had started studies on a number of important issues, including the links between working and living conditions and productivity, labour protection in the informal economy, and the effectiveness of the labour administration. It notes the Government's indication that the studies were forwarded to the provinces for implementation and legislation. However, the Government does not indicate whether the issues relating to the principle of equal remuneration for men and women for work of equal value have been examined in the context of these studies. *The Committee asks the Government to provide information on how it is ensured that,*

*when the provinces implement and legislate in respect of the studies, issues relating to the principle of equal remuneration for men and women for work of equal value are effectively addressed, with the cooperation of employers' and workers' organizations.*

*Statistical information.* The Committee notes the Government's indication that statistical information on the levels of remuneration of men and women working in the different sectors of the economy is rarely collected by the relevant authorities. **Recalling that statistical information on the levels of remuneration of men and women working in the different sectors of the economy is needed to allow an adequate assessment of the nature and extent of the remuneration gap between men and women, as well as to monitor progress with regard to promoting and ensuring respect for the principle of equal remuneration, the Committee asks the Government to take steps to compile and analyse such statistical information.**

*Enforcement.* The Committee notes the Government's indication that the provincial wages inspectors and payment of wages authorities have dealt with cases relating to wages and payment of wages to the workers in general, and it is proposed that a study in this regard may be initiated in consultation with the ILO. The Government also states that no court of law or tribunal has given a decision involving the question of principle relating to the application of the Convention. The Committee also recalls the comments from the Pakistan Workers' Federation (PWF) stressing the need to amend the relevant legislation with a view to ensuring its effective enforcement by the labour inspection services, to which no reply has been provided by the Government. **The Committee asks the Government to provide information on any cases dealt with by the competent bodies including the labour courts, concerning the application of the principle of equal remuneration for men and women for work of equal value, as well as any progress made with regard to initiating the study concerning the principle under the Convention. It once again encourages the Government to take appropriate measures with a view to strengthening the mechanisms to enforce the principle of equal remuneration for men and women for work of equal value, including the provision of training for the labour inspectorate and for judges, as well as awareness-raising activities for the general public, and to indicate the measures taken in this regard.**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Legislation. Prohibition of discrimination.* The Committee had previously recalled the importance of adopting non-discrimination and equality legislation in order to give effect to the Convention, and that constitutional protection alone, while being important, may not be sufficient in terms of granting effective protection against discrimination in employment and occupation. The Committee had also asked the Government to provide information on the measures taken with a view to including provisions on non-discrimination and equality in employment and occupation in the draft Employment and Service Conditions Act. The Committee notes the Government's indication that the draft Employment and Service Conditions Act will be sent to the provinces for consideration. It also notes the Government's continued reference to the Constitution of Pakistan, that all citizens have equal opportunities in private and public employment, and that the provisions of the law are fully implemented. The Government again states that there is no complaint on record from any industrial or commercial undertaking regarding discrimination in employment and occupation. The Committee recalls that for the purpose of achieving the objectives of the Convention, it is essential to acknowledge that no society is free from discrimination thus continuous action is required to address it and that the absence of complaints of discrimination is not an indication of an absence of discrimination but rather may be a reflection of the absence of an appropriate legal framework. It also recalls that the Convention aims at the protection against discrimination in employment and occupation of all workers, both citizens and non-citizens. **The Committee asks the Government to take steps to ensure that the Employment and Service Conditions Act includes provisions expressly defining and prohibiting direct and indirect discrimination, in all aspects of employment and occupation, for all workers, on at least all the grounds set out in Article 1(1)(a) of the Convention. It also asks the Government to continue to provide information on any progress made in the adoption of the draft Employment and Service Conditions Act, and to provide a copy of the Act as soon as it is adopted.**

*Equality of opportunity and treatment between men and women.* The Committee recalls its previous request for information concerning the National Gender Reform Plan, which according to the Government provides for measures to increase women's employment in the public sector, and the 10 per cent quota system in government employment at the federal level. It notes that the Government's report does not contain any detailed information in this regard. **The Committee once again requests the Government to provide more detailed information on the implementation of the public sector quota system, including statistical information on the distribution of men and women in the different government departments, jobs and positions.**

The Committee notes that according to the Labour Force Survey 2010–11 the labour force participation rate (refined) was 68.7 per cent for men and 21.7 per cent for women (70 per cent for men and 27.6 per cent for women in the rural area; and 66.4 per cent for men and 10.7 per cent for women in the urban area). The Committee notes that the gender differential as regards labour force participation continues to be high, both in the rural area and the urban area. With regard to the employment status of men and women, the Committee notes that the percentage of women in the category of unpaid family workers remains high in 2010–11 (63.4 per cent). Women remain concentrated in unskilled elementary occupations or craft and related trade work. In this context, the Committee notes the observations by the Pakistan Workers

Federation (PWF) in their communication dated 30 July 2010 stressing the need for measures to enable women to move from the informal to the formal economy, including extending social security and minimum wages, and training and education for rural women. The Government reiterates in general terms that the labour standard is implemented equally for all workers without any discrimination based on sex and that all citizens without any discrimination have equal access to employment in a factory and to vocational training institutions. ***The Committee asks the Government to provide detailed information on the specific measures taken to promote and ensure women's equality of opportunity and treatment in employment and occupation in the public sector, and the specific measures taken to enable women to move from the informal to the formal economy, as well as statistical information indicating the progress made in enhancing their participation in the labour market both in rural and urban areas. Recalling that vocational training and education have an important role in determining the actual possibilities of gaining access to employment and occupation, it also asks the Government to provide information on any measures taken or envisaged to promote equal access of women and girls to education and training at all levels, including in the context of the National Education Policy, as well as up-to-date statistical information in this regard.***

***Sexual harassment.*** The Committee recalls its previous request for information on the effective implementation of the Protection against Harassment of Women at the Workplace Act, 2010. It also recalls the observations by the PWF referring to some shortcomings in the implementation of this Act. The Government replies that committees are to be established at the workplace to implement the Act. The Committee notes that the preamble to this Act refers to the protection of women from harassment at the workplace, while the definition of "complainant" means a woman or man who has being aggrieved by an act of harassment (section 2). ***The Committee asks the Government to provide information on any measures taken or envisaged under the Protection against Harassment of Women at the Workplace Act so as to protect men and women equally against sexual harassment. It also asks the Government to provide information on the practical application of the Act, including the number and nature of workplace committees established, and its impact on preventing and addressing sexual harassment. Please also provide information on the number of complaints lodged with the Ombudsperson or with the Inquiry Committee, pursuant to section 8 of the Act, as well as the remedies provided and sanctions imposed. The Committee also requests information on measures taken or envisaged to raise awareness on sexual harassment, both quid pro quo and hostile environment, in the public and private sectors.***

***Discrimination against minorities.*** The Committee recalls that the 5 per cent quota for employment of minorities in federal government employment according to the Cabinet decision of 20 May 2009, is to apply to any person who is "a non-Muslim" as defined in article 260(3)(b) of the Constitution, which includes a person belonging to any of the Scheduled Castes. It notes that the Government does not provide any further details on the progress made in implementing the 5 per cent quota. ***The Committee once again asks the Government to provide information on the progress made in implementing the quota for employment of minorities including those belonging to any of the Scheduled Castes in federal government employment, including statistical information on the number of minority members employed, disaggregated by sex and minority group, and according to government departments, jobs and positions. The Committee also asks the Government to provide information detailing who is considered to belong to the Scheduled Castes, including whether they are non-Muslim.***

The Committee had asked the Government to provide information on any developments with regard to the reconstitution of the National Commission for Minorities. It notes that the Government's report does not contain any information in this regard. ***The Committee therefore once again asks the Government to provide information on any developments with regard to the reconstitution of the National Commission for Minorities. It also asks the Government to continue to provide information on the implementation of schemes and programmes to promote and ensure equality of opportunity and treatment for minorities in training and education, and also to provide information on any other measures taken to promote access of minorities to employment and occupation, including self-employment.***

***Discrimination based on social origin.*** In its previous comments, the Committee had recommended that a prohibition of discrimination based on social origin, including caste, be included in the legislation. The Committee notes the Government's general statement that the Constitution ensures equal rights to all citizens including minorities, and persons belonging to different castes and social origin. ***Recalling the persistent de facto segregation and discrimination against Dalits, and the need to take effective measures toward the elimination of such discrimination in employment and occupation, the Committee asks the Government to take measures to promote and ensure non-discrimination and equality of opportunity and treatment in employment and occupation, irrespective of social origin, including caste, through legislation and other appropriate measures, and to provide specific information in this regard.***

***Discrimination based on religion.*** The Committee recalls that the ILO supervisory bodies have expressed concern for many years over the impact of the discriminatory legal provisions and administrative measures on the enjoyment of equality of opportunity and treatment in employment and occupation of religious minorities, in particular the members of the Ahmadi minority. It recalls certain provisions of the Penal Code relating to offences relating to religion ("blasphemy laws"); in particular, section 298C of the Penal Code singles out the members of the Ahmadi minority. It also recalls that Muslims applying for a Pakistani passport must sign a declaration to the effect that the founder of the Ahmadi movement is an impostor, which is designed to prevent members of this movement from obtaining passports identifying them as Muslims. The Committee notes with ***regret*** that the Government does not provide any information in response to the

Committee's previous requests concerning the necessary steps to review the discriminatory legal provisions and administrative measures. *The Committee urges the Government to take decisive action to review and amend the discriminatory legal provisions and administrative measures, and to actively promote respect and tolerance for religious minorities, including the Ahmadi, and to provide information on any progress made in this regard. It also asks the Government to provide information on the employment situation of religious minorities, including those defined in section 260(3)(b) of the Constitution as "a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the Lahori Group who calls themselves "Ahmadis" or by any other name, or a Bahai". It further asks the Government to provide information on any other measures taken or envisaged to promote equality of opportunity and treatment in employment and occupation for religious minorities, including the implementation of the 5 per cent quota for employment of minorities in federal government employment.*

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

## Papua New Guinea

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 2000)***

The Committee notes the observations of the International Trade Union Confederation (ITUC) dated 31 August 2011.

*Legislative developments.* The Committee had been asking the Government to provide information on the status of the Industrial Relations Bill and the review of the Employment Act 1978, including the revision of sections 97 to 100 of the Act. The Committee notes the Government's indication that the sixth and final draft of the Industrial Relations Bill prohibits direct and indirect discrimination on the grounds of race, colour, sex, religion, pregnancy, political opinion, ethnic origin, national extraction or social origin, and actual or perceived HIV or AIDS status, against an employee or applicant for employment or in any employment policy or practice. The Government states that the Bill is being worked on by the State Solicitor's Office, Department of Justice and Attorney General, and it anticipates that the Bill will be enacted in 2011. The Government further indicates that developments concerning the review of the Employment Act will be communicated to the Office in due course. The Committee also notes that the Decent Work Country Programme for 2009–12 has set labour law reform as a priority. *The Committee hopes that the Industrial Relations Bill will be adopted in the near future, and requests the Government to provide information on progress made in this regard, and to forward a copy of the text once it is adopted. It also asks the Government to provide information on any progress made concerning the review of the Employment Act, with a view to aligning the provisions on discrimination with the Industrial Relations Bill and to bring them into conformity with the Convention.*

*Discrimination on the ground of sex in the public service.* The Committee recalls its previous comments regarding the discriminatory impact of section 36(2)(c)(iv) of the Public Services (Management) Act 1995 allowing calls for candidates to specify that "only males and females will be appointed, promoted or transferred in particular proportions", and section 20.64 of General Order No. 20 and section 137 of the Teaching Services Act 1988 concerning restrictions for female teachers with respect to certain allowances. The Committee notes with *regret* the Government's indication that no progress has been recorded with regard to amending the discriminatory provisions applying to the public service, and that the consultations with the relevant government agencies, to which the Government made reference in its 2009 report, have not yet started. *Recalling its previous comments regarding the discriminatory impact of these provisions, the Committee urges the Government to take expeditious steps, to review and amend the provisions in order to bring them in line with the requirements of the Convention.*

*Discrimination against certain ethnic groups.* The Committee notes that according to the ITUC there has been an increase in violence against Asian workers and entrepreneurs, who are blamed for "taking away employment opportunities". The ITUC also states that throughout 2009 and 2010, many Asians had been attacked and Asian enterprises looted. *The Committee asks the Government to investigate the allegations of discrimination against Asian workers and entrepreneurs including incidents of violence and to provide information on the results of such investigations. The Committee also requests information on the practical measures taken to ensure protection in the context of employment and occupation, against discrimination on the grounds of race, colour, or national extraction, as well as on any measures taken or envisaged to promote equality of opportunity and treatment of members of different ethnic groups in employment and occupation.*

*Additional grounds of discrimination. HIV and AIDS.* The Committee notes the HIV and AIDS strategy 2011–15, which includes prevention, counselling, testing, treatment, care and support, and systems strengthening. The Committee further notes the observations of the ITUC that there are no laws prohibiting discrimination against persons living with HIV and AIDS, and that there have been reports of some companies firing persons living with HIV and AIDS. The ITUC also indicates that the Business Coalition against HIV and AIDS has assisted companies to develop HIV and AIDS policies at the workplace. *The Committee asks the Government to indicate how it is ensured that discrimination in employment and occupation based on actual or perceived HIV and AIDS status is effectively addressed in the implementation of the HIV and AIDS strategy 2011–15, and the results achieved by such measures. The Committee also once again asks the Government to provide information on the practical application of the HIV and AIDS*

**Management and Prevention Act No. 4 of 2003, including regarding the activities of the National AIDS Council Secretariat.**

*Disability.* The Committee notes the observations of the ITUC that persons with disabilities face discrimination in accessing employment and social services. **The Committee asks the Government to reply to the issues set out in the communication of the ITUC regarding discrimination faced by persons with disabilities, and to indicate any steps taken to address these matters.**

*Sexual orientation.* The Committee notes the observations by the ITUC that lesbian, gay, bisexual, and transgender persons face discrimination in employment. **The Committee asks the Government to reply to the issues set out in the communication of the ITUC regarding discrimination faced by lesbian, gay, bisexual and transgender people, and to indicate any steps taken to address these matters.**

*National equality policy.* The Committee notes the Government's indication that there is no concrete or fully detailed document setting out the employment policy. The Government also states that it is verifying if the Occupational Skills Certification Policy exists. The Committee notes that the Government's report still does not contain any further information on the national policy specifically addressing discrimination on all the grounds enumerated in the Convention. With regard to discrimination based on sex, the Committee notes that the Medium Term Development Plan 2011–15 includes sections on gender, and that in Papua New Guinea Vision 2050 (published in November 2009), gender is positioned as one of the seven "Strategic Focus Areas": "Human Capital Development, Gender, Youth and People Empowerment". However, the Committee notes that none of the sections of these plans or strategies seem to specifically address the issue of gender equality in employment and occupation. **Recalling that a national policy under Article 2 of the Convention necessarily includes the adoption and implementation of concrete and proactive measures aimed at the promotion of equality in employment and occupation in respect of at least all the grounds under the Convention, the Committee once again asks the Government to provide full particulars on the concrete measures taken or envisaged to ensure and promote equality of opportunity and treatment in employment and occupation on all the grounds enumerated in the Convention.**

*Restrictions on women's access to certain jobs.* The Committee recalls that sections 98 and 99 of the Employment Act prohibit the employment of women, inter alia, in heavy labour and during the night. The Government's report contains no new information in this regard. **The Committee asks the Government to take steps to ensure that protective measures for women are limited to maternity protection. The Committee also asks the Government to provide information on how it is ensured that, in practice, women can have access to all jobs and occupations on an equal footing with men. The Committee also requests information on any awareness-raising activities to rectify stereotyped perceptions regarding women's capacities and roles in society.**

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

**Qatar****Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)**

*Article 1 of the Convention. Legislation.* The Committee recalls that the provisions in the Constitution (article 35) and the Labour Law No. 14 of 2004 (sections 93 and 98) are considerably narrower than the principle set out in the Convention as they do not cover discrimination based on political opinion, national extraction and social origin and only protect against discrimination in certain aspects of employment. The Committee notes the Government's persisting assertion that the legislative framework is sufficient and effective to ensure observance of the principle of non-discrimination on any basis whatsoever, and that in referring to the term "person" the definition of workers in section 1(5) of the Labour Law covers all the grounds set out in *Article 1(1)(a)* of the Convention. Instead of inserting a non-discrimination provision in the Labour Law, the Government proposes to increase awareness raising and better understanding of its meaning, aims and objectives. The Committee considers that section 1(5) falls short of effectively prohibiting discrimination on all the grounds of the Convention and notes the absence in the Government's report of any information demonstrating that effective protection and avenues of redress are being provided in accordance with the Convention. The Committee draws the Government's attention to the importance of reviewing continually the protection afforded by the national legislation to ensure that it remains appropriate and effective and provides for adequate means of redress and legal remedies for cases of discrimination on all the grounds set out in the Convention, and with respect to all aspects of employment and occupation. **In the absence of a clear legislative framework, the Committee urges the Government to take all necessary measures to provide effective protection, in law and in practice, against discrimination on all the grounds of the Convention, including political opinion, national extraction and social origin, and to ensure that effective avenues of redress exist to address complaints of discrimination based on these grounds, for both public and private sector workers. The Government is also requested to indicate how protection against discrimination on the grounds covered by the Convention is being ensured, in practice, with respect to access to vocational training and guidance, access to employment and particular occupations, including recruitment, as well as with respect to all terms and conditions of employment. The Committee further asks the Government to provide full**

**information on the action taken in this regard and results achieved of such action, as required by Article 3(f) of the Convention.**

*Non-discrimination of migrant workers. Practical application.* The Committee notes that according to estimates of the National Statistics Authority provided by the Government in its National Report to the United Nations Human Rights Council, expatriate workers represented, in September 2009, 84 per cent of the population (A/HRC/WG.6/7/QAT/1, 19 November 2009, page 3). The Committee had previously welcomed the attention given by the Government to the situation of migrant workers but had also expressed concern that the sponsorship system in place provides employers with the possibility to exert disproportionate power on migrant workers, which was likely to increase their vulnerability to abuse and discrimination. The Committee had also noted the need to establish effective and accessible mechanisms within the Labour Department to settle disputes between migrant workers and their sponsors.

The Committee notes the adoption of Law No. 4 of 2009 regulating the entry and exit of expatriates in Qatar and their residence and sponsorship, revoking Law No. 3 of 1963 on the entry and residence of aliens in Qatar and Act No. 3 of 1984 on the regulation of the sponsorship of the residence and exit of aliens. It notes that section 22 of the Law allows the transfer of a migrant worker to another employer with the written consent of both the new and the previous employer, and after having obtained the approval of the Ministry of Labour for those workers to whom the Labour Law applies. Section 12 authorizes the Minister of Interior to transfer a migrant worker, temporarily or permanently, without the employer's consent, in case of a lawsuit between the sponsor and the worker, and in the event of abuse by the employer or if public interest so requires. In the case of workers covered by the Labour Law, the Minister of Interior approves the transfer upon the worker's request and with the consent of the Ministry of Labour. The expatriate worker continues to be dependent on the sponsor's permission to leave the country temporarily or permanently (section 18).

The Committee further notes that a Labour Relations Department was set up by virtue of Order No. 35 of 2009 to receive and take speedy decisions regarding complaints and to disseminate publications intended for workers in coordination with the relevant embassies, as well as providing guidance and counselling. The Higher Council of the Judiciary also has special units to examine law suits initiated by workers with a view to speeding up decisions. According to the Government, the Human Rights Department has continually handled complaints arising out of labour relations between sponsors and workers and the Ministry of Interior approved a large number of requests regarding the transfer of workers on the basis of evidence of existing abuse. 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.

While welcoming the Government's efforts to improve the protection of workers under the sponsorship system and to establish more effective complaints and dispute settlement mechanisms, the Committee remains concerned that the limitations imposed on the cases in which transfer of a worker to another sponsor is allowed, as well as the requirement to obtain permission of the sponsor, continues to place the worker in a vulnerable situation. Given the high number of migrant workers in the country and the current legislative framework regarding employment discrimination, the Committee considers it important that the Government keeps the operation of the sponsorship system under review with a view to assessing whether appropriate flexibility to change workplaces is being provided in practice to all migrant workers in cases of abuse and discrimination on the grounds set out in the Convention. The Committee is concerned that under the present system migrant workers suffering abuse and discriminatory treatment may refrain from bringing complaints out of fear of retaliation by the employer, or because of uncertainty as to whether this would lead to a change of sponsor, or to deportation. At the same time, filing a lawsuit or bringing a complaint to establish abuse by the employer is a requirement for being granted permission to change the workplace. ***The Committee, therefore, asks the Government to provide information on the concrete measures taken, including by the National Human Rights Commission (NHRC), the Labour Relations Department and the Human Rights Department to address discrimination of migrant workers on the grounds set out in the Convention, including through providing accessible and effective complaints procedures and counselling and legal assistance to migrant workers. The Committee requests the Government to continue to provide information on the measures taken or envisaged to allow for appropriate flexibility for migrant workers to change their sponsor which may assist in avoiding situations in which migrant workers become vulnerable to discrimination and abuse. In this regard, please indicate the number of migrant workers, including domestic workers, that have successfully applied for a change of workplace during the reporting period, indicating the reasons for granting such a transfer. Please also provide particulars of those workers who have applied for transfer and been refused and the grounds for such refusal. The Committee asks the Government to monitor closely the application of Law No. 4 of 2009 and to examine the extent to which it may give rise to discriminatory practices against migrant workers based on the grounds of the Convention, and to provide information on the findings and any follow-up. Please provide information on the number and nature of complaints relating to employment discrimination, including harassment and sexual harassment, submitted by migrant workers and in particular domestic workers, to the NHRC, the Human Rights Department and the Labour Relations Department, as well as the outcome of these cases and remedies provided. Noting that in 2007 non-Qatari women constituted 100 per cent of the workers in household services and that the Bill on domestic workers is still being prepared, the Committee asks the Government to take all the necessary measures to protect migrant domestic workers against discrimination on the grounds of the Convention, in law and in practice, and hopes that the bill on domestic workers will soon be adopted and will be in conformity with the principle of the***

**Convention. The Committee draws the Government's attention to the recently adopted Domestic Workers Convention, 2011 (No. 189), and Recommendation No. 201.**

*Equality between men and women in employment and occupation.* The Committee notes that in September 2009, the total population (nationals and non-nationals) of the State of Qatar was 1,623,724, of which 1,248,668 (75.7 per cent) were male and 375,056 (24.3 per cent) were female. The Committee notes the information provided by the Government that the overall economic activity rate of women rose from 27.5 per cent in 1986 to 49.3 per cent in 2007 and that the percentage of economically active women out of the total of Qatari women rose from 30.3 per cent in 2004 to 34.6 per cent in 2007. The data also indicate an increase in the concentration of Qatari women in the teaching profession and in occupations of an educational nature, and in clerical occupations in Government ministries. In 2007, women represented 49.7 per cent in specialized occupations (compared to 40.8 per cent in 2004) while their percentage in clerical occupations decreased from 42.7 in 2004 to 28.8 per cent in 2007. In 2007, 43.4 per cent of the economically active women were employed in the household sector with the majority in household services, where non-Qatari women represent 100 per cent of the workers.

The Committee recalls the concentration of women in certain courses of training and educational institutions, with no women enrolled in some courses while in others they constituted 100 per cent of the student population. It also recalls the need for more proactive measures to address discriminatory practices in job advertisements and hiring, and to eliminate stereotyped assumptions by employers of women's and men's suitability for certain jobs and to encourage women to apply for posts traditionally or exclusively held by men. The Committee had previously requested information on the implementation of economic and education components of the General Strategy for the Family, and its impact on achieving equality between men and women with respect to access to a wide range of training courses, jobs and occupations, including posts of responsibility. The Committee notes the Government's statements that the elimination of certain old traditions regarding certain jobs for men and women needs time and effort and that it is undertaking great efforts to raise awareness and address traditions and standardized assumptions in this regard. The Committee notes that apart from the pilot programme carried out by the High Council for Family Affairs to promote women's empowerment in management of small enterprises, the Government provides no further information on the measures taken to implement the General Strategy for the Family; no specific information has been provided either on the concrete measures taken, and their impact, to address discriminatory advertising and hiring practices and assumptions by employers of women's and men's suitability for certain jobs. The Committee, however, notes with *interest* the ratification by Qatar on 26 April 2009 of the United Nations Convention on the Elimination of all Forms of Discrimination against Women. ***Noting the Government's commitment to improve women's participation in the labour market and to make an effort to gather and communicate the requested information as soon as possible, the Committee asks the Government to ensure that its next report contains full information on the implementation of the General Strategy for the Family and its impact, as well on the measures taken to address stereotypical views of what jobs are appropriate for women and men with a view to addressing discriminatory practices in advertisement and hiring. The Committee also requests the Government to indicate the findings of the studies undertaken by the High Council for Family Affairs on the barriers that hinder women from reaching leadership positions, and to provide information on all measures taken to address the concentration of women in certain occupations and training courses. Please provide up-to-date statistics, disaggregated by sex and origin, showing the evolution since 2007 regarding the proportion of men and women in the various sectors of activity and at each level within the various occupations in both the private and public sectors.***

*Enforcement.* The Committee notes the establishment of the Labour Inspection Department by Order No. 35 of 2009 to monitor the implementation of the regulations protecting workers, undertake workplace inspections and provide advice and counselling to employers. The Committee further notes that the Government's report again does not contain information on complaints submitted by Qatari workers and migrant workers to the courts, or to the Labour Relations Department, the Human Rights Department and the National Committee of Human Rights that specifically relate to discrimination in employment and occupation on any of the grounds set out in the Convention. The Committee recalls that the absence of complaints relating to employment discrimination does not necessarily indicate the absence of such discrimination in the country. ***The Committee asks the Government to provide specific information on how the labour inspection department monitors discriminatory practices by employers, and the outcome of these activities. The Committee also asks the Government to provide detailed information on the specific measures taken by the various government Departments and the NHRC to promote equality of opportunity and treatment and non-discrimination in employment and occupation with respect to all the grounds covered by the Convention, and information on the nature and number of complaints received by these bodies regarding discrimination, and the remedies provided and sanctions imposed.***

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)***

*Discrimination based on political opinion – inherent requirements of the job.* In its previous observations, the Committee had drawn 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". It had requested the Government to supply information on what constituted an "activity in the political police" and on the application of section 50 of the Act in practice. The Committee notes that, according to the Government, the provision in question, i.e. section 54(j) of Act No. 188/1999 in its updated version, should be interpreted in the context of the Emergency Ordinance No. 24/2008 concerning access to an individual's personal file and the disclosure of the Securitate as the political police. According to the Government, the applicable legislation no longer mentions "political police" but now refers to "employees of Securitate" and to "collaborators of Securitate". Ordinance No. 24/2008 defines an "employee of Securitate" as being "any person having served as officer or non-commissioned officer in the Securitate or Militia, including as an undercover agent, with responsibility in security matters between 1945 and 1989, conducting activities that suppressed or restricted freedoms and fundamental rights"; and a "collaborator of Securitate" as being "any person having provided information, in whatever form, such as notes and written reports, as well as oral reports recorded by security employees denouncing activities and behaviour hostile to the totalitarian communist regime, which sought to restrict freedoms and fundamental rights". Furthermore, the Committee notes that an appeal was lodged with the Constitutional Court against the provision of Act No. 188/1999 in question, and that the Court dismissed the claim that it was unconstitutional in 2006 (Ruling No. 41/2006 of 24 January 2006). The Committee nevertheless considers that, in view of the fact that it applies to all posts in the public service, the exclusion provided for under section 54(j) is not adequately defined or limited and might cause discrimination in employment based on the person's political opinion. ***The Committee requests the Government to take the necessary steps to ensure that section 54(j) of Act No. 188/1999 on civil servants is revised, to ensure that the requirements for being a candidate for a civil service post are based on the skills required for a specific job, in the strict sense of the term, in accordance with Article 1(2) of the Convention. Meanwhile, it asks the Government to provide information on the application of this article in practice, particularly on the number of persons whose candidature to a civil service post might have been set aside under section 54(j) of Act No. 188/1999.***

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

## Russian Federation

### ***Equal Remuneration Convention, 1951 (No. 100)*** (ratification: 1956)

*Application in practice.* The Committee notes the Government's indication that article 19(3) of the Constitution provides for men and women to enjoy "equal rights and freedoms and equal opportunities". The Committee also notes that, pursuant to article 37(3), everyone shall receive "remuneration for labour without any discrimination whatsoever and not below the minimum wage established by federal law". The Committee further recalls that, pursuant to section 3 of the Labour Code (Federal Law No. 197-FZ of 2001), everyone shall have equal opportunities in realizing their labour rights and may not be subject to restrictions with regard to these rights or receive any advantages on the grounds of sex in particular; and that, under section 22, the employer shall ensure equal payment to employees for work of equal value. While noting the relevant legal provisions, the Committee remains concerned about the application of these principles in practice particularly in light of the level of women's earnings in comparison with men's. Indeed, the Committee notes from the statistical information provided by the Government the existence of a wide gender wage gap, with the average wages of women amounting in 2009 to 65.3 per cent of those of men. In addition, the Committee notes the deep concern expressed by the United Nations Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW), in its concluding observations, concerning the deterioration of the situation of women in employment, and noting, in particular, that they represent the overwhelming majority of workers in lower level and low-paid jobs in the public sector, that they face discrimination in the private sector, and that their share of high-paid jobs in that sector is low (CEDAW/C/USR/CO/7, 16 August 2010, paragraph 36). According to the report submitted by the Government to CEDAW, hidden discrimination against women and their vertical and horizontal segregation remain serious problems in the economic sphere (CEDAW/C/USR/7, 9 March 2009, paragraph 75). The Committee recalls that stereotypical attitudes regarding the roles of women and men in society result in occupational segregation as well as gender-biased undervaluation of the work performed by women. In order to address such occupational segregation and differences of remuneration between men and women in employment, the Committee refers the Government to its 2006 general observation and to the importance of promoting objective and analytical methods for the evaluation of jobs and to cooperate with workers' and employers' organizations to promote the application of the principle of equal remuneration for men and women for work of equal value. The Committee further notes the Government's indication that a special task force on gender equality was established in 2010 in the Ministry of Public Health and Social Development. The

Government indicates that the participation of social partners is planned and that issues relating to equal pay for work of equal value will be discussed. *The Committee asks the Government as follows:*

- (i) *to provide information on the measures taken by the special task force on gender equality with a view to promoting and ensuring equal remuneration for men and women for work of equal value;*
- (ii) *to take steps to address occupational segregation and the inequalities in remuneration existing in practice between men and women, including specific measures to address stereotypical attitudes with a view to reducing inequalities in remuneration, and to continue to seek the cooperation of the social partners in this regard;*
- (iii) *to provide information on measures taken to promote the development and use of objective job evaluation methods.*

*Enforcement.* The Committee notes the absence of information concerning equal remuneration cases dealt with by the competent administrative and judicial authorities. In this regard, it stresses that the lack of court cases regarding equal remuneration or wage discrimination is likely to indicate a lack of awareness of or access to the rights and procedures and of the existing remedies under the law, or fear of reprisals. *The Committee, therefore, asks the Government to take appropriate measures to raise public awareness of the relevant legislation, the procedures and remedies available related to the principle of the Convention. It also asks the Government to consider providing specific training on the principle of equal remuneration for men and women for work of equal value to judges, labour inspectors and other relevant public officials. Please continue to provide information on equal pay cases dealt with by the competent administrative and judicial authorities.*

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

The Committee recalls its observations of 2009 and 2010 which addressed the following issues: (1) Resolution No. 162 adopted by the Government on 25 February 2000 which contains a list of industries, occupations and work from which women are excluded; (2) the enforcement of the Labour Code's non-discrimination provisions; (3) equality of opportunity and treatment for men and women; and (4) equality of opportunity and treatment of ethnic minorities and indigenous peoples.

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* The Committee noted the discussion that took place in the Conference Committee on the Application of Standards in June 2010. In its conclusions, the Conference Committee had raised concerns regarding Resolution No. 162 of 25 February 2000 which excludes women from being employed in 456 occupations and 38 branches of industry, and section 253 of the Labour Code, which provides that the employment of women in arduous work and work in harmful or dangerous conditions shall be limited. The Conference Committee had noted that Resolution No. 162 and section 253 of the Labour Code went beyond protecting women's reproductive health and broadly restricted their access to occupations and sectors that involve equal health and safety risks to men and women, and it had urged the Government to take steps to revise section 253 of the Labour Code and Resolution No. 162 to ensure that any limitations on the work that can be undertaken by women are not based on stereotyped perceptions regarding their capacity and role in society and are strictly limited to measures to protect maternity. The Conference Committee had asked the Government to ensure that the planned review of the existing system of health and safety protection addressed the need to provide a safe and healthy working environment for both men and women, and one that would not lead to measures hindering women's participation in the labour market. The Conference Committee had also asked the Government to take measures to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, as well as at all levels of responsibility, and it had urged the Government to take measures, through tripartite consultation, to ensure non-discrimination and promote equality of opportunity and treatment in employment and occupation for all groups protected under the Convention, including ethnic minorities. Such measures should include strengthening the legal framework, which should address direct and indirect discrimination and the burden of proof, and provide for effective remedies in discrimination cases. The strengthening and establishment of appropriate mechanisms to promote, analyse and monitor equality of opportunity and treatment in employment and occupation should also be part of these measures.

The Committee notes the Government's report, received on 18 November 2011, in Russian. The Committee will examine this report as soon as the translation becomes available.

## **Rwanda**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)**

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(2)(a) of the Convention. Application of the principle of equal remuneration for work of equal value. Legislation.* The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda. It notes that the new Act refers to the present Convention in its Preamble and that it contains a definition of the expression "work of equal value" (section 1.9). However, it notes that this definition is too narrow to give full effect to the provisions of the Convention since it refers to "similar work", and further, that the new Act contains no substantial provisions prescribing "equal remuneration

for work of equal value". Furthermore, the Committee notes that the Government mentions in its report article 11 of the Constitution which prohibits any discrimination in general, and notes that article 37 of the Constitution specifies that "every person having equal competence and capacity shall have the right, without any discrimination, to equal pay for equal work". Referring to its previous comments, the Committee notes with regret that the Government has not taken the opportunity to give full legislative expression to the principle of equal remuneration for work of equal value within the meaning of the Convention.

While it is important to prohibit discrimination on the basis of sex in employment, this is not sufficient to ensure the full application of the principle of equal remuneration pursuant to the Convention. Referring to its general observation of 2006, in which it clarifies the meaning of the concept of "work of equal value" under the Convention, the Committee would like to stress that, whilst this concept encompasses the concept of "equal", "the same" and "similar" work it also goes beyond that because it encompasses work which is of an entirely different nature but which is nevertheless of equal value. The concept of "work of equal value" therefore allows for a much broader comparison to be made between jobs performed by men and women in different places or sectors, or between different employers. It therefore allows pay discrimination to be combated more effectively where men and women traditionally perform work that is of an entirely different nature but which is nevertheless of equal value. ***The Committee therefore once again urges the Government to take the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value as set out in the Convention.***

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

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)***

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. Legislative developments. Scope of protection of workers against discrimination.* The Committee notes that section 12 of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda extends the protection afforded to workers covered from all the grounds of discrimination prohibited under *Article 1(1)(a)* of the Convention as well as from other grounds (*Article 1(1)(b)*). Section 12 of that Act prohibits any discrimination, either directly or indirectly, in the course of employment intended to deprive workers of equality of opportunity and treatment where such discrimination is based on: (1) race, colour, origin; (2) sex, marital status or family responsibilities; (3) religion, beliefs or political opinions; (4) social or economic conditions; (5) national extraction; (6) handicap; (7) previous, current or prospective pregnancy; and (8) any other form of discrimination. The Committee also notes that the new Act establishes general penalties in the case of the violation of its provisions (section 169), namely two months' imprisonment and/or a fine of 50,000 to 300,000 Rwandan francs. It notes, however, that, in the French version of the Act at least, direct or indirect discrimination is prohibited only "during the course of employment" and that this prohibition does not therefore cover all stages of employment and occupation, particularly recruitment. The Committee also notes that section 12 appears to prohibit acts done with an intention to deny equality of opportunity and treatment, which would be more restrictive than the definition of discrimination set out in *Article 1* of the Convention under which intent is not required. ***The Committee therefore requests the Government to provide information on the measures taken or envisaged to prohibit discrimination during access to employment or to an occupation. It also requests the Government to clarify whether intent is required for an act to constitute discrimination under section 12 of Act No. 13/2009. The Government is also requested to provide information on the application of section 12 of the Act, in practice and to specify, in particular, whether any appeals have been lodged on the basis of any one of the prohibited grounds of discrimination and whether penalties have been imposed under section 169 of that Act.***

*Sexual harassment.* The Committee notes the adoption of Act No. 59/2008 of 10 September 2008 on the prevention and punishment of gender-based violence, section 24 of which establishes punitive measures in the case of "sexual harassment of a subordinate" imposed on "any employer or any other person who uses his or her position to harass a subordinate by way of orders, intimidation and terror for the purpose of sexual pleasure". It also notes the inclusion in Act No. 13/2009, of provisions prohibiting "gender-based violence" in employment (section 9), that is "any act of a physical, psychological or sexual nature directed at a person or likely to damage their property on the grounds of their sex" which "infringes their rights and affects their integrity". Section 9 of Act No. 13/2009 also prohibits moral harassment at work, either directly or indirectly, which is defined as "any act of harassment at work of any origin, either external or internal to the enterprise, which manifests itself in particular through behaviour, words, intimidation or anonymous written communications designed to have an adverse effect on the dignity of a worker in the workplace, endanger his or her job and constitute an obstacle to his or her work". The Committee welcomes the adoption of these new legislative provisions which, when combined, appear to cover the two essential elements of sexual harassment at work as defined in its 2002 general observation, namely: (1) any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job (*quid pro quo*); and (2) conduct that creates an intimidating, hostile or humiliating working environment for the recipient (*hostile work environment*). ***However, in order to ensure adequate protection for men and women workers and to clarify the legal regime applicable to this discriminatory practice, the Committee requests the Government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covers both quid pro quo and the creation of a hostile working environment. Furthermore, the Committee requests the Government to provide information on any measures taken or envisaged to prevent this form of gender-based discrimination in the workplace, particularly in the context of the national gender policy adopted in 2004 (education programmes, awareness-raising campaigns on preventive measures and appeal mechanisms, etc.).***

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

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

## Saudi Arabia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1978)**

*National equality policy.* For many years, the Committee has been calling on the Government to take measures to declare and pursue a national equality policy as required under *Article 2 of the Convention*, addressing at least all the grounds set out in *Article (1)(1)(a)*. Terms of reference had been provided by an ILO high-level mission on the development of a national equality policy, including regarding the establishment and mandate of a multi-stakeholder task force. The Committee notes the Government's indication that the Ministry of Labour shall communicate with the relevant bodies, including the Human Rights Commission, with a view to examining the setting up of a working team responsible for the preparation of a national equality policy. The Government also expresses its desire for ILO assistance in this process. ***Trusting that the multi-stakeholder task force will be established in the very near future, the Committee urges the Government to take concrete measures, without further delay, to develop and implement a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. Please provide specific information on the steps taken in this regard, including with a view to securing ILO technical assistance. Noting that no information has been provided on the status of the national survey on the situation in the country with regard to discrimination on all the grounds set out in the Convention, and the establishment of an action plan, the Committee again requests the Government to provide this information.***

*Legislation.* The Committee notes that the Government provides no information in response to the concerns raised previously regarding the absence of specific provisions prohibiting discrimination in employment and occupation. ***In the light of the serious concerns regarding discrimination in employment and occupation which have been raised by the Committee for many years, as well as by the Conference Committee on the Application of Standards, the Committee urges the Government to take steps to include as part of its national equality policy, legislation specifically prohibiting discrimination, both direct and indirect, in the public and private sectors, on all the grounds set out in the Convention, covering all workers and all aspects of employment, and ensuring effective means of redress. Please provide specific information on the concrete steps taken in this regard.***

*Scope of protection.* The Committee had previously asked the Government to provide information on how domestic workers, agricultural workers, part-time workers, and "incidental, seasonal and temporary workers", are effectively protected against discrimination. The Committee notes the Government's indication that some provisions of the Labour Code apply to casual, seasonal and temporary workers, and that the rules for the regulation of part-time work are to be issued by the minister. The Government indicates further that domestic workers and similar workers, though excluded from the scope of the Labour Code, are able to complain to special committees and then to the courts if necessary. With respect to the adoption of the regulation on domestic workers and similar workers which was under preparation, the Committee notes that the Government states that it has been submitted to the Cabinet of Ministers for adoption. ***Noting the general information provided by the Government in this context, the Committee again requests detailed information regarding how in practice domestic workers, agricultural workers, part-time workers, and incidental, seasonal and temporary workers can bring a claim of discrimination in employment and occupation, whether any such claims have been filed, and if so, how they have been addressed. The Committee also requests the Government to continue to provide information on the status of the adoption of the regulation on domestic workers, and to provide a copy once it has been adopted. Please also provide specific information on any rules adopted for the regulation of part-time work. The Committee also again urges the Government to ensure that any new legislative non-discrimination provisions cover all workers, including those who are presently excluded wholly or partially from the scope of the Labour Code.***

*Equal opportunity and treatment of men and women.* The Committee had noted previously the significant occupational sex segregation of the Saudi labour market, with women being concentrated in education, health and social work. It had also noted that although the legislative prohibition of women and men working together had been repealed, there was very little awareness of this change. The Committee notes the Government's indication that the National Employment Policy has been adopted, which addresses the expansion in employment opportunities of women. The Committee also notes the adoption of the Ninth Development Plan (2010–14), according to which, by the end of 2008, women's labour force participation was 11.5 per cent. Women constituted only 12.8 per cent of total Saudi employment, with 77.6 per cent of total female employment in the education sector. The unemployment rate was 6.8 per cent for men and 26.9 per cent for women. The objectives of the Development Plan include, "[increasing] the overall participation rate, particularly that of females, in an effort to enhance economic empowerment of women"; "promoting participation of women in economic activity, and providing the facilities required to increase their participation"; and "consolidating and enhancing qualitative progress in education of Saudi girls at all stages of education". The Committee also notes the Government's acknowledgement in its report that while there is a rising trend in women assuming leadership positions, there is a need to be more proactive in increasing job, educational and training opportunities for women. The Government also provides information on training initiatives, indicating that in 2009 there were more than 55,000 female trainees in the areas of technical and vocational training at government and non-governmental centres and institutes. Noting that the

Government refers to training programmes for occupations “which suit women”, the Committee recalls the importance of avoiding stereotyped assumptions in training and employment with respect to women’s suitability and capability for certain jobs as this will limit their employment opportunities. ***The Committee asks the Government to provide information on the specific measures taken pursuant to the Ninth Development Plan and the National Employment Strategy to increase the labour market participation of women, including the training and facilities provided, as well as the measures taken to improve education for girls to expand their future employment opportunities, and the impact of such measures. The Committee also asks the Government to take concrete measures to address occupational sex segregation, with a view to providing opportunities for women in a wider range of sectors and occupations, including higher level and decision-making positions, and in those areas that have been traditionally dominated by men, and to provide information on the results achieved. Please also provide specific information on the measures taken, as requested previously by the Committee, to ensure that workers and employers and their organizations are aware that the law no longer prohibits women and men from working together, and the specific steps taken to address de facto workplace segregation. The Committee also requests information on the establishment, mandate and activities of the Higher National Committee for Women’s Affairs.***

***Sexual harassment.*** The Committee previously raised concerns regarding the absence of legislation addressing sexual harassment, and the particular vulnerability of domestic workers to such harassment. The Government replies in very general terms that it does not tolerate cases of molestation of female workers, including female domestic workers, and that anyone who sexually molests a female worker would be subject to legal sanctions. The Committee draws the Government’s attention to the fact that sexual harassment in employment and occupation is not limited to crimes of a sexual nature, to which the Government appears to be referring, and covers a wider range of situations. The Committee notes that without a clear definition and prohibition of both *quid pro quo* and hostile environment sexual harassment, it is doubtful whether sexual harassment in all its forms is being effectively addressed. ***The Committee, therefore, asks the Government to take steps to include a provision in the Labour Code defining and explicitly prohibiting sexual harassment, in line with its 2002 general observation on this topic. With respect to domestic workers, the Committee also asks the Government to take the opportunity of the preparation of the regulation on domestic workers to address specifically the issue of sexual harassment, as these workers are particularly vulnerable to such harassment, and again asks the Government to provide information regarding any steps taken in this regard.***

***Restrictions on women’s employment.*** The Committee recalls the protective measures set out in section 149 of the Labour Code, confining women to jobs that are “suitable to their nature”. The Committee notes that the Government provides no reply to its request to amend section 149 with a view to ensuring that any protective measures are strictly limited to maternity protection. In reply to the Committee’s request for clarification of the meaning of “suitable to them” in the Order of 21 July 2003 approving women’s participation in international conferences suitable to them, the Government states that it refers to conferences that are suitable to the specialized work undertaken by women or any conference which is specifically for women. The Committee also notes from the report of the Special Rapporteur on violence against women, its causes and consequences, that the criteria governing work that can be undertaken by women remains regulated by paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987) (A/HRC/11/6/Add.3, 14 April 2009, paragraph 29). Paragraph 2/A sets the following criteria for women to work: (a) the need for the woman to work; (b) permission of her guardian; (c) suitability of the work to a woman’s nature and not distracting with regard to her household and marital duties; (d) sex-segregated workplace; and (e) women’s compliance with notions of dignity and modesty and Islamic dress code. The Committee recalls that protective measures applicable to women’s employment which are based on stereotypes regarding women’s professional abilities and role in society, violate the principle of equality of opportunity between men and women in employment and occupation and should be repealed. ***Concerned at the legal framework which places severe limitations on women’s employment, the Committee urges the Government to amend section 149 of the Labour Code, and repeal paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987), with a view to ensuring that any protective measures are strictly limited to maternity protection. The Committee also asks the Government to amend the Order of 21 July 2003 approving women’s participation in international conferences suitable to them, to ensure that women are able to participate in international conferences in the course of employment and occupation on an equal footing with men.***

***Discrimination against migrant workers.*** The Committee must note with ***regret*** that the Government once again provides no response to its previous comments and those of the Conference Committee on the Application of Standards, raising concerns regarding discrimination against migrant workers. The Committee notes, however, from the report of the Special Rapporteur referred to above, which highlights the risk of exploitation and abuse of migrant workers due to the *kafala* (sponsorship) system, that the *kafala* system was recently under review by the Ministry of Labour (*ibid.*, paragraphs 63–65). ***The Committee once again urges the Government to take measures to address the issues of discrimination and exploitation of migrant workers, including providing legal protection to migrant workers against discrimination on all the grounds enumerated in the Convention, as well as accessible dispute resolution mechanisms. The Committee also asks the Government to provide specific information on the review of the kafala system being undertaken by the Ministry of Labour, including the methodology being used, any resulting conclusions or recommendations, and follow-up. The Committee again urges the Government to follow up in a concerted manner issues relating to discrimination of migrant workers, including examining the occupations in which migrant workers***

*are employed, their conditions of employment, and the particular situation of female domestic workers; and to make addressing discrimination against migrant workers an important component of the national equality policy.*

*Discrimination based on religion.* The Committee notes the Government's indication that the State has started to encourage and promote the values of religious tolerance, including the adoption of national dialogue involving all citizens regardless of creed, and attempting to address hatred and violence against non-Muslims. ***The Committee asks the Government to provide information on the specific measures taken to encourage and promote religious tolerance, and the results achieved. Please also provide information on specific measures taken to address discrimination based on religion in employment and occupation.***

*Dispute resolution and human rights mechanisms.* The Committee previously raised concerns regarding the inadequacy of the dispute resolution mechanisms in addressing issues of discrimination, including for migrant workers. The Committee notes that the Government again indicates that there have been no complaints of discrimination in employment and occupation. The Government also indicates that the Human Rights Commission is carrying out a national programme to disseminate a culture of human rights, including raising awareness through media, lectures, symposia and publications aimed at changing cultural and social stereotypes with a view to eliminating discrimination. The Government also indicates that the Ministry of Justice has drafted a strategy for the development of the judiciary, proposing the establishment of specialized women's units at the justice departments and within justice bodies, to receive women's claims, and staffed by female administrative staff, women specializing in the sharia, and female legal counsellors. A unit providing for mediation regarding issues concerning women has also been proposed. The Government also refers to Royal Decree No. 8382/mb of 28/10/1429 (2008) which provides for the establishment of women's units in courts and justice secretariats under the supervision of an independent women's administration; procedures to address delays that jeopardize women's rights and stop violence against them because of a lawsuit, and the adoption of sanctions; addressing women's complaints and seeking a clear and sound manner of receiving, investigating and resolving such complaints; and increasing women's awareness of their rights through media. ***The Committee asks the Government to continue to provide information on the measures taken by the Human Rights Commission to raise awareness regarding discrimination, particularly regarding any activities addressing specifically discrimination in employment and occupation. Please also provide information on the measures taken to implement the strategy for the development of the judiciary and Royal Decree No. 8382/mb. The Committee also requests the Government to clarify whether it is envisaged that women will be included on the Human Rights Commission and the courts, having the same status and responsibilities as men, and to provide information on any progress made in this regard. The Committee also asks the Government to continue to provide information on the number and nature of complaints brought before labour inspectors, labour dispute commissioners, the Human Rights Commission or the courts regarding discrimination, and the outcome thereof. The Committee also once again urges the Government to take measures to ensure that those involved in dispute resolution and enforcement, including labour inspectors, labour dispute commissioners, judges and members of the Human Rights Commission, receive appropriate training regarding non-discrimination and equality issues.***

## Senegal

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)***

*Article 2 of the Convention. Equality of opportunity and treatment for men and women.* In its previous comments, the Committee referred to the observations of the International Trade Union Confederation (ITUC) of 23 September 2003 and the National Federation of Independent Trade Unions of Senegal (UNSAS) of 16 October 2006, which emphasized the gender segregation in the labour market, the high rate of illiteracy among women and the low school enrolment rate of girls. It also noted the launching of the National Strategy on Gender Equality and Equity (SNEEG) in December 2007. The Committee notes that according to the Government's brief report, the SNEEG is currently being disseminated to the actors concerned, and particularly to state institutions and civil society. The Government indicates that in the context of the implementation of the SNEEG, the Act on Gender Parity in Electoral Lists was adopted in 2010 and the number of women in the Government rose following the latest Government reshuffle. It also emphasizes that many awareness-raising and training activities on equality, including workshops and conferences, are carried out with the active participation of workers' and employers' organizations. The Committee further notes that a plan for the implementation of the SNEEG for 2009–15 was adopted in March 2009 and that it includes a number of measures to increase economic power and autonomy of women (Effect 3), with the particular objectives of: (1) women gaining access to factors of production and financial resources; (2) women obtaining the technical and managerial skills necessary to carry on their economic activities; and (3) women having more time to devote to production activities. Among these measures, the Committee observes that it is first envisaged to draw up an assessment concerning the access of women to resources and production factors, and an evaluation of needs for the reinforcement of the capacities of active women. It also notes that the drafting and implementation is envisaged of a plan and a programme for the reinforcement of facilities to lighten the work of women. ***The Committee requests the Government to provide information on the implementation of the measures under the SNEEG in relation to access to resources and factors of production, including land and vocational training, with an indication of their impact on gender segregation in the labour market. The Committee also requests the Government to***

*provide any available information on the impact of the plan and the programme for the reinforcement of facilities to lighten the work of women on the development of women's training and employment for women.*

*Statistics.* In its previous comments, the Committee asked the Government to provide statistical data on the activity rates of men and women in the private and public sectors, as well as in the informal economy, and on their participation in vocational training. *Noting the Government's indication that such statistics are not available, the Committee trusts that the Government will soon be in a position to provide such statistical data, and requests it to take the necessary measures for the compilation and analysis of such data on employment and training, which are indispensable to identify any discrimination between men and women and to evaluate the measures adopted to overcome it.*

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

## Serbia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 2000)

*Implementation of the non-discrimination legislation.* In its previous comments, the Committee noted with interest the adoption of the Act on the Prohibition of Discrimination (*Official Gazette* No. 22/09) in April 2009 as well as the observations made by the Confederation of Autonomous Trade Unions of Serbia (CATUS) and the Trade Union Federation "Nezavisnost" that despite the enactment of legislation, discrimination continues to occur in practice. The Committee has earlier requested the Government to provide information on the measures taken to promote awareness of, implement and enforce the provisions relating to discrimination in employment and occupation contained in the Labour Code and the Act on the Prohibition of Discrimination. The Committee notes that the Government's report does not contain any information in this respect. *The Committee asks the Government to provide information on the measures taken to implement the anti-discrimination legislation. Furthermore, recalling the importance of concrete and practical measures to promote awareness and understanding of the non-discrimination legislation among workers and employers, their organizations, labour inspectors and judges as well as the public at large, the Committee once again requests the Government to provide information on the promotional and training activities undertaken on the anti-discrimination legislation and on the number, nature and outcome of employment discrimination cases addressed by the labour inspectorate and the Commissioner for Equality and the judiciary, including on remedies provided and sanctions imposed.*

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

## Sierra Leone

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1966)

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

*Articles 2 and 3 of the Convention. Lack of national policy.* The Committee regrets that the Government does not provide any new information in respect to the Convention's application. Since Sierra Leone has ratified the Convention, the Government has consistently reported that no legislative or administrative regulation or other measures existed to give effect to the provisions of the Convention and the Government has failed to provide information on any measures taken in this regard. In its latest report the Government repeats the general statement that it had a broad-based policy which ensured jobs for all who apply and are willing to work, regardless of sex, religion, ethnicity or political opinion. The Committee is therefore bound to recall that under the Convention, Sierra Leone has the obligation to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination regarding vocational training, access to employment and particular occupations, as well as terms and conditions of employment.

In connection with the above, the Committee recalls that articles 7 to 9 of the 1991 Constitution establish economic, social and educational objectives for the State that potentially promote the application of the Convention. Article 15 guarantees the right to equal protection of the law irrespective of race, tribe, place of origin, political opinion, colour, creed or sex, and article 27 of the Constitution provides constitutional protection from discrimination. The Committee considers that these provisions may be an important element of a national equality policy in line with the Convention, but recalls that provisions affirming the principles of equality and non-discrimination in itself cannot constitute such a policy. As stated in the Committee's 1988 General Survey on the convention, the national policy on equality of opportunity and treatment should be clearly stated and should be applied in practice, presupposing state implementation measures in line with the principles set out in *Articles 2 and 3 of the Convention and Paragraph 2 of the accompanying Recommendation No. 111.*

*While being aware of the many challenges the Government is facing in the process of consolidating peace, the Committee encourages the Government to give serious consideration to the application of the Convention in law and practice as an integral part of its efforts to promote peace and social and economic stability. The Government is requested to provide information on measures taken or envisaged to promote and ensure equal access to technical and vocational training, public and private employment, as well as equal terms and conditions of employment, including through educational programmes and cooperation with employers' and workers' organizations. The Committee also reiterates its previous requests to the Government to provide information in particular on the measures taken to ensure equality in employment and occupation between women and men and among members of the different ethnic groups.*

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

## **Slovakia**

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)**

*Article 1(b) of the Convention.* The Committee recalls its previous observation in which it noted that section 119a(2) of the Labour Code, as amended in 2007 by Act No. 348/2007 Coll., defines work of equal value as being work of the same or comparable complexity, responsibility and difficulty, carried out under the same or comparable working conditions and producing the same or comparable capacity and results of work for the same employer. The Committee notes further that section 119a(3) provides that if a system of job evaluation is used, it must be based on the same criteria for men and women and without sex discrimination. The Committee notes the Government's indication that objective job evaluation, when implemented by the employer, allows a comparison of different jobs using objective criteria, which calls for a wage adjustment once the different jobs have been evaluated as having comparable value. The Committee also notes the Government's indication that no information on disputes and court rulings on the application of section 119a of the Labour Code is available. The Committee notes that while the Labour Code permits objective job evaluation with a view to comparing different jobs, section 119a does not appear to give a right to equal remuneration for men and women for work of equal value, going beyond the same or comparable work. The Committee recalls that the principle of the Convention requires equal remuneration for jobs which are of an entirely different nature, including those with different complexity, responsibility and difficulty, and carried out under entirely different conditions, and producing different results, but which are nevertheless of equal value. ***The Committee therefore asks the Government to provide information on how it is being ensured that workers have the right to claim equal remuneration for work of equal value, for jobs of an entirely different nature. Please also provide information on the practical application of section 119a of the Labour Code, including any judicial or administrative decisions and the outcome thereof. The Committee also requests information on any measures taken to promote objective job evaluation pursuant to section 119a, and to ensure that the process is free from gender bias.***

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)**

*Discrimination on the basis of race and national extraction.* The Committee notes the different measures and programmes taken under the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic (2008–13) to address the difficulties encountered by the Roma in employment and education. It particularly notes the launching of social enterprises as an important tool for improving employment opportunities of the long-term unemployed Roma, and that a programme has been developed by the Plenipotentiary Government Office for Roma Communities to address the lack of education of Roma children. However, the Committee notes the Government's indication that the Roma continue to be affected by unemployment and discrimination in the labour market because of their lack of qualifications; and that the educational situation of Roma children remains problematic, in particular, with regard to the fact that a considerable number continue to be placed in "special" schools. In this connection, the Committee recalls that section 8(a) of the Anti-Discrimination Act, 2004, as amended by Act No. 85/2008, provides for temporary compensatory measures to eliminate forms of social and economic inequalities or disadvantage faced by persons belonging to vulnerable groups; and notes that no information has been given by the Government relating to such measures concerning Roma in employment and education. However, the Committee considers that such positive measures could assist in addressing the de facto inequalities affecting members of minority groups, including the Roma, thus giving effect to the national policy referred to in *Article 2 of the Convention* (see General Survey of 1996 on equality in employment and occupation, paragraph 73). The Committee also notes that, according to the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic (2008–13), comprehensive statistical data disaggregated by ethnicity must be made available in order to assess results under the Medium-term Concept. The Committee considers that such information is crucial for assessing progress and ensuring effective monitoring of the measures taken with respect to employment and occupation.

The Committee notes that the Advisory Committee on the Framework Convention for the protection of national minorities was informed by the Slovak National Centre for Human Rights (NCHR) that the majority of complaints received on the ground of ethnicity are lodged by persons belonging to the Roma minority, which is particularly affected by discrimination in the labour market regarding recruitment procedures (Council of Europe, ACFC/OP/III(2010)004, 18 January 2011, paragraph 41). ***In light of the above, the Committee urges the Government to increase its efforts to address the continuing discrimination faced by the Roma in employment and occupation, and particularly asks the Government to:***

- (i) ***provide information on any temporary compensatory measures taken aimed at eliminating social and economic inequalities or disadvantage faced by the Roma population, pursuant to section 8(a) of the Anti-Discrimination***

*Act, as well as information on the steps taken to raise awareness and understanding of the concept and objectives of such measures;*

- (ii) *provide information on the steps taken to promote the participation of the Roma, on an equal footing with other parts of the population, in education and training at the various levels, including any positive measures to address the segregation of Roma children into “special” schools;*
- (iii) *take the necessary steps, in the context of the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic, to gather statistical information on the situation of Roma in employment and education;*
- (iv) *continue to provide information on the results achieved in realizing the objectives and obtaining the targets set out in the Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic, as well as on any other achievements regarding policies aimed at eliminating discrimination against Roma in employment and education.*

*Equality of opportunity and treatment between men and women.* The Committee notes from the Government’s report that the National Strategy for Gender Equality (2009–13) was adopted on 8 April 2009 by Resolution No. 272. The Strategy indicates that it constitutes the foundation for decision-making at all levels and formulates basic targets and goals for the achievement of gender equality. The basic objective is to create an environment, effective mechanisms, tools and methods for the implementation of gender equality in all areas of society. In this regard, the Committee particularly notes the following means to be used to achieve this objective: the adoption of legislative and non-legislative measures; the creation of a system of analytical, monitoring and control mechanisms to systematically determine the effectiveness and efficiency of adopted measures; the promotion of information and awareness of gender equality issues; and the elimination of gender stereotyping. The Committee also notes the adoption in 2010 of the National Action Plan for Gender Equality (2010–13) by Resolution No. 316, which is the implementation document of the National Strategy for Gender Equality. The Action Plan sets specific tasks and provides for systematic activities with a view to promoting the development and implementation of the basic objective of the National Strategy. The Committee further notes from the Government’s report that the Minister of Labour, Social Affairs and Family, in cooperation with other responsible ministers and organizations, is to submit summary reports annually on improvements made in the area of gender equality.

While welcoming these initiatives, the Committee notes from the information provided in the National Action Plan that some obstacles continue to hinder equality of treatment and opportunities between men and women: gender equality is not considered as a priority issue to be addressed in the public administration; and the inadequacy of staff and administrative capacity necessary to carry out gender analysis and evaluate the impact of the proposed measures related to gender. The Committee also notes from the information provided by the Government to the Seventh Council of Europe Conference of Ministers responsible for Equality between Women and Men, that strong gender stereotypes persist, particularly causing gender imbalances in decision-making, gender segregation in the field of education which is thus transferred to the labour market, inequalities in the level of wages, and unbalanced share of family responsibilities and childcare between men and women (Seventh Council of Europe Conference of Ministers responsible for Equality between Women and Men, 7 May 2010, page 6). *The Committee encourages the Government to continue to take steps to overcome the obstacles faced by women in employment and occupation, and to provide information on the following:*

- (i) *the concrete measures taken or envisaged to implement the National Strategy for Gender Equality (2009–13) and the National Action Plan for Gender Equality (2010–13), including measures promoting women’s access to a wider range of training and jobs, and the results achieved;*
- (ii) *the concrete steps taken to increase public awareness regarding gender discrimination in the labour market, as well as information on any steps taken or envisaged to increase awareness and understanding on gender equality in the public administration; and*
- (iii) *updated statistics on the distribution of men and women in the various economic sectors and occupations, in the public and private sectors, as well as the last summary report on gender equality.*

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

## South Africa

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)**

*Article 1 of the Convention. Equal remuneration for work of equal value.* The Committee notes the Government’s indication that given that the Government, in consultation with the social partners, was in the process of reviewing the Employment Equity Act (EEA), a decision had been taken in 2009 not to include a provision covering equal pay for work of equal value in the amended EEA regulations. The Committee also notes that in the process of amending the EEA, a draft provision dealing specifically with equal pay for work of equal value has been included in Chapter 2. The Committee further notes that, while the EEA amendments are underway, equal pay for work of equal value has been implemented in the Director-General’s Review System, emanating from sections 43, 44 and 45 of the EEA, which empower the Director-General of Labour to do an in-depth assessment of compliance and make recommendations. *The Committee, welcoming the Government’s intention to include the principle of equal pay for work of equal value in Chapter 2 of the*

*EEA, hopes that the term “pay” will be defined broadly to cover all elements of remuneration, as defined in Article 1(a), and asks the Government to provide information on any developments in this regard. Please provide specific information on how the principle is included in the Director-General’s Review System, such as methods of implementation, monitoring of the Director-General’s recommendations and regarding any cases on this matter which have been referred to the Labour Court.*

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

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)**

*Article 1(1)(b) of the Convention. HIV/AIDS status.* The Committee notes with *interest* the decision rendered by the Labour Court of Johannesburg in February 2011 (*Allpass v. Mooikloof Estates*, Case No. JS178/09), awarding the complainant compensatory damages for unfair dismissal and discrimination on the grounds of his HIV status, and making specific reference to the Convention, and to the HIV and AIDS Recommendation, 2010 (No. 200) as a recognition of the impact of discrimination based on real or perceived HIV status and its increasing prevalence. The Court also refers to the notion of “inherent job requirement”, included in *Article 1(2)* of the Convention, pointing out that the Committee has emphasized the need for a strict interpretation of this notion. *The Committee asks the Government to continue to provide information on judicial and administrative decisions concerning discrimination in employment and occupation based on HIV/AIDS status. The Committee also reiterates its request for information concerning the South African Defence Force Policy on HIV/AIDS status, which was to be revised following the decision rendered by the High Court of Pretoria in May 2008. The Committee also once again asks for information concerning the National Strategy Plan on HIV/AIDS (2007–11), including measures adopted under this plan to prevent and address discrimination in employment and occupation based on HIV/AIDS status.*

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

## **Spain**

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)**

*Legislative and administrative measures.* The Committee notes the legislative and administrative measures adopted by the Government to promote equality. The Committee emphasizes in particular the provisions amending the legal system currently in force, under the terms of Basic Act No. 3/2007 of 22 March on effective equality between women and men, which it noted in its previous observation. These provisions include: the amendment of the general electoral system, the amendment of Act No. 1/2000 on civil procedures which provides for the reversal of the burden of proof; the amendment of the Workers’ Charter (providing that instructions to engage in discrimination shall be void, establishing the possibility of adopting affirmative action for members of the under-represented sex and adopting measures to improve the balance between work and family responsibilities, among other substantive measures for the recognition of equality), and the amendment of the Labour Procedures Act. The Committee also notes the amendment of the Public Employment Statute, the Self-employment Statute and the system of public equality institutions, as well as the establishment of the Equality Label granted to enterprises which stand out for their good practices in relation to equality. Finally, the Committee notes the collective agreements containing measures to promote equality, the provision respecting the registration and deposit of collective agreements with a view to establishing a database, as well as the Employment and Collective Bargaining Agreement 2010, 2011 and 2012, which emphasize that collective agreements shall include among their objectives compliance with the principle of equality. *The Committee requests the Government to continue providing information on the application and impact in practice of Basic Act No. 3/2007 on effective equality between women and men, and particularly on the equality plans adopted in the context of enterprise collective bargaining and their impact on the implementation of the Convention.*

*Discrimination based on race, colour, religion and national extraction.* The Committee notes with *regret* that once again the Government’s report does not contain information on this subject. The Committee notes the report on the development of racism and xenophobia in Spain, prepared by the Spanish Observatory on Racism and Xenophobia, which refers principally to the situation of immigrants in the country and emphasizes the interaction between attitudes of intolerance and situations of economic and employment crisis. *The Committee once again requests the Government to provide information on the activities carried out by the Spanish Observatory on Racism and Xenophobia and the Council to Promote Equality of Treatment and Non-discrimination with regard to Racial and Ethnic Origin. The Committee particularly requests the Government to provide detailed information on the measures, programmes and plans of action to promote equality of opportunity and treatment and address discrimination in employment and occupation based on race, colour, religion and national extraction. The Committee also asks the Government to provide information on awareness-raising and educational programmes established to promote greater tolerance towards members of minority groups, and especially immigrants, persons of non-European origin and the Roma.*

*Observations made by the Trade Union Confederation of Workers’ Commissions (CC.OO.).* In its previous observation, the Committee noted the observations made by the CC.OO. expressing concern as regards affirmative action

measures in enterprises with fewer than 250 workers, the delay in the establishment of the Council on the Participation of Women in the Ministry of Equality and the difficulties faced by foreign women in gaining access to the labour market due to the fact that they work in the informal economy. The Committee notes the Government's indications that: (1) with regard to affirmative action measures in enterprises with fewer than 250 workers (see the Equality Act), the Equality Label has been established and subsidies are available for the preparation and application of equality plans; (2) Royal Decree No. 1791/2009 determines the operation, competence and composition of the Council on the Participation of Women, a joint consultative and advisory body composed of representatives of women's organizations and associations; and (3) with regard to the access of foreign women to the labour market, Orders Nos TAS/3698/2006 and TAS/711/2008 regulate the registration of non-Community foreign workers with public services and employment agencies, a guide has been prepared for public administrations on how to address the integration of immigrant women and an analysis has been published of the labour market situation of immigrant women, methods of integration, sectors with employment opportunities and enterprise initiatives. These studies will provide a basis for the preparation of more effective legal, policy and strategic measures to address the issue. **The Committee requests the Government to provide further information on the concrete proactive measures adopted in enterprises with fewer than 250 workers, and the measures adopted with a view to achieving the integration of immigrant women into the labour market and their impact in practice.**

*The Committee also requests the Government to provide information on the following:*

- (i) *the Strategic Plan for Equality of Opportunities (2008–11) and its impact;*
- (ii) *the regular evaluation report on the impact of Basic Act No. 3/2007 of 22 March on effective equality for women and men, undertaken in accordance with the fifth final provision of the Act; and*
- (iii) *the report evaluating the impact of Basic Act No. 1/2004 respecting comprehensive protection measures against gender violence.*

*Statistical information.* The Committee notes the statistical information attached to the Government's report, particularly on the numbers of self-employed workers and the proportion of workers with contracts without limit of time and fixed-term contracts disaggregated by sex. The Committee further notes the positive trend in the activity rate of women. **The Committee requests the Government to continue providing statistical information relevant to the application of the Convention.**

*Labour inspection.* The Committee notes the information provided by the Government on the activities undertaken by the labour inspection services during the period 2008–10. It notes in particular the increase in scheduled inspections and those undertaken following complaints by workers, the number of workers affected, the types of violations committed and the penalties applied to the enterprises concerned. The Committee also notes the campaign carried out in the hotels, financial institutions, commerce, textiles, metallurgy and cleaning sectors with a view to identifying wage discrimination, the findings and the penalties applied. **The Committee requests the Government to continue providing information on the activities carried out by the labour inspection services with a view to the application of the Convention, and particularly the results of the 2010 campaign on wage discrimination.**

### **Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1985)**

*Articles 3 and 9 of the Convention.* *Measures to apply the Convention in order to create effective equality of opportunity and treatment for men and women workers.* The Committee notes with **interest** the legislative provisions adopted, agreements and court decisions handed down with a view to achieving substantive equality of opportunity for men and women workers. It notes in particular Basic Act No. 3/2007 on effective equality between men and women, which is the result of intensive civil, social and political dialogue. The Committee also notes that section 44 of the Act provides that the right to reconcile personal, family and working life shall be granted to men and women workers so that family responsibilities are assumed in a balanced manner and all discrimination based on the exercise of this right is avoided. The Act also contains a number of provisions giving effect to the Convention, namely: the establishment of paternity leave, to be extended to four weeks as from 2010, and the extension of special leave in the event of disability of a child under the age of majority, or premature birth; the possibility of shortening the working day; improvement in the leave of absence regime and improvements in the systems for breastfeeding infants under nine months old. The Committee also notes the information sent by the Government to the effect that under the Act, during such leave, employees are entitled to take part in training courses organized by the Administration, to return to work in the same job and to benefit from any improvement in working conditions to which they would have had access during their absence. The Committee notes that, according to the Government, the improvements introduced by the Act have been incorporated in the Workers' Statute, the Basic Public Employment Statute, the Third Single Agreement for Employees Engaged in the General Administration of the State and the Government–Trade Unions Agreement for the Public Service in the framework of the social dialogue 2010–12. The Committee notes that under the latter agreement, the First Plan for Equality between Men and Women in the General Administration of the State and its Public Bodies was approved. The Committee also notes the legal provisions adopted in order to establish active employment policies. **It asks the Government to continue to send information on the implementation in practice of all these provisions, particularly**

**Basic Act No. 3/2007 and the agreements adopted under it, including information on how the measures adopted have affected the application of the Convention.**

*Other members of the immediate family.* The Committee notes with *interest* the adoption of Act No. 39/2006 to promote personal autonomy and care in respect of persons in a situation of dependence, the aim of which is to improve the quality of life of dependent persons as well as of their carers and family members. The Committee notes that, according to the Government, it is hoped that effective implementation of the Act will contribute in the medium and long term to increasing the rate of women's participation in the labour market. **The Committee asks the Government to provide information on the impact of the Act, including statistical data on the persons benefiting under it.**

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

## Sri Lanka

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)**

The Committee notes the comments by the Lanka Jathika Estate Workers' Union (LJEWU) which were attached to the Government's report.

*Article 1 of the Convention. Legislation on equal remuneration.* In response to its previous comments regarding the absence of legislation providing for equal remuneration for men and women for work of equal value, the Committee notes the Government's indication that there have been no developments in this regard. The Committee is concerned that particularly in such a highly gender segregated labour market (see comments with respect to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)), the absence of an explicit right to equal remuneration for men and women for work of equal value undermines the implementation of the Convention. In this regard, the Committee recalls that the rights regarding wages arising from the Wage Boards and collective agreements appear to be limited to equal wages for the same or substantially the same work, which is narrower than the principle set out in the Convention. **Recalling its 2006 general observation, the Committee urges the Government to take steps to give full legislative effect to the principle of equal remuneration for men and women for work of equal value, and to provide information on measures taken in this regard.**

*Additional emoluments.* The Committee had noted previously the practice by certain employers in rural areas of providing workers with payments in kind, such as meals, which were only provided to male workers. The Committee notes that the Government again indicates that there are no legal provisions for payment of wages in kind, but acknowledges that most of the workers in the plantation sector are provided with free housing. The Committee recalls that the purpose of the broad definition of "remuneration" enshrined in *Article 1(a)* of the Convention is to capture all elements that a worker may receive for his or her work including additional allowances paid in kind, such as meals and housing facilities. **The Committee again asks the Government to take measures to ensure that in practice all emoluments, whether in cash or in kind, are granted or paid without discrimination based on the sex of the worker, and to provide specific information on steps taken in this regard.**

*Article 2. Wage boards.* The Committee recalls that wage rates are set for a number of sectors through the wage boards. While specific rates based on gender no longer appear to be set in the wage board ordinances, the Committee notes that classification of wages in various trades is differentiated based on the classification of categories such as "unskilled", "semi-skilled" and "skilled". The Government has not provided any information in response to its previous request regarding how it is ensured that in determining minimum wages rates, the work performed by women is not being undervalued in comparison to that of men who are performing different work and using different skills, and that the procedures adopted are free from gender bias. The Government has also not provided any statistical information regarding the number of women and men in the different categories of the various sectors and trades, as previously requested, which would assist the Government and the Committee to assess the nature and extent of wage inequalities. The Committee recalls that there is often a tendency to set lower wages for sectors predominantly employing women, and therefore that special attention is needed in setting sectoral wages to ensure that the rates fixed are free from gender bias. The fact that the minimum wage rates no longer distinguish between men and women is not sufficient to ensure that the process is free from gender bias. The Committee also notes that, in defining different jobs and occupations in the wage board ordinances, sex-specific terminology remains in use in many cases, reinforcing stereotypes regarding whether certain jobs should be carried out by men or women, and thus increasing the likelihood of wage inequality. For example, terms such as "chemical men" and "machine women" are used, as well as "bleaching operatives (males)" and "mending operatives (females)", and should be avoided. **The Committee asks the Government to provide information on the specific criteria used to determine wage rates fixed by the wage boards. Please also provide information on the concrete steps taken to ensure that rates of wages fixed by the wage boards are based on objective criteria, free from gender bias, so that the work in sectors in which women are predominantly employed is not being undervalued compared to sectors in which men are predominantly employed. The Committee also asks the Government to ensure that gender-neutral terminology is used in defining the various jobs and occupations in the wage board ordinances. The Committee also urges the Government to compile and analyse statistics on the current wage rates for men and women in the different categories of the various sectors and trades to enable it to gain more detailed knowledge of the nature and scope of the remaining wage inequalities and to be able to assess progress made in addressing such inequalities.**

*Wage policy.* The Committee previously noted the Government's intention to review the wage policy, to simplify the procedures for wage setting, and to establish a national minimum wage. In this regard, the Committee notes the Government's indication that the Cadre and Salary Commission is mandated to determine and revise the cadre and salary structure in the public service. The Committee also notes the statement of the LJEWU that these commissions hear the views of trade unions before recommending rates of pay. The Committee notes further that the public administration circulars on restructuring of public service salaries, appended to the Government's report, do not indicate if or how the principle of the Convention is taken into account in the wage determination process. The Government also states that "no discriminatory policy exists in the public service except in a few blue-collar jobs". With respect to the private sector, the Government states that tripartite consultations are continuing in the context of the National Labour Advisory Council, including with regard to a national minimum wage and developing a national wage policy, but no final decision has been taken. ***Noting the Government's acknowledgement that there is a discriminatory wage policy with respect to some public service jobs, the Committee asks the Government to provide further details regarding such policies and to take steps to abolish them. It also asks the Government to continue to provide information on the progress made in developing a new wage policy, and to provide information on how the policy will promote and ensure the principle of equal remuneration for men and women for work of equal value in both the public and private sectors.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)***

The Committee notes the observations by the Lanka Jathika Estate Workers' Union (LJEWU) attached to the Government's report.

*Legislative protection.* The Committee recalls its previous comments, urging the Government to make every effort to introduce provisions in the legislation ensuring that all men and women, citizens and non-citizens, are effectively protected from discrimination in all aspects of employment and occupation on at least all the grounds enumerated in the Convention. In its reply, the Government continues to refer to the constitutional provisions, but does not indicate any further progress in introducing specific legislative provisions. ***Recalling that general constitutional provisions regarding equality, while important, have generally not proven to be sufficient in order to address specific cases of discrimination in employment and occupation, the Committee again urges the Government to take steps to introduce specific legislative provisions ensuring that all women and men, whether citizens or non-citizens, are protected against discrimination in all aspects of employment and occupation on at least all the grounds enumerated in the Convention, and to provide information on progress made in this regard. The Committee also once again asks the Government to provide information on the concrete measures taken to protect, in practice, citizens and non-citizens against discrimination on the basis of sex, race, colour, religion, political opinion, national extraction and social origin.***

*Equality of opportunity between men and women.* The Committee notes from the 2010 Labour Force Survey Annual Report of the Department of Census and Statistics, that the labour force participation of women is 31.2 per cent compared to 67.1 per cent for men. Only 15.6 per cent of working age women has employee status, compared to 36.4 per cent of men. In the Labour Force Survey, it is confirmed that "the occupational profiles of women and men are quite distinct", with a high proportion among "skilled agricultural and fishery workers". The Committee had also noted previously the under-representation of women in many areas of employment, and their concentration in self-employment and unskilled work, often in the informal economy, and in export processing zones (EPZs). The Committee notes the information provided by the Government on the range of measures taken by the Department of Labour and the Board of Investment, concerning conditions of employment and other facilities in the EPZs, as well as information on a range of gender-related activities including planned training and awareness-raising of the Gender Bureau under the Ministry of Labour Relations and Productivity Promotion. ***The Committee asks the Government to provide information on any measures taken or envisaged to effectively address occupational sex segregation, and the impact of such measures, including with respect to women in the informal economy, and in EPZs. It also asks the Government to provide information on any other measures taken to increase female labour force participation including increasing access to higher level posts. Please also provide information on the status of the adoption of the Women's Rights Bill, as well as details of the Five-Year National Action Plan for 2010-14, and any information on its implementation.***

*Sexual harassment.* The Committee had previously raised concerns regarding the absence of effective protection against sexual harassment. The Committee notes that the Government again refers to the voluntary "Code of Conduct and Procedures to address Sexual Harassment at the Workplace", introduced by the Ceylon Chamber of Commerce and the Employers' Federation of Ceylon, indicating that the Code is considered as a milestone in Sri Lankan efforts to prevent sexual harassment at the workplace. The Government also indicates that a case of unjustified termination of service could be brought before the Labour Tribunal based on sexual harassment. The Committee notes that the Government has not given any indication that it intends to include a specific provision preventing and prohibiting sexual harassment in the labour law, as recommended by the Committee. The Committee recalls that clear definitions, encompassing quid pro quo and a hostile environment harassment, and appropriate responses in terms of remedies and complaints mechanisms under national laws, are important in addressing sexual harassment, which is a serious form of sex discrimination. ***The Committee therefore asks the Government to take steps to include specific legislative provisions prohibiting and***

*preventing sexual harassment in employment and occupation. The Committee also asks the Government to provide information on the practical application of the Code of Conduct on sexual harassment, including its impact on preventing and addressing sexual harassment. Please also provide information on any complaints lodged, the remedies provided and sanctions imposed by the judicial or administrative authorities relating to sexual harassment, including in the context of unjustified termination. The Committee also requests information on measures taken or envisaged to raise awareness on sexual harassment, both quid pro quo and hostile environment, in the public and private sectors.*

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

## Sweden

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)**

*Gender wage gap and occupational segregation.* The Committee notes from the Government's report the persistence of the gender wage gap, which amounted to 15.8 per cent in 2008. In this connection, the Committee notes the Government's indication that the gender wage gap is in part due to the following: women and men are found in different professions, sectors and positions; the presence of women in part-time employment; gender stereotypes which influence the choice of study and training programmes; parenthood which reduces women's employment rate; and the higher rate of sickness absences for women. The Committee also notes the Government's efforts to address pay differentials and occupational segregation in employment, including by means of a gender equality bonus, tax relief for household services to improve equal sharing of parental duties, rehabilitation guarantee to facilitate the return to work of women on sick leave, inquiries analysing gender segregation in the choice of education and measures aiming at encouraging entrepreneurship among women. These measures introduced by the Government in 2009 are part of a long-term strategy for gender equality in the labour market and the business sector. Furthermore, the Committee notes the setting up of a programme on women's career development with a view to improving the career opportunities of women employed in the public sector; as well as two national programmes aimed at increasing the number of women on company boards. The Government also refers in its report to the provisions of the Discrimination Act, according to which employers are required to take active measures to promote equal opportunities at the workplace (Chapter 3, sections 1–13). It particularly underlines the provision requiring employers to endeavour to prevent differences in pay and other terms of employment between women and men who perform "work which is to be regarded as equal or of equal value" (Chapter 3, section 2); and encouraging them to promote equal balance of women and men in different types of work and categories, by means of education, training, skills development and other appropriate measures. ***The Committee asks the Government to continue to provide information on the measures taken to address the gender wage gap and occupational segregation in employment including on the impact of the long-term strategy for gender equality. Please also provide information on the implementation of active workplace measures under the Discrimination Act as well as any developments in following up the recommendations of the Government commission regarding changing and strengthening the rules on active measures. Please continue to supply statistical information on the distribution of men and women in the different sectors of economic activity, occupational positions and their respective levels of remuneration.***

*Wage-mapping.* The Committee notes that under the Discrimination Act, employers must carry out wage mapping every three years in order to identify, remedy and prevent unfair gender differences in pay and other terms of employment (Chapter 3, section 10). The employer is then to assess whether existing pay differences are directly or indirectly associated with gender. ***The Committee asks the Government to provide further information on the implementation of Chapter 3, section 10, of the Discrimination Act, and particularly to indicate the consequent wage adjustments implemented. Please also continue to provide information on the activities carried out by the Office of the Equality Ombudsman.***

*Collaboration with workers' and employers' organizations.* The Committee notes with ***interest*** the measures taken by the Equality Ombudsman to assist the social partners in meeting their statutory requirements under the Discrimination Act: (i) the Ombudsman has compiled a manual which describes, inter alia, for social partners the methods of drawing up equal opportunity plans, wage-mapping, and preparing analyses and plans of actions; (ii) training programmes have been conducted for management and union officials on active measures with a view to creating equal rights and opportunities at the workplace, including by means of collective agreements; and (iii) a network of representatives of social partners has been established to create a platform for sharing ideas and knowledge, including on the new legislation and discrimination cases in employment. ***The Committee asks the Government to continue to provide information on the measures taken or envisaged to promote cooperation with workers' and employers' organizations with regard to the principle of the Convention.***

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

## Switzerland

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)**

*Anti-discrimination law.* In its previous observation the Committee noted that on 23 March 2007 a motion was tabled in Parliament to draft a law on equal treatment for the purpose of preventing or eliminating all forms of discrimination based on sex, skin colour, ethnic origin, religion, philosophical conviction, age, disability or sexual identity. The Committee notes that by a decision of 21 September 2009 the National Council dropped the motion on the grounds that the applicable law was sufficient to ensure protection against discrimination. The Committee recalls that the Federal Constitution contains a general provision to the effect that no one shall suffer discrimination on grounds, inter alia, of origin, race, sex, age, language, social position, mode of life, religious, philosophical or political conviction or on grounds of a corporal, mental or physical disability (article 8). The Federal Act on equality between men and women prohibits direct and indirect discrimination against workers on grounds of sex, including in respect of pregnancy, civil status or family situation (section 3) and the Act on equality for persons with disabilities seeks to prevent, reduce or eliminate inequalities affecting persons with disabilities, in particular in the area of training and further training. As regards to discrimination on other grounds, the protection afforded to workers is derived from section 328 of the Code of Obligations, “Protection of the worker’s personality”, section 28 of the Civil Code on unlawful affront to the personality, and section 261bis of the Penal Code establishing racial discrimination as a criminal offence.

The Committee is of the view that, although important, the provisions of the Constitution have on the whole been insufficient to remedy specific situations of discrimination in employment. The same is true of the provisions in the Penal Code which could prove difficult to enforce in dealing with discrimination in employment. Furthermore, given the persistence of discrimination the Committee considers that generally comprehensive legislation on anti-discrimination is necessary if the Convention is to be applied effectively. The Committee wishes to draw the Government’s attention to a number of features noted in the national laws it has examined in the past few years, which may make an effective contribution to addressing discrimination and promoting equality in employment and occupation: coverage of as many workers as possible; a clear definition of direct or indirect discrimination; prohibition of discrimination at all stages of employment; explicitly assigning supervisory responsibilities to competent national authorities; providing dissuasive penalties and appropriate means of redress; shifting or reversal of the burden of proof; protection against reprisal; the possibility to take affirmative action; adoption and implementation of policies or plans on equality at the workplace; collection of relevant data. ***The Committee accordingly asks the Government to re-examine the possibility of taking legislative measures to define and prohibit discrimination based on at least all the grounds enumerated in Article 1(1)(a) of the Convention, at all stages of employment, including in vocational training and recruitment and in terms and conditions of employment, so as to afford workers effective protection against discrimination and enable them to assert their rights effectively. The Committee requests the Government to provide information on any such measures taken to reinforce the legal framework pertaining to discrimination in employment and occupation.***

*Articles 2 and 3 of the Convention. Equality of opportunity and treatment without distinction as to race, colour, national extraction or religion.* The Committee points out that in its previous comments it encouraged the Government to introduce in the legislation an express prohibition on racial discrimination in employment and occupation so as to afford workers better protection against discriminatory practices and thus move towards full application of the principles of the Convention. The Committee notes that in June 2009 the Service to Combat Racism (SLR) published a legal guide on racial discrimination, which deals among other matters with racial discrimination in the world of work, citing examples and pointing out available remedies. On the matter of recruitment by private employers, the Committee notes that the guide stresses the difficulty of proving discrimination in the absence of any witnesses, the complexity of civil proceedings and the lack of clarity as to the legal consequences of discrimination in practice. On the matter of recruitment by public employers, the guide states that in the absence of express rules on the subject, in the event of discriminatory conduct in the course of job interviews, it is difficult to know how candidates are to defend themselves. Regarding the legislation to protect workers against discrimination based on race, colour, national extraction or religion, the Committee notes the Government’s statement that no legislative measures are envisaged in the area of contractual relationships established under private law. The Committee also notes that, in a study published in 2010 on the law against racial discrimination, the Federal Committee against Racism (CFR) indicates that the lack of any express ban on racial discrimination is the cause of considerable legal uncertainty, particularly as regards indirect discrimination. The CFR likewise points out that the lack of any provisions in private law and administrative law is an incentive for victims to resort to penal law, which sanctions only the most serious and public cases of discrimination and omits the most subtle or less visible forms, particularly in the world of work. ***Noting recommendations made by the Federal Committee against Racism in the study published in 2010, the Committee requests the Government to indicate the action taken to follow up on them, more particularly the recommendation for an in-depth examination of the “anti-racism legislation”, including the problems of multiple discrimination, the inclusion in the legislation of a ban on direct and indirect discrimination in work relationships between individuals and the establishment of effective instruments for enforcement. The Committee also asks the Government to continue to provide information on the awareness raising and information measures taken to prevent discrimination on the grounds of race, colour, national extraction or religion and to promote tolerance.***

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

## Syrian Arab Republic

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)**

The Committee notes that the Human Rights Council condemned and expressed profound concern at the grave and systematic human rights violations in the Syrian Arab Republic (Resolution by the Human Rights Council at its 17th special session on the human rights situation in the Syrian Arab Republic, 23 August 2011 - A/HRC/S-17/2) and regretted the lack of progress made in the political reform process. The Committee recognizes that without an inclusive, credible and genuine dialogue conducted in an environment without fear and intimidation, and without effective protection of human rights, the implementation of the Convention is seriously hindered, if not rendered impossible. However, given that the Government's report contains no reply to its previous comments, it is bound to repeat its previous observation, which read as follows:

*Legislative developments.* The Committee notes the adoption of a new Labour Law (No. 17/2010), section 75(a) of which provides that the employer shall apply the principle of "equal pay for work of equal value" to all workers without any discrimination, including discrimination based on gender. Section 75(b) then defines "work of equal value" as "work that requires equal scientific qualifications and professional skills, as attested by a work experience certificate". While welcoming the specific reference to "work of equal value" in the new Labour Law, the Committee is concerned that the definition in section 75(b) may unduly restrict the application of section 75(a), as it does not appear to allow a comparison of jobs requiring different qualifications and skills, which are nonetheless of equal value. **The Committee asks the Government to provide information on the practical application of section 75 of the new Labour Law, including any administrative or judicial decisions. Please also provide specific information regarding the scope of comparison permitted under section 75(b), and in particular whether it is possible to compare jobs of an entirely different nature, requiring different qualifications and skills, to determine whether they are of equal value under section 75(a).**

*Application in practice.* The Committee notes that the Government's report contains no information in response to its previous observations regarding concrete measures taken to determine the nature, extent and causes of inequalities in remuneration that exist in practice, in order to identify specific measures to address these inequalities. **The Committee once again urges the Government to undertake studies to determine the nature, extent and causes of inequalities in remuneration existing in practice between men and women for work of equal value in the public and private sectors, and to identify specific measures to address these inequalities. Please also provide full information on the occupational classification system referred to in the previous report, including information on the criteria used to ensure that this classification system is free from gender bias.**

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

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

## Thailand

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1999)**

The Committee notes the comments of the National Congress of Thai Labour (NCTL).

*Article 1(b) of the Convention. Work of equal value.* The Committee notes that the Government states in very general terms that sections 15 and 53 of the Labour Protection Act (LPA), protect men and women in conformity with the principle of the Convention. The Committee recalls its previous comments in which it urged the Government to amend section 53 of the LPA in order to ensure that legislation provides for equal remuneration for men and women not only for equal, the same or similar work, but also for different work which is nevertheless of equal value. The Committee notes that the Government has not taken any steps to amend section 53 of the LPA. The Committee recalls that provisions that are narrower than the principle laid down in the Convention hinder progress in eradicating gender-based pay discrimination, because they do not reflect the concept of "work of equal value". The Committee notes however that the Government plans to conduct a study on the understanding of the principle of the Convention and has taken steps to improve awareness of the concept of "equal remuneration for work of equal value" through publicising the Committee's general observation of 2006. **The Committee again urges the Government to take the necessary steps to amend section 53 of the LPA in order to include the principle of equal remuneration for men and women for work of equal value explicitly. Please also provide information on the results achieved through the study and the activities undertaken to publicise the principle of the Convention.**

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

## The former Yugoslav Republic of Macedonia

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1991)**

*Anti-discrimination legislation.* The Committee notes with *interest* the adoption of the Law on Prevention and Protection against Discrimination on 8 April 2010, which entered into force on 1 January 2011. The law, which applies to both the public and the private sectors, covers, inter alia, work, labour relations and education. It defines and prohibits

direct and indirect discrimination based on “sex, race, skin colour, gender, belonging to a marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, education, political belonging, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or any other ground established by the law or by ratified international agreements”, thus covering all the grounds enumerated in *Article 1(1)(a) of the Convention* as well as a number of additional grounds pursuant to *Article 1(1)(b)*. The law also makes provision for addressing victimization and creates a category of “more severe forms of discrimination” which includes multiple, repeated or prolonged discrimination. It also provides for the adoption of affirmative action measures until actual equality is achieved and sets out the procedure to be established regarding discrimination claims being brought before the Commission for Protection against Discrimination and before the courts. ***The Committee requests the Government to provide information on the legal and practical measures taken to implement the 2010 Law on prevention and protection against discrimination with respect to the prohibition of discrimination and its exceptions in the fields of employment and occupation, in particular any affirmative action measures taken to achieve equality in employment and occupation and any special protective measures taken in favour of certain categories of persons. It further asks the Government to indicate the manner in which the provisions regarding the “most severe forms of discrimination” are being applied in practice, and to provide any information on judicial or administrative decisions handed down in this respect.***

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)***

*Assessment of the gender pay gap.* The Committee recalls that in 2007 women earned 80.3 per cent of men’s monthly income (average and median), and that the gender wage gap was highest in the occupational group of service and sales workers (47 per cent) and legislators, senior officials and managers (39.4 per cent). The Committee notes the Government’s indication that according to the Central Statistical Office’s Continuous Sample Survey of the Population for the year 2009, women dominated the lower income groups, while men dominated the higher income groups; the total number of persons earning less than Trinidad Tobago dollars (TTD) 500 per month is 5,392, two-thirds of whom were women. Within the income brackets of TTD500–999, TTD1,000–1,499 and TTD1,500–1,999, the majority were women, while men fell within the higher income brackets between TTD2,000–2,999 and TTD15,000 or over. The Government also indicates that approximately 21 per cent of men were employed in agriculture, forestry, hunting and fishing, while approximately 23 per cent of women were employed in the wholesale and retail trade, restaurants and the hotel industry. ***The Committee asks the Government to indicate the measures taken or envisaged to address the persistent gender pay gap, and the occupational segregation of men and women. It also asks the Government to continue to provide detailed statistical information on the earnings of men and women according to occupational group and industry, as well as on an hourly basis, if possible.***

*Articles 1 and 2 of the Convention. Legislation.* ***Recalling that the Equal Opportunity Act, 2000, contains no specific provisions regarding equal remuneration for men and women for work of equal value, and noting that the Government provides no response to its previous requests in this regard, the Committee urges the Government to take steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value and to provide information in this regard.***

*Collective agreements.* The Committee previously asked the Government to provide information on the progress made in removing sex discriminatory clauses from collective agreements. ***Noting that the Government once again has not replied to this request, the Committee urges the Government to provide this information in its next report. It also asks the Government to provide the report of the Joint Working Party on Reclassification regarding all the jobs in the bargaining unit represented by the National Union of Government and Federated Workers, which has still not been received.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)***

*Legislation. Equal Opportunity Commission.* The Committee notes the information provided by the Government concerning the functioning of the Equal Opportunity Commission established by section 26(1) of the Equal Opportunity Act, 2000, which commenced operation in April 2008 with the appointment of the first commissioners. The Commission is divided into six units. Its legal officers were appointed in October 2009 and the investigative officers in January 2010. From April 2008 to August 2011, it received 503 complaints, 380 of which have been resolved and completed, 19 are currently being conciliated or mediated and 24 are waiting to be filed at the Equal Opportunity Tribunal. Eighty complaints are currently being investigated. The Commission has also held panel discussions on the promotion of equality with a special focus on employment, disability and gender. The Committee further notes that the Commission has suggested some amendments to the Equal Opportunity Act, 2000, and that the Equal Opportunity (Amendment) (No. 2) Bill, 2011, has been drafted which has been reviewed by the Law Review Commission and is currently due to be debated

in Parliament before the end of 2011. The Committee notes that the Bill includes age and HIV and AIDS as prohibited grounds of discrimination and eliminates the condition of intention for the establishment of direct or indirect discrimination. ***The Committee requests the Government to continue to provide information on any developments concerning the adoption of the Equal Opportunity (Amendment) (No. 2) Bill, 2011, as well as on the activities undertaken by the Equal Opportunity Commission, including the complaints dealt with, and those referred to the Equal Opportunity Tribunal.***

***Discrimination based on sex.*** The Committee recalls its long-standing comments expressing concern about the discriminatory nature of the provisions of several government regulations, which provide that married female officers may have their employment terminated if family obligations affect their efficient performance of duties (section 57 of the Public Service Commission Regulations; section 52 of the Police Commission Regulations; and section 58 of the Statutory Authorities' Service Commission Regulation). It also noted that a female officer who marries must report the fact of her marriage to the Public Service Commission (section 14(2) of the Civil Service Regulations). With respect to section 14(2) of the Civil Service Regulations, the Committee had taken note of the Government's view that this provision is not considered discriminatory in Trinidad and Tobago, as it is an administrative matter related to the practice of women changing their names upon marriage. The Committee had also noted the Government's indication that steps were being taken so as to amend the Civil Service Regulations to require notification of name change of both men and women. ***Noting that the Government's report does not refer to this issue and given the serious nature of the matter, the Committee urges the Government once again to take the necessary action to bring the regulations concerned into conformity with the Convention, and to indicate in its next report the specific steps taken, the progress made and any difficulties encountered in this regard.***

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

## Tunisia

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)***

The Committee notes that a constituent assembly was elected on 23 October 2011. ***In this context, the Committee hopes that, in the process of legislative reform that would be expected to accompany the adoption of the new Constitution, the matters on which it has been commenting for many years will be taken into account so as to ensure the full conformity of the legislation with the Convention.*** Noting that the Government's report does not contain information in reply to its previous observation, the Committee recalls that it read as follows:

***Articles 2 and 3 of the Convention. National policy relating to discrimination on grounds other than sex.*** The Committee notes with regret that the Government has once again failed to provide any details on the measures adopted to combat discrimination on grounds of race, colour, national extraction, religion, political opinion and social origin in the context of a national policy of equality of opportunity and treatment. The Committee notes that the Government reiterates its indication that under article 6 of the Constitution all Tunisians have the same rights and the same duties and are equal before the law. It also notes the Government's indication that the competent services of the Ministry of Employment and the Vocational Integration of Youth have not reported any case of discrimination based on race, colour, religion, political opinion, national extraction or social origin in relation to employment and occupation, and that no complaints have been registered by the administrative services or the courts.

The Committee once again reminds the Government that constitutional provisions providing for equal protection under law are not sufficient in themselves to ensure the full application of the Convention. Similarly, the fact that the authorities have not received any complaints does not mean that there is no discrimination in the country. The Committee considers that this may on the other hand indicate that the victims either have an inadequate knowledge of the relevant legal provisions and dispute resolution procedures available, or fear possible reprisals by the employer. The Committee also wishes to emphasize once again that *Article 2* of the Convention requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating any discrimination in employment and occupation on the basis of the criteria set out in the Convention. ***The Committee requests the Government to:***

- (i) consider in the context of a national policy of equality of opportunity and treatment adopting legislation explicitly prohibiting discrimination based on race, colour, national extraction, religion, political opinion or social origin, and to take concrete measures to eliminate such discrimination in practice;***
- (ii) take measures to raise awareness in the public and among the social partners of the principles set out in the Convention and the legal provisions relating to equality of opportunity and treatment in employment and occupation;***
- (iii) take measures, for example in the form of studies, to evaluate the effectiveness of dispute resolution procedures, including any difficulties of a practical nature encountered by men or women workers in obtaining legal redress for discrimination based on any of the grounds set out in the Convention.***

The Committee is raising other 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.***

## United Kingdom

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** (ratification: 1999)

*Legislative developments.* The Committee notes that the majority of the provisions of the Equality Act 2010, which the Government indicates brings together nine major pieces of discrimination legislation and approximately 100 statutory instruments, came into force in October 2010, with some provisions, including those related to the public sector equality duty, scheduled to enter into force in April 2011. Legislation that has been repealed as a consequence of the adoption of the Equality Act includes the Sex Discrimination Act 1975, the Race Relations Act 1976, the Sex Discrimination Act 1986, and the Disability Discrimination Act 1995.

The Committee notes with *interest* that the new Act addresses discrimination on the basis of an expanded range of grounds (protected characteristics set out in section 4), namely age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, a number of which are additional grounds as foreseen in *Article 1(1)(b) of the Convention*. Discrimination on these grounds is prohibited in access to employment, promotion, transfer, training, terms and benefits, facilities or services, dismissal or any other detriment, as well as occupational pensions; also with respect to contract workers; and in the context of employment services, which include vocational training and guidance (sections 39–41, 55–56 and 61). The Committee also notes that positive action is provided for in relation to recruitment and promotion (sections 158–159). The Act also provides that workers' and employers' organizations must not discriminate with respect to membership, benefits, facilities and services (section 57). The Committee notes further that the existing race, disability and gender equality duties have been brought together under the Equality Act, and there is now a single equality duty for public bodies, covering all the protected characteristics listed above, with the exception of marriage and civil partnership (section 149(7)). Pursuant to section 149, a public authority must have due regard to the need to eliminate discrimination, harassment and victimization; advance equality of opportunity; and foster good relations between those who share a protected characteristic and those who do not. It also allows for affirmative action. Pursuant to section 153, a Minister of the Crown, the Welsh Ministers and the Scottish Ministers may by regulation impose duties on a public authority, and section 155 provides for the possibility of imposing duties on a public authority that is a contracting authority in connection with its public procurement functions through regulations. The Committee also notes that the public sector equality duty "does not confer a cause of action at private law" (section 156). ***The Committee asks the Government to provide information on the implementation of the Equality Act 2010 as it relates to employment and occupation, including practical measures taken, the number and nature of cases brought and the results achieved. Please also provide information on the adoption of relevant regulations under the Act, including with respect to Wales and Scotland. The Committee also requests information on the application and impact of the public sector equality duty, including its application in the context of public procurement, as well as specific information on how the equality duty is monitored and enforced. The Committee also asks the Government to provide specific information on the role of the Government Equality Office, the Equality and Human Rights Commission and the Women and Work Commission in the implementation of the Act. Noting the Government's indication that it is considering how to implement the new equality duty in a way that is best for business, public bodies and the public, the Committee asks the Government to provide specific information on steps taken in this regard.***

*Review of Equality Act and austerity measures.* The Committee notes from the report of the United Nations Committee on the Elimination of Racial Discrimination (CERD) that in the context of the austerity measures adopted in response to the current economic downturn, the measures envisaged under the Equality Act are under scrutiny, and CERD expresses concern that some of the State's achievements in the fight against inequality and discrimination are under threat of being diluted or reversed (CERD/C/GBR/CO/18-20, 14 September 2011, paragraph 13). ***The Committee urges the Government to monitor carefully the impact of the austerity measures on the employment situation of groups particularly vulnerable to the impact of the economic crisis, so as to address effectively any direct and indirect discrimination that may occur in employment and occupation on the grounds set out in the Convention. The Committee further hopes that the Government will make every effort to ensure that the measures envisaged under the Equality Act and progress achieved through previous action taken to address discrimination and promote equality of opportunity and treatment will not be adversely affected by the austerity measures, and asks the Government to provide information in this regard.***

*Northern Ireland.* The Committee notes that the Equality Act is not applicable in Northern Ireland. The Committee also notes from a report of the Equality Commission for Northern Ireland of January 2011, that it considers that as a result of the enactment of the Equality Act, vulnerable and marginalized individuals in Northern Ireland have less protection against unlawful discrimination, harassment and victimization than those in Great Britain, and there is a need to streamline and modernise Northern Ireland equality law. The Commission provides a number of proposals for legislative reform in this context. The Committee also notes that while the Government provides information on the composition of the workforce by religion, no information is provided with respect to the Committee's previous comments. The Committee has for a number of years raised concerns regarding the Fair Employment and Treatment (NI) Order, 1998, which excludes teachers from the protection against discrimination on the ground of religious belief, thus constituting a

hindrance to the equal opportunity and treatment of schoolteachers in Northern Ireland. *The Committee again urges the Government to take steps to ensure that the applicable legislation no longer includes the exemption with regard to discrimination against schoolteachers on the ground of religious belief and asks the Government to provide information on any progress made in this regard, as well as information on the following:*

- (i) *the follow-up given to the proposals for legislative reform of the Equality Commission for Northern Ireland, including improving protection against discrimination based on colour or nationality; and*
- (ii) *the implementation of the Race Equality Strategy for Northern Ireland.*

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

## Uruguay

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*** ***(ratification: 1989)***

*Article 1(1)(a) of the Convention. Discrimination on the basis of sex. Sexual harassment.* The Committee notes with *satisfaction* the adoption of Act No. 18561 of 18 August 2009 concerning sexual harassment at work and in teaching relationships. In keeping with the 2002 general observation, the Act contains standards relating to the prevention of and penalties for such acts and covers both quid pro quo and hostile work environment sexual harassment (section 2). The Act also imposes the obligation on the State to formulate and implement awareness-raising, education and supervision policies for the prevention of sexual harassment, establishes obligations for the employer in the event of a complaint, provides for measures to protect victims and witnesses against reprisals in the wake of the complaint (section 12) and lays down penalties. The Labour and Social Security Inspectorate-General (IGTSS) is the competent body in the public and private spheres for monitoring compliance with the Law. The Government adds that various activities, including for ministry officials, public enterprises and departmental supervisory bodies, have been undertaken by the Tripartite Commission on Equality of Opportunity and Treatment in Employment (CTIOTE) and by the National Institute for Women, to raise awareness and disseminate the Law and materials for dissemination have been produced. *The Committee requests the Government to provide information on the practical application and impact of Act No. 18561 concerning sexual harassment, the number of complaints filed on the basis of the Act and the outcomes thereof.*

*Article 1(1)(b). Other legislative measures. Persons with disabilities.* The Committee notes with *interest* the adoption of Act No. 18651 of 19 February 2010, which establishes a comprehensive protection system for persons with disabilities aimed, inter alia, at ensuring their occupational reintegration and at avoiding exploitation and discriminatory, abusive or degrading treatment. The Act also provides that the State will provide assistance in vocational training to persons with disabilities and will provide incentives for bodies that employ them. In addition, the State, government departments, autonomous entities, decentralized services and non-State associations are obliged to fill at least 4 per cent of vacancies with persons with disabilities who meet aptitude criteria for the posts concerned. *The Committee requests the Government to send information, including statistics, on the impact of Act No. 18651 in practice.*

*Part III of the report form. Complaint procedures.* In its previous observations, the Committee referred to the observations of the Inter-Union Assembly of Workers – Workers’ National Convention (PIT–CNT) concerning the need to establish flexible complaint mechanisms to resolve disputes involving discrimination at work. The Committee asked the Government to provide an assessment of the operation of existing complaint procedures within the IGTSS, indicating whether these procedures provide for the reversal of the burden of proof and protection against reprisals. The Committee observes that the Government’s report does not contain any information in this respect. *The Committee therefore again requests the Government to undertake an assessment of the operation of existing complaint procedures within the IGTSS, indicating whether these procedures provide for a reversal of the burden of proof and protection against reprisals, and to continue to provide information on the complaints of discrimination lodged and the outcome thereof.*

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)***

*Discrimination on the basis of political opinion.* The Committee has been referring for some years to the observations made by the National Single Federation of Public Employees (FEDE–UNEP) and the Confederation of Workers of Venezuela (CTV) concerning threats, harassment, transfers, the worsening of working conditions and the dismissal of employees of the Central and Decentralized National Public Administration due to their participation in the collection of signatures to initiate a referendum to revoke the public offices assigned by popular election. The names of the workers who signed the proposal for a referendum were, according to the trade union organizations, published prior to their dismissal on a list on the Internet (known as the Tascón list), which was used as a source of information for reprisals. According to the observations made by the CTV in 2007, such reprisals continued despite the indication by the President of the Republic that the list should be discarded. The Committee has also been referring since 2007 to: (1) the

observations made by the CTV concerning the dismissal of 19,500 workers from *Petróleos de Venezuela* (PDVSA) which, according to the CTV, were motivated by political reasons; (2) the pressure exerted on public officials to join the political party established by the President of the Republic; and (3) the requirement for soldiers and officers to shout the slogan “fatherland, socialism or death”, under the menace of the threat by the President of the Republic that anyone not prepared to do so must resign.

In this respect, the Committee notes the Government’s indication that the dismissal of workers from the PDVSA consisted of a labour measure adopted against a group of workers on the basis of their failure to discharge their work-related duties and violations of the national Constitution and laws. According to the Government the active and flagrant participation by this group of workers in disputes, sabotage and unlawful paralysis of the oil industry was noted by the competent bodies of the State. The Government adds that it has the necessary measures to avoid any discriminatory act or practice against citizens and that there is a legal framework as well as bodies entrusted with remedying and penalizing failure to comply with the legal and constitutional provisions prohibiting discrimination. The Government refers once again to article 67 of the Constitution and indicates that it is not compulsory to belong to a political party. In this respect, the Committee notes with *deep regret* that the Government has confined itself once again to reiterating its previous comments and has not provided additional information. The Committee notes in particular that, although the Government indicates that the events which occurred in the PDVSA were the subject of an investigation by State bodies, it does not indicate precisely which body undertook the investigation, nor does it attach a copy of the findings of the investigation. The Committee has indicated that, in protecting individuals against discrimination in employment and occupation on the basis of political opinion, the Convention implies that this protection shall be afforded to them in respect of activities expressing or demonstrating opposition to established political principles, since the protection of opinions which are neither expressed nor demonstrated would be pointless (see the General Survey of 1988 on equality in employment and occupation, paragraph 57). **The Committee once again strongly urges the Government to:**

- (i) **take all the necessary measures to conduct an independent investigation into the alleged acts and to provide specific information on its findings; and**
- (ii) **take concrete measures to ensure that workers in both the public and private sectors are not subjected to discrimination due to their political opinions, and to provide information on the results achieved in this respect.**

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

## Viet Nam

### **Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)**

*Article 1(a) of the Convention. Definition of remuneration.* The Committee notes that in its previous comments, the Committee sought clarification from the Government as to whether the equal pay provisions of the Labour Code and the Law on Gender Equality covered all aspects of remuneration as defined by *Article 1(a)* of the Convention. The Committee had also recommended that in the context of future legislative revisions, a clear definition of remuneration in line with the Convention be included and that the principle of equal remuneration be applied to all components of remuneration. The Committee notes that no clear definition of remuneration in line with *Article 1(a)* of the Convention has been included in the draft Labour Code, despite the Committee’s recommendations. The Committee recalls once again, the importance of defining remuneration in broad terms, encompassing not only “the ordinary, basic or minimum wage or salary” but also “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”, in order to fully apply the Convention. **The Committee urges the Government to take measures to introduce a provision in legislation defining remuneration in accordance with Article 1(a) of the Convention and to ensure that the principle of equal remuneration for work of equal value is applied in respect of all components of remuneration.**

*Article 1(b). Work of equal value.* The Committee has previously raised concerns that the provisions of the Labour Code (section 111) and the Law on Gender Equality (section 13) which provide for equal remuneration for equal work, are narrower than the Convention, which provides for equal remuneration for men and women for work of equal value. The Committee notes that under the Convention, men and women performing jobs of a different nature, which are nonetheless of equal value, should also receive equal remuneration. The Committee had urged the Government in the context of the planned comprehensive revision of the Labour Code, to take the opportunity to give full legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee notes the Government’s response indicating that it has not taken the opportunity of the revision process to include a provision giving full legislative expression to the principle of the Convention because it considers it to be difficult to define equal value for jobs of a different nature. In terms of how to determine equal value, the Committee draws the Government’s attention to *Article 3* of the Convention which presupposes the use of appropriate techniques for objective job evaluation, comparing factors such as skill, effort, responsibilities and working conditions. The Committee also recalls that different methods of job evaluation can be developed, and that for the purpose of ensuring gender equality in the determination of remuneration, analytical methods of job evaluation have been found to be most effective (see General Survey of 1986, paras 138 to 142). **The Committee again urges the Government to take measures in order to give full legislative**

*expression to the principle of equal remuneration for men and women for work of equal value and encourages the Government to seek ILO assistance in this regard.*

*Assessment of the gender wage gap.* The Committee recalls its previous comments in which it noted that in the public sector, the average monthly income of women amounted to 92 per cent of men's, while in the private sector and in the foreign invested sector it accounted, respectively, for 75.9 per cent and 65.5 per cent of men's income. The Committee also previously noted the findings of the Viet Nam Country Gender Assessment of 2006 according to which the gender wage gap existing in the country resulted from sex-based labour market segregation due, inter alia, to "widespread discrimination against women in recruitment" and the "low value attached to women's work in particular sectors". The Committee notes from the statistics provided by the Government that during 2007 and 2008, women accounted for 49.3 per cent of the total workforce and represented approximately 50 per cent of workers in most sectors of economic activity. The Government states that this is evidence that sex-based discrimination in recruitment and employment is not problematic. No information is provided on the evaluation of the gender wage gap or measures taken or envisaged to address the wage gap. ***The Committee once again urges the Government to take appropriate measures to reduce the gender wage gap and address its underlying causes and asks it to provide information on the implementation of such measures. With a view to monitoring and addressing the gender wage gap, the Committee asks the Government to collect and provide more specific statistical data, disaggregated by sex, on the distribution of men and women in different sectors of economic activity, occupational categories and positions and their corresponding earnings both in the private and public sectors.***

*Parts III and IV of the report form. Enforcement.* The Committee notes with *interest* that training to detect unequal pay for men and women, for judges, labour inspectors and other labour officials has been incorporated in the general programmes of dissemination and education of the Labour Code and that specific training on the Convention was provided in 2008 and 2009 on those in provincial labour departments. The Committee notes the Government's indication that out of the 799 enterprises inspected during 2007–10, no cases of violations of the principle of equal remuneration for work of equal value were registered. The Committee recalls that the absence of complaints does not necessarily mean that the Convention and the national legislation are effectively applied and is more likely to indicate a lack of awareness of the rights, a lack of confidence in or absence of practical access to procedures, or fear of reprisals. ***The Committee asks the Government to continue to provide information on the training offered to judges, inspectors and other labour officials, as well as information on the impact of such training on detecting and addressing unequal pay. Please provide any information on decisions handed down by courts of other competent bodies with regard to the application of the Convention as well as on any violations detected by or brought to the attention of the labour inspectorate services, the sanctions imposed and the remedies provided.***

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

### ***Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)***

*Legislative developments.* The Committee notes that the Labour Code is in the process of being amended. The Committee notes that section 9(1) of the draft Labour Code prohibits discrimination based on the grounds of gender, race, social class, belief or religion, and omits the grounds of colour, national extraction and political opinion. The Committee further notes that the prohibition only covers discrimination in employment, the labour relationship and work, and does not cover all aspects of employment and occupation included in the Convention, namely access to vocational training and education, vocational guidance and placement services, recruitment, advancement, security of tenure of employment, remuneration for work of equal value, and terms and conditions of employment. ***The Committee asks the Government to take the opportunity of the legislative revision process to include provisions in the Labour Code explicitly defining and prohibiting direct and indirect discrimination based on at least all the grounds set out in Article 1(1)(a) of the Convention, namely sex, race, colour, religion, political opinion, national extraction and social origin, in all areas of employment and occupation. Please provide information on the progress made in this regard.***

*Sexual harassment.* The Committee welcomes the Government's intention to include a specific provision concerning sexual harassment in the Labour Code which is in the process of being revised. The Committee notes however that section 9(2) of the draft Labour Code prohibiting "sexual harassment against employees" does not provide a definition of sexual harassment and does not indicate whether both quid pro quo and hostile environment sexual harassment are covered. The Committee also notes that measures are being taken to raise awareness on sexual harassment, such as launching an information campaign with the participation of the media. ***The Committee asks the Government to provide information on the adoption of section 9 of the draft Labour Code, prohibiting sexual harassment, and encourages the Government to take steps in order to include a clear definition and prohibition of both quid pro quo and hostile environment sexual harassment in employment and occupation. The Committee also asks the Government to provide more information on the information campaign and other measures taken to raise awareness on sexual harassment amongst workers, employers and their organizations. Please also indicate the relevant procedures and remedies which are currently available under the legislation to address complaints of sexual harassment.***

*Restrictions on women's employment.* The Committee recalls its previous comments in which it noted that labour laws and regulations are revised on a yearly basis, including the list of occupations from which women are barred. The

Committee notes that the Government has provided a list of draft revisions to be brought to Circular No. 3/TT-LB of 28 January 1994, setting out the harmful and dangerous jobs from which women are barred while removing some occupations, the list also adds four new occupations from which all women workers would be barred (operator of cement packing machine, cleaner of a cylinder in a cement factory, operator of a production and bottling of HCl acid and operator of equipment for drying, liquefying and bottling). The Committee notes the Government's indication that the Circular needs to be revised to prohibit the employment of women when jobs adversely affect female workers more than male workers, as is the case when a female worker is pregnant or feeding a small child, and the harmful or dangerous factors may adversely affect the child. The Government also indicates that the possible use of the general criteria of a job "not suitable to the mental and psychological setting of female workers" is being studied and clarified. The Committee considers that such broad and general restrictions based on a job "not suitable to the mental and psychological setting of female workers" would be discriminatory and contrary to the Convention. The Committee recalls that protective measures for women should not go beyond maternity protection, and that those aimed at protecting women generally because of their sex or gender, based on stereotypical perceptions about their suitability, capabilities and appropriate role in society are contrary to the Convention and constitute obstacles to the recruitment and employment of women. The Committee also notes that provisions relating to the protection of persons working in harmful or dangerous jobs should be aimed at protecting the health and safety of both women and men at work. ***The Committee asks the Government to take measures in order to ensure that in the upcoming revision of Circular No. 3/TT/LB of 28 January 1994, it is made clear that the restrictions are limited to women who are pregnant or nursing. The Committee also asks the Government to ensure that in the revision of the Labour Code, any protective measures for women are limited to maternity protection.***

***Discriminatory recruitment practices based on sex.*** The Committee recalls its previous comments in which it noted the discriminatory practices affecting women in recruitment, such as giving preference to male job applicants and discouraging female applicants by establishing requirements prohibiting marriage and pregnancy during a certain period following recruitment. The Committee notes the Government's indication that measures have been taken to put an end to the discriminatory practices affecting women in recruitment and employment, such as the inclusion of section 32 in the draft of the revised Labour Code prohibiting employers to "force the worker to comply with such obligations which limit his/her legitimate rights" when an employment contract is being concluded. The Committee also notes that Decree No. 55/2009/ND-CP of 10 June 2009, regulating administrative sanctions on violations of gender equality, sets out in section 8(2)(a) a fine of 5,000,000 to 10,000,000 Vietnamese dong (VND) for employers who "refuse or limit the employment of male or female due to gender reasons, except such that support gender equality, dismiss an employee for gender reasons or pregnancy, maternity leave or having children". ***The Committee asks the Government to provide information on the progress of the adoption of section 32 of the draft Labour Code and on the practical application of section 8(2)(a) of Decree No. 55/2009/ND-CP of 10 June 2009, and to take measures in order to monitor their application and to effectively eliminate discriminatory recruitment practices affecting women.***

***Discrimination based on political opinion, colour and national extraction.*** The Committee notes the Government's repeated statement that no discrimination on the basis of political opinion, colour and national extraction exists in Viet Nam. The Committee notes the Government's indication that article 5 of the Constitution prohibits discrimination based on political opinion and article 54 provides for the right to vote without discrimination based on certain grounds, including national extraction. The Committee also notes that section 9(1) of the draft Labour Code, which prohibits discrimination on certain grounds, omits the grounds of colour, national extraction and political opinion. The Committee emphasizes once again that combating discrimination is an ongoing process and that the absence of discriminatory provisions in the law, and the fact that no complaints have been raised with the authorities, are not indications of the absence of discrimination. ***The Committee asks the Government to provide information on any practical measures taken to ensure full application of the Convention with respect to equality of opportunity and treatment irrespective of political opinion, national extraction and colour.***

***Discrimination based on religion.*** The Committee notes that section 9 of the draft Labour Code includes the ground of religion in the prohibition of discrimination. The Committee had previously requested information on the application of section 8 of the Ordinance No. 21/2004/PL-UBTVQH11 which prohibits discrimination on religious grounds, and more particularly with respect to persons whose religion was not recognized under section 16 of the Ordinance. The Government indicates that Decree No. 22/2005/NP-CP provides detailed instructions on the implementation of the Ordinance. The Committee also notes that Directive No. 01/2005/CT-TTg was adopted by the Prime Minister on 4 February 2005 concerning Protestantism, prohibiting in section 2 attempts to force people to follow or to abandon a religion. The Committee further notes the Government's indication that approximately 85 per cent of the population follow a religion, which accounts for 25 million people and that 32 religious organizations have been recognized by the Government. The Government also indicates that the main religions in Viet Nam are Buddhism (10 million followers), Catholicism (6 million), Cao Dai (2.4 million), Hao Hao Buddhism (1.3 million), Protestantism (1.5 million), Islam (1.5 million), Tink do Cu sy Buddhism (1.5 million) and Baha'i (7,000). ***The Committee asks the Government to provide more specific information on Decree No. 22/2005/ND-CP and to indicate whether it gives any instructions on applying section 16 of Ordinance No. 21/2004/PL/UBTVQH11 setting the conditions for religions to be recognized, and to indicate whether any religious organizations have been refused recognition. The Committee also asks the Government to provide information on the application of Directive No. 01/2005/CT-TTg and to indicate any further measures taken to protect persons against discrimination in employment and occupation.***

*Measures affecting individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the State.* The Committee recalls its previous comments in which it noted that persons upon whom a ban under section 36 of the Penal Code has been imposed have the right to appeal the decision within 15 days of the date of conviction and that courts had issued various verdicts banning persons from holding certain posts, practising certain occupations or doing certain jobs. The Committee notes the Government's indication that in practice, bans can be imposed when the court judges that the continuation of the work by the convicted person may cause a danger for the society, and that this could be the case in about 100 acts criminalized by the Penal Code, such as acts to infringe life, health, dignity of a person, acts to infringe freedom of citizens, drug-related crimes, acts to infringe public order and security or acts to infringe juridical activities. **The Committee asks the Government to provide information related to the verdicts banning persons from holding certain posts, practising certain occupations or doing certain jobs, the offences in connection with which such bans have been imposed and the number and nature of the appeals lodged and the outcomes thereof.**

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

## Yemen

### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)**

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

*National policy on equality of opportunity with respect to political opinion, national extraction and social origin.* The Committee regrets to note the Government's failure to reply to the Committee's repeated requests for information on the measures taken to adopt and implement a national policy with respect to all the grounds set out in the Convention. **The Committee urges the Government to take immediate steps to collect and provide detailed information on all the measures taken or envisaged to ensure that no discrimination on the basis of political opinion, national extraction and social origin occurs in employment and occupation in accordance with Articles 2 and 3 of the Convention.**

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

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

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Australia: Norfolk Island, Bahamas, Barbados, Belize, Benin, Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Eritrea, Ethiopia, France, France: French Polynesia, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Portugal, Romania, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Sierra Leone, Slovakia, South Africa, Sri Lanka, Swaziland, Sweden, Switzerland, Syrian Arab Republic, United Republic of Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Yemen, Zambia); **Convention No. 111** (Afghanistan, Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Bahamas, Barbados, Belize, Benin, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, France, France: French Polynesia, France: French Southern and Antarctic Territories, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Jamaica, Jordan, Kenya, Republic of Korea, Lao People's Democratic Republic, Lebanon, Liberia, Lithuania, Luxembourg, Madagascar, Malawi, Malta, Mauritania, Mauritius, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Pakistan, Papua New Guinea, Paraguay, Portugal, Qatar, Romania, Russian Federation, Rwanda, San Marino, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Sri Lanka, Swaziland, Sweden, Switzerland, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela, Viet Nam, Yemen, Zambia); **Convention No. 156** (Albania, Argentina, Australia: Norfolk Island, Belize, Plurinational State of Bolivia, Bosnia and Herzegovina, Bulgaria, Chile, Croatia, El Salvador, Ethiopia, Guatemala, Guinea, Iceland, Republic of Korea, Lithuania, Mauritius, Montenegro, Netherlands, Paraguay, Russian Federation, San Marino, Slovakia, Spain, Ukraine, Uruguay, Bolivarian Republic of Venezuela, Yemen).

## Tripartite consultation

### Bangladesh

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)**

*Tripartite consultations required by the Convention.* The Committee notes the information provided by the Government in its report received in September 2011 in reply to its 2009 observation. The Government recalls that it has constituted the Tripartite Consultative Council (TCC) in conformity with the Convention. It further reports that the TCC is currently composed of 60 members having equal representation from employers' organizations, workers' organizations and government. The Labour and Employment Minister is the Chairman of the TCC. All issues related to labour including wages, employment conditions and child labour, as well as labour standards, are discussed in the TCC. Decisions are taken through consultation and actions are taken per agreement. The Committee notes that the Government has formulated the National Child Labour Elimination Policy, 2010, which was discussed in the TCC. It also notes that the Government has declared a minimum wage for the Ready Made Garments (RMG) sector following tripartite consultations. The Government indicates in its report that a tripartite committee has been formed to review the Bangladesh Labour Act, 2006. The next TCC meeting will discuss the revised Labour Act, once it is finalized. **The Committee requests the Government to provide a report containing more detailed information on the effective consultations held by the Tripartite Consultative Council on the matters relating to international labour standards listed in Article 5(1) of the Convention. In this respect, the Committee hopes that the next report will include information on reports or recommendations made as a result of the consultations covered by the Convention.**

### Burundi

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its 2007 observation which read as follows:

*Article 5(1) of the Convention. Tripartite consultations required by the Convention.* The Government stated in a brief report received in November 2007 that it has prepared a note on Conventions to ratify or denounce. This note has been transmitted to the Burundi Employers Association (AEB) and the Trade Union Confederation of Burundi (COSYBU). The result of these consultations will be communicated to the ILO. **Referring to its 2006 observation, the Committee trusts that the Government will be able to provide detailed information on the content and results of tripartite consultations held during the period covered by the report, on questions concerning international labour standards, and in particular on the reports to be made to the ILO as well as the re-examination of unratified Conventions and of Recommendations (Article 5(1)(c) and (d)).**

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

### 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 2009 observation which read as follows:

*Articles 2 and 5(1) of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in October 2009. The Government refers to a Higher Committee for Labour and Social Security which is tripartite in composition. The Committee notes the Government's statement that no information is available on the consultations held during the period covered by the report on each of the items set out in *Article 5(1)*. The Committee refers to the comments that it has been making since its examination of the first report and expresses the conviction that the Government and the social partners should endeavour to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which reaffirms that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". **The Committee therefore hopes that the Government's next report will contain detailed information on the consultations held on all the items covered by Article 5(1) of the Convention, and on the other points raised in its previous observations in relation to Articles 4 and 6 of the Convention.**

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

## Chile

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)**

*Effective tripartite consultations.* With reference to its 2009 observation, the Committee notes the Government's detailed reply received in September 2011. The Government recalls that there are no provisions in national law establishing rules to determine the most representative organizations in the light of international labour Conventions. In the context of the Convention, the Government considers the various organizations which by their number, sectoral representation and influence in local matters can be considered representative organizations and influential actors in labour matters in the country. The Government indicates that it has invited to comment on reports on the application of ratified Conventions the Confederation of Production and Trade (CPC), the National Confederation of Micro, Small and Medium-sized Enterprises of Chile (CONAPYME), the Single Confederation of Workers (CUT), the Autonomous Central Union of Workers (CAT) and the National Union of Workers (UNT) (*Article 5(1)(c) of the Convention*). The Government indicates that it has the firm intention of continuing effective tripartite consultations with the most representative national bodies of workers and employers, but not exclusively with any one of them. The Committee refers to its 2009 observation in which it indicated that by using the phrase "representative organizations" in the plural, the Convention invites governments to include in the procedures those representative organizations which have indicated their interest in participating in the tripartite consultations required by the Convention. **The Committee invites the Government to include information in its next report on the effective tripartite consultations held with the representative organizations concerned in relation to international labour standards which are required by the Convention (Articles 2 and 5).**

*Article 5(1)(b). Tripartite consultations prior to the submission to the National Congress of the instruments adopted by the Conference.* The Government indicates in its report that it has complied strictly with *Article 5(1)* of the Convention. **The Committee refers to its observation on the obligation of submission envisaged in article 19(5) and (6) of the Constitution of the ILO in which it indicates that 28 instruments adopted by the International Labour Conference are awaiting submission. The Committee requests the Government to provide information on the effective consultations held with the social partners concerning the proposals made to the National Congress on the occasion of the submission of the instruments adopted by the Conference.**

## China

### **Hong Kong Special Administrative Region**

#### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (notification: 1997)**

*Article 3 of the Convention. Choice of workers' representatives.* The Committee notes the Government's report dated July 2011 including information in response to its 2009 observation. The Government indicates that the Labour Advisory Body (LAB) aims to ensure effective tripartite consultation according to the most appropriate methods for the local circumstances of the Hong Kong Special Administrative Region (HKSAR). The Government also recalls the notification of application with modification registered by the ILO on July 1997, regarding the application of *Article 3* of the Convention, which states: employers and workers are represented by six members on each side on the LAB. Five of the employers' representatives are freely nominated by their respective associations and five workers' representatives are elected on a biannual basis by workers' trade unions in a secret ballot. The remaining members are direct appointees of the Chief Executive. The Government further indicates in its report that all registered employees' unions are allowed to participate in LAB and free to elect their representatives in accordance with transparent and well-tested methods that are deemed the most widely representative of the various workers' views.

*Article 5. Tripartite consultations required by the Convention.* In reply to the Committee's previous comments, the Government indicates that the Committee on the Implementation of International Labour Standards (CIILS) was consulted on the subjects listed in *Article 5* and has duly replied to the comments made by the Committee of Experts. The Committee also notes that a tripartite team including representatives of the CIILS and the LAB was set up to attend the 98th and 99th Sessions of the Conference. **The Committee requests the Government to provide up-to-date information on the activities of both the CIILS and the LAB on the matters concerning international labour standards as well as examples on the manner in which Article 5 is being implemented.**

## Colombia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)**

*Strengthening of social dialogue and tripartite consultations.* In the report received for the period ending May 2011, the Government indicates that, in accordance with the new structure established by Act No. 1444 of May 2011, the

Ministry of Labour envisages stimulating and promoting the development of an industrial relations culture based on dialogue, conciliation and the conclusion of agreements which consolidate social and economic development, increased productivity, the direct resolution of individual and collective labour disputes and dialogue concerning wage and labour policies. The Government indicates that, in accordance with the above, full effect will be given to Convention No. 144. Nevertheless, the report does not contain information on the tripartite consultations held on each of the points enumerated in *Article 5(1) of the Convention*. The Committee once again expresses its conviction that the Government and the social partners should endeavour to take tangible measures to promote and reinforce tripartism and social dialogue on matters relating to international labour standards covered by the Convention. The Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC) made comments which were forwarded to the Government in September 2011. In their comments, they proposed to the Government that a labour agenda should be prepared and agreed upon specifically including the determination of dates for the discussion of international labour standards and for seeking their ratification. ***The Committee requests the Government to provide specific information on the manner in which the Government and the social partners have held “effective” consultations on international labour standards, as required by the Convention (Article 5(1)). The Committee recalls that the 2008 Declaration on Social Justice for a Fair Globalization identifies Convention No. 144 as one of the most significant instruments from the viewpoint of governance.***

*Tripartite consultations prior to submission to the Congress of the Republic of the instruments adopted by the Conference.* With reference to its previous comments, the Government indicates in the report that it is a matter of serious concern that Conventions and Recommendations have not been submitted. The Committee notes that the Government intends to bring the matter to the Committee for Dialogue on Wage and Labour Policies to analyse the most expeditious manner of complying with the constitutional obligation of the submission of Conventions and Recommendations to the Congress of the Republic. The trade union organizations confirm in their comments that the instruments adopted by the International Labour Conference have not been submitted to the Congress of the Republic for discussion nor put before the Committee for Dialogue on Wage and Labour Policies. ***The Committee refers to its observation on the obligation of submission envisaged in article 19(5) and (6) of the Constitution of the ILO. The Committee observes that 34 instruments adopted by the Conference are awaiting submission. The Committee asks the Government to provide information on the effective consultations held with the social partners concerning the proposals made to the Congress of the Republic on the occasion of the submission of the instruments adopted by the Conference (Article 5(1)(b)).***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Côte d'Ivoire

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)**

*Tripartite consultations required by the Convention. Training.* The Committee notes the communication of the General Confederation of Enterprises of Côte d'Ivoire (CGECI), which was forwarded to the Government in January 2011. It also notes the Government's replies to the 2009 observation, which were received in June 2011, and which include the report of the Tripartite Committee on ILO Matters. During the meeting of 20 December 2010, the Tripartite Committee discussed issues related to *Article 5 of the Convention* and also discussed the updating of its list of members. The representative of a workers' organization expressed the hope that all the members of the Committee would receive training so that they could discharge their duties appropriately. The CGECI expressed the hope that the Committee would operate on a regular basis, which the Government also confirmed in its report. ***The Committee invites the Government to provide detailed information on the “effective consultations” held during the period covered by the next report. It would welcome examining precise and detailed information on the consultations held on each of the issues set out in Article 5(1) of the Convention. It invites the Government to provide information on the arrangements made, possibly with ILO assistance, for the financing of any necessary training of participants in the consultation procedures on international labour standards required by the Convention (Article 4(2)).***

*Submission to the National Assembly of the instruments adopted by the Conference.* In its communication, the CGECI indicates that it has not been informed or consulted concerning the submission to the National Assembly of the instruments adopted by the International Labour Conference. The Government indicates that the process of submission to the National Assembly of the instruments adopted by the Conference was initiated in November 2009. The Government adds that the instruments concerned were the subject of tripartite consultations. ***The Committee hopes that the process of the submission to the National Assembly of the instruments adopted by the Conference between 1996 and 2011 will soon be completed and that the Government will provide precise and detailed information on the proposals submitted to the National Assembly, as required by Article 5(1)(b) of the Convention.***

## Czech Republic

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Effective tripartite consultations. Questions arising out of article 22 reports.* The Committee notes the replies to the 2010 observation submitted by the Government in the report received in August 2011. The Government indicates that in order to provide enough time to social partners to assess the reports on the application of ratified Conventions, all reports were prepared by the Government by 31 July 2011 and sent to the most representative organizations of workers and employers for consultation on 5 August 2011. Comments of the social partners were discussed at the tripartite meeting for the cooperation with the ILO of the Working Team of the Council and Economic and Social Agreement on 24 August 2011. A period of 12 working days was provided for report assessment. ***The Committee notes with satisfaction the efforts in implementing measures to achieve the best possible procedures in promoting effective consultations required by the Convention. It invites the Government to continue to report on measures taken to promote tripartite consultations on international labour standards and on any follow-up to recommendations derived from such consultations.***

*Re-examination of unratified Conventions.* Following its previous comments, the Committee notes with *interest* that the ratification of the last governance Conventions – the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) – was registered in March 2011. The Committee notes that the issue of ratifying the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), was discussed in two meetings in 2011. The tripartite meetings did not reach an agreement. The Government expresses its intention to use the reporting obligations pursuant to article 19 of the ILO Constitution as a suitable opportunity to gain practical experience from other ILO Members, as well as to obtain opinions from the supervisory bodies. The Government adds that the issue of ratifying Conventions Nos 151 and 154 should be included in the agenda of the Working Team of the CESA at a later stage. ***The Committee would welcome the Government to include information in its next report on Convention No. 144 on any other consultations held to re-examine the prospects of ratification of unratified Conventions (Article 5(1)(c) of the Convention).***

## Democratic Republic of the Congo

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)**

*Articles 2 and 5(1) of the Convention. Effective tripartite consultations.* In its observation of 2010 the Committee noted the ministerial orders adopted after consultation of the National Labour Council in order to apply the Labour Code and the reports of the extraordinary meetings of the National Labour Council held in July 2005 and March 2008. The Government also indicated that in September 2007 a new forum for the social partners was opened in the form of the Standing Committee on Social Dialogue, in order to discuss economic and social issues. In a brief report received in June 2011, the Government indicates that it will provide relevant information in the future on the effective submission to Parliament of the 28 instruments adopted at the 13 sessions of the Conference held between 1996 and 2010. ***The Committee refers the Government to its observation of 2011 concerning the obligation of submission established in Article 19, paragraphs 5 and 6, of the ILO Constitution, in which it notes that the 30 instruments adopted by the Conference have still not been the subject of this submission. It requests the Government to report on any consultations held with the social partners concerning the proposals made to Parliament on the occasion of the submission of the instruments adopted by the Conference. The Committee hopes that the Government will be in a position to announce further progress on tripartite consultations held on each of the matters relating to international labour standards covered by the Convention.***

*Article 3. Choice of employers' and workers' representatives.* The Committee recalls that trade union elections were held for the fifth time between October 2008 and July 2009. ***It requests the Government to indicate who were the employers' and workers' representatives chosen for the purpose of tripartite consultations covered by the Convention and to state the manner in which it was ensured that they were freely chosen by their representative organizations.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Djibouti

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

The Committee notes with *regret* that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its 2008 direct request, which read as follows:

*Articles 1 and 3(1) of the Convention. Participation of representative organizations.* The Committee notes the Government's first report on the application of the Convention received in May 2008. It notes in particular that, under section 215

of the Labour Code, the representative nature of trade union organizations shall be determined by the result of professional elections. According to the Government, the first professional elections are due to be held in 2008. *Referring to the issues concerning freedom of association dealt with by the Committee on Freedom of Association, as well as its comments on the application of Convention No. 87, the Committee requests the Government to specify the manner in which the representatives of employers and workers were chosen, enabling them to freely undertake the tripartite consultations required by Convention No. 144.*

*Article 4(2). Financing of training.* The Committee noted that two tripartite workshops have been organized, one with the assistance of the ILO in March 2008 and the other in cooperation with the Arab Centre for Labour Administration and Employment in November 2007. *The Committee hopes that the Government will be able to indicate in its next report the arrangements made for the financing of the necessary training of participants in the consultative procedures.*

*Article 5(1)(c) and (e). Tripartite consultations required by the Convention.* The Government indicates that, in accordance with section 3 of Decree No. 2008-0023/PR/MESN of 20 January 2008 regulating the organization and operation of the National Council for Labour, Employment and Vocational Training, the Council may give technical and legal advice on the proper implementation or possible denunciation of the international labour conventions to which Djibouti is a party. In the annex to the report, the Government has forwarded the recommendations made by the participants in the tripartite workshop held in March 2008. The recommendations show in particular that the Government was encouraged to ratify Conventions Nos 135 and 158. Furthermore, in its comments on Convention No. 96, the Committee of Experts invited the Government and the social partners to consider ratifying Convention No. 181. *In this regard, the Committee requests the Government to provide information on the consultations held in the National Council for Labour, Employment and Vocational Training on each of the matters relating to international labour standards referred to in Article 5(1) of the Convention. Please also indicate whether tripartite consultations have been held on the ratification of Conventions Nos 135, 158 and 181.*

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

## Fiji

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)**

*Tripartite consultations required by the Convention.* The Committee notes the information provided by the Government in its report received in May 2011. The Government indicates that the Employment Relations Advisory Board (ERAB) convened five meetings in 2010, three of which were special board meetings to discuss issues relating to the country's national minimum wage. It also indicates that all government policies that are raised through the ERAB are dealt with on a tripartite basis as required under section 8(1) of the Employment Relations Promulgation 2007. The ERAB is composed of two women, a representative from the Fiji National Council of Disabled Persons (FNCDP), along with representatives from the government, employers' and workers' organizations. The Committee also recalls the ratification in January 2010 of the Employment Policy Convention, 1964 (No. 122), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). *The Committee invites the Government to provide information in its next report on the consultations held on each of the matters relating to international labour standards set out in Article 5(1) of the Convention, indicating the nature of any reports or recommendations made as a result of the consultations.*

## Grenada

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

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:

*Tripartite consultations required under the Convention.* The Committee notes that the brief statement contained in the report submitted by the Government in November 2009 does not provide any information on the consultations required on the Convention. *It must invite again the Government to provide information on the measures taken to ensure effective tripartite consultations within the meaning of the Convention, including detailed information on the consultations held by the Labour Advisory Board on each of the subjects concerning international labour standards listed in Article 5(1) of the Convention.*

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

## Guinea

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)**

The Committee notes with *regret* that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the following matters raised in its 2006 direct request, which read as follows:

*Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.* In a report received in May 2005, the Government recalled that, with a view to holding tripartite consultations on matters relating to ILO activities, it established an Advisory Committee on Labour and Social Legislation (CCTLS) in 1995. However, the Government recognized that this body has met rarely since its establishment and that there has been no tripartite dialogue on the items on the agenda of the Conference. The Government indicated that this situation is due, among other factors, to the lack of reaction of the social

partners. Furthermore, the Government reported that, following a tripartite workshop on international labour standards held in October 2004, the Department of Employment and the Public Service renewed the officers of the CCTLS and relaunched legislative activities. The Committee expresses again the firm hope that the Government will be in a position to provide information in its next report on the measures adopted to ensure effective tripartite consultations on the matters covered by the Convention. ***It requests the Government to provide reports regularly containing detailed information on the consultations held on all the subjects covered by Article 5(1), including precise information on the activities of the Advisory Committee on Labour and Social Legislation.***

***Article 4. Financing of training.*** The Government indicated that there are no specific arrangements for the training of participants. However, when training is initiated at the national level by the competent authority in the context of social consultations, it is generally tripartite in nature. In this respect, the Committee recalls that, where training for participants in the consultations proves to be necessary to enable them to perform their functions effectively, its financing should be covered by appropriate arrangements between the Government and the representative organizations (see General Survey on tripartite consultation, 2000, paragraphs 125 and 126). It requests the Government to take measures for this purpose and to describe in its next report, where appropriate, the content of these arrangements (*Article 4(2)*). Finally, the Government indicated that a training programme was envisaged in the context of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), but that, in the absence of any reaction by the social partners, it was limited to activities initiated by the Ministry of Employment and the Public Service and carried out at the national level. ***The Committee requests the Government to describe in its next report the training activities undertaken in relation to international labour standards. It also requests the Government to provide information on any progress achieved in the implementation of the PRODIAF programme in relation to the necessary training for participants in the consultation procedures, as required by the Convention.***

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

## Guyana

### ***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 previous observations which read as follows:

***Effective tripartite consultations.*** The Committee notes the brief replies supplied by the Government in May 2006 to its 2003 direct request. It refers to its previous comments and recalls again that certain subjects covered by *Article 5(1) of the Convention* (replies to subparagraphs (a), submissions to the National Assembly (b), reports to be made to the ILO (d)) involve annual consultation, while others (re-examination of unratified Conventions and of Recommendations (c), proposals for the denunciation of ratified Conventions (e)) call for less frequent examination. ***The Committee asks the Government to supply information on the frequency of consultations and to provide any reports or recommendations resulting therefrom (Article 5(2)).***

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

## Indonesia

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)***

***Tripartite consultations required by the Convention.*** The Committee notes the information provided by the Government in August 2011 to its 2009 observation. The Government indicates that the National Tripartite Cooperation Institution in Indonesia has conducted consultations regarding international labour standards which resulted in the signing of the Indonesian Jobs Pact 2011–14 (IJP) in April 2011. The Government also intends to discuss the comments made by the Committee of Experts regarding the Trade Union/Labour Union Act (Law No. 21 of 2000) regarding the application of Conventions Nos 87 and 98. The Committee notes with *interest* that the IJP is a commitment by government, employers and workers representatives based on the Decent Work Agenda and the 2008 Social Justice Declaration. The four pillars of the Organization are the basis for its implementation, as part of the effort to achieve the Millennium Development Goals by Indonesia. Under the IJP, the social partners intend to strengthen the National Tripartite Institution (LKS Tripnas) and the regional tripartite institutions by holding regular workshops/seminars at the national, provincial, and district/city level involving appropriate resource persons from the constituents and independent experts. ***The Committee expresses its hope that as part of the progress made under the IJP, the Government will be in a position to provide in its next report on Convention No. 144 detailed information to demonstrate how the tripartite consultations on international labour standards required by the Convention are actually held in practice. The Committee once again requests the Government to report on the effective consultations held by the National Tripartite Cooperation Institution as required by Article 5(1) of the Convention.***

## Ireland

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)***

***Tripartite consultations required by the Convention.*** The Committee notes with *serious concern* that the Government has not provided any information on the application of the Convention since its last report received in

October 2005. *The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including particulars on the effective tripartite consultations held on replies to questionnaires concerning items on the agenda of the Conference, proposals made on submission to Parliament of the instruments adopted by the Conference, re-examination of unratified Conventions and Recommendations, questions arising out of the report to be made on the application of Conventions, denunciation of Conventions (Article 5(1) of the Convention).*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Jordan

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2003)**

*Articles 2 and 5 of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in August 2011 indicating that, by virtue of Section 43 of the Labour Code, Regulation No. 21 of 2010 was promulgated and established the mandate of the Tripartite Committee for Labour Affairs. The Committee notes with *interest* that this tripartite committee is responsible for ensuring consultations with respect to the matters related to international labour standards. *The Committee invites the Government to provide in its next report detailed information on the content and outcome of the tripartite consultations held by the Tripartite Committee for Labour Affairs on all matters related to international labour standards covered by Article 5(1) of the Convention.*

## Kazakhstan

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Consultation procedures and effective tripartite consultations required by the Convention.* The Committee notes the report submitted by the Government in January 2011 for the period ending in August 2010 which contains an overall description of social dialogue in the country. The Committee recalls once again that the Convention specifically requires the implementation of procedures that ensure effective consultations concerning the measures to be taken at the national level with regard to international labour standards (*Article 2(1) of the Convention*). *The Committee asks the Government to describe in its next report the procedures that ensure consultations on international labour standards, and to provide information on the consultations held on each of the matters set out in Article 5(1) of the Convention. The Committee is also once again obliged to draw the Government's attention to the serious failure to submit to Parliament the 34 instruments adopted by the Conference from 1996 to 2011, and hopes that it will be able to provide information on the prior tripartite consultations held with the social partners in this respect (Article 5(1)(b)).*

## Malawi

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1986)**

*Tripartite consultations required by the Convention.* The Committee notes a brief report received in June 2011. The Government indicates that the Tripartite Labour Advisory Council, the Social Dialogue Council, and the Wages Advisory Council ensure effective tripartite consultations. The Tripartite Labour Advisory Council is in charge of advising the Ministry of Labour on all employment-related issues. *The Committee refers to its 2008 and 2010 observations and again asks the Government to submit a report containing detailed information on the tripartite consultations held on each of the matters related to international labour standards covered by Article 5(1) of the Convention. It also requests the Government to include information on the nature of any reports or recommendations made as a result of such consultations.*

*Article 5(1)(c) and (e). Prospects of ratification of unratified Conventions and proposals for the denunciation of ratified Conventions.* In its previous comments, the Committee recalled that the ILO Governing Body recommended the denunciation of Conventions Nos 50, 64, 65, 86, 104 and 107 concerning indigenous workers and the ratification of the most updated instrument, the Indigenous and Tribal Peoples Convention, 1989 (No. 169). In the Committee's 2005 direct request on the Underground Work (Women) Convention, 1935 (No. 45), the Government was invited to give favourable consideration to the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), which shifts the emphasis from a specific category of workers to the safety and health protection of all mineworkers, and in turn to denounce Convention No. 45. *The Committee again invites the stakeholders concerned to hold tripartite consultations to re-examine unratified Conventions – such as Conventions Nos 169 and 176 – in order to promote, as appropriate, their implementation or ratification and to denounce outdated Conventions.*

## Mozambique

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1996)**

*Consultations required by the Convention.* The Committee notes the Government's report received in September 2011, which reproduces the information sent in the previous report. The Government lists the subjects to be dealt with in tripartite consultations without specifying those that were actually addressed during the period covered by the report. It again states that it is very difficult to ensure that the social partners receive the necessary training to participate in tripartite consultations. *In view of the foregoing, the Committee points out that the Government may seek technical assistance from the Office regarding the provision of detailed information, allowing the Committee to ascertain, as the Convention requires, that tripartite consultations are actually carried out on international labour Conventions in accordance with Article 5(1) of the Convention. The Committee requests the Government to provide information on the content and results of the consultations held on the subjects covered by the Convention.*

## Nigeria

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last replies in August 2004. *The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the previous observations, which set forth the following matters:*

*Consultations with representative organizations.* The Committee noted that the Nigeria Employers Consultative Association (NECA) and the Nigeria Labour Congress (NLC) are consulted at the National Labour Advisory Council (NLAC) level with regard to some matters covered by the Convention. The Government further indicated that the National Labour Institutions Bill, which makes provision for the NLAC, was before the National Assembly. The Committee reminds the Government that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. *It asks the Government to report on the results of the legislative reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention.*

*Tripartite consultations required by the Convention.* The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5(1) of the Convention*. *The Committee therefore requests the Government to provide full and detailed information on the tripartite consultations dealing with:*

- (a) *the Government's replies to questionnaires concerning items on the agenda of the International Labour Conference and the Government's comments on proposed texts to be discussed by the Conference; and*
- (b) *questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the Organization.*

*Prior tripartite consultation on proposals made to the National Assembly.* The Committee recalls that the instruments adopted at the 95th Session of the Conference were submitted to the National Assembly for noting on 21 August 2006. The Government further stated that there was no tripartite consultation as there was no request for their ratification. The Committee points out that, for those States which have already ratified Convention No. 144, effective prior consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (*Article 5(1)(b)*). Even if the Government does not intend proposing the ratification of a Convention, the social partners must be consulted sufficiently in advance for them to reach their opinions before the Government finalizes its decision. *The Committee trusts that the Government and the social partners will examine the measures to be taken with a view to holding effective consultations on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.*

*Operation of the consultative procedures.* *The Committee once again requests the Government to indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the outcome of these consultations.*

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

## Saint Kitts and Nevis

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)**

*Tripartite consultations required under the Convention.* In reply to the 2010 observation, the Government states in its report received in September 2011 that it regrets not having any specific information on the tripartite consultations held regarding questionnaires concerning items on the agenda of the 100th Session of the Conference (June 2011). The Government also states that many of the tripartite meetings during the 2009–10 period focused on the necessary steps for formulating a Labour Code. The Committee notes that the ILO subregional team assisted the Government in drafting a Labour Code. In May 2011, the National Tripartite Committee met to discuss the HIV component of the Decent Work

Country Programme with the participation of ILO team specialists. *The Committee reiterates the importance of holding tripartite consultations on international labour standards as required by the Convention. It asks the Government to provide in its next report the information on the tripartite consultations held on questionnaires concerning items of the agenda of the Conference and on the preparation of reports on the application of ratified Conventions (Article 5(1)(a) and (d)). The Committee also invites the Government to include information on the tripartite consultations held, especially within the National Tripartite Committee on International Labour Standards. It further requests the Government to provide examples of any reports or recommendations made as a result of the consultations held under the established procedures.*

## Sao Tome and Principe

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)**

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

*Mechanisms for tripartite consultations and the consultations required by the Convention.* In a brief report received in March 2007, the Government refers to the tripartite consultations carried out through the National Council for Social Dialogue. The Government also indicates that the National Council meets regularly. *The Committee refers to its previous observations and once again invites the Government to indicate in its next report the manner in which the National Council is involved in the consultations required by the Convention and to provide particulars of the consultations held on each of the matters on international labour standards referred to in Article 5(1) of the Convention, including information on the reports or recommendations made on international labour standards as a result of such consultations.*

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

## Serbia

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2005)**

*Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention.* The Committee notes the Government's report for the period ending in August 2011. It also notes the comments submitted by the Serbian Association of Employers and by the Trade Union Confederation Nezavisnost forwarded by the International Trade Union Confederation (ITUC) in August 2011. In its previous comments, the Committee noted the remarks of the Confederation of Autonomous Trade Unions of Serbia (CATUS) indicating that there was no progress in connection with the functioning of the Economic and Social Council tripartite consultations system. The Government reiterates in its report that, within the framework of the regular reporting on the implementation of ILO Conventions, it submits all reports prepared to the social partners for opinion. The views of the social partners are then submitted to the ILO along with the reports. The Government also reports on the tripartite consultations held through the Economic and Social Council to prepare the participation of the delegates to the International Labour Conference. Nezavisnost observes that the Government's report does not include information on the work of the consultative mechanisms or exact information on the activities of the Economic and Social Council – questions which are essential indicators of the observance of the matters listed in *Article 5(1)* of the Convention. Nezavisnost also indicates that the report does not contain information on the results achieved from tripartite consultations. The Serbian Association of Employers claims that it received the reports on the application of ratified Conventions on a very short deadline, and therefore was unable to provide any comments. *The Committee requests the Government to include further information in its next report on the operation of the consultation mechanism, specifying the activities of the Social and Economic Council of Serbia on each of the matters related to international labour standards listed in Article 5(1) of the Convention. The Government is also requested to indicate the frequency of consultations held and the nature of any reports or recommendations made by the Economic and Social Council as a result thereof (Article 5(2)).*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Sierra Leone

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)**

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

*Effective tripartite consultations.* The Committee notes the Government's report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. *The Committee hopes that the Government and the social partners will examine how the Convention is applied and that the Government's next report will contain indications on any measures taken in order to implement effective tripartite consultation in the sense of the Convention (Articles 2 and 5 of the Convention).*

The Committee recalls that the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers' and workers' organizations undertake for the consultations required by the Convention.

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

## Turkey

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)**

*Effective tripartite consultations.* The Committee notes the Government's report received in December 2010 for the period ending May 2010 and the information provided by the Turkish Confederation of Employer Associations (TİSK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ). The Committee notes that the Tripartite Consultative Committee met numerous times from 2008 to 2010 in order to discuss, among other items, legislative amendments arising out of points related to the application of ratified Conventions (*Article 5(1)(d) of the Convention*). In this regard, TİSK indicates that at a meeting held on 28 January 2009, in view of the global economic crisis, it was decided that the Government and the social partners should meet more regularly throughout 2009 to assess the situation. The matters discussed at the Tripartite Consultative Committee included the revision of the operation of private employment agencies. *The Committee invites the Government to include in its next report updated information on the tripartite consultations held on the matters covered by the Convention (Article 5(1)). In this regard, the Committee invites the Government to provide information relating to the examination of the ratification of the Safety and Health in Mines Convention, 1995 (No. 176), and the Private Employment Agencies Convention, 1997 (No. 181), which might result in the denunciation of the Underground Work (Women) Convention, 1935 (No. 45), and the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), (Article 5(1)(c) and (e) of the Convention).*

## Uganda

### **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since June 2004. *The Committee trusts that the Government will be able to provide a report, including information in reply to the following points raised in 2004:*

The Government indicated that the application of this Convention continues to depend on active tripartite participation, and that consultations were undertaken particularly at the time of revision of the national labour legislation. It also stated that training on the procedures and content of international labour standards might increase the effectiveness of tripartite consultation. The Government stated that it has received technical and financial assistance from the ILO to hold seminars and workshops on consultative procedures. *The Committee invites the Government to report on any progress achieved in the field covered by the Convention, following the assistance received from the Office.*

*Tripartite consultations required by the Convention.* *The Committee requests the Government to provide details on the consultations regarding international labour standards covered by the Convention (Article 5(1)).*

*Article 5(1)(c) and (e).* The Committee recalls that the ILO Governing Body has invited States which are parties to certain Conventions that Uganda has ratified to contemplate ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and denouncing Conventions Nos 50, 64, 65 and 86. States parties to the Underground Work (Women) Convention, 1935 (No. 45), were invited to contemplate ratifying the Safety and Health in Mines Convention, 1995 (No. 176). *Please indicate if tripartite consultations are envisaged on this matter.*

*Article 6.* *The Committee again requests the Government to indicate whether the representative organizations were consulted with regard to the production of an annual report on the operation of the procedures covered by the Convention and, if so, to state the outcome of these consultations.*

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

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Belarus, Benin, Bosnia and Herzegovina, Botswana, Burkina Faso, Central African Republic, Congo, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, France: French Polynesia, France: New Caledonia, Gabon, Guatemala, Iceland, India, Iraq, Jamaica, Liberia, Mongolia, Namibia, Netherlands: Aruba, Nicaragua, Senegal, Sri Lanka, Trinidad and Tobago, Yemen, Zambia).

## Labour administration and inspection

### Angola

#### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

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

The Committee notes the annual inspection report for 2009, containing figures on the staff of the labour inspection services, estimated data of workplaces liable to inspection, statistics of inspection visits, violations and penalties imposed and of industrial accidents as well as other instructive information on the activities of the General Labour Inspectorate (IGT), such as on preventive measures in the area of occupational safety and health.

The Committee notes an ongoing reform of the labour inspection system and a relevant plan for 2010–14. Further, it notes that, following a request by the Government for technical assistance and an assessment of the situation of labour inspection in the country by a multidisciplinary team of the ILO in March and April 2010 in response to this request, various recommendations were made. These recommendations relate to the need for legislative reforms, particularly as regards safety and health, the conditions of service (remuneration, career prospects) and powers of labour inspectors (with a view to relieving them of additional functions, such as mediation or conciliation), classification of breaches of labour law according to their gravity and determination of appropriate sanctions, as well as the obligation of notification to the labour inspectorate of cases of occupational accidents and diseases, and the need to ensure the application in practice of the relevant legal provisions. In addition, the Committee notes recommendations for improved initial and regular training of labour inspectors; initiation of proactive inspection visits through check-lists and computerized registers of workplaces and other useful data; the promotion of collaboration with the social partners and other bodies, such as the National Institute for Social Security (INSS), as well as the strengthening of coercive enforcement mechanisms. *The Committee would be grateful if the Government would keep the ILO informed of the steps taken in the framework of the ongoing reform, particularly in relation to the recommendations made by the ILO, and communicate a copy of any relevant texts or document.*

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

### Argentina

#### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee notes the Government's report received on 12 October 2010 and the attached documentation. It also notes the comments by the Confederation of Workers of Argentina (CTA) dated 31 August 2010 and 1 September 2011. The Committee also notes the comments of the General Confederation of Labour (CGT RA) dated 29 October 2010. *The Committee requests the Government to communicate any comment or information it deems relevant with regard to the comments by the CTA dated 1 September 2011.*

*Cooperation in the context of MERCOSUR.* The Committee notes with *interest* that according to the Government's report, the joint inspection operations in the context of MERCOSUR have continued and have been well received among the social partners in the region. *Observing that the trade unions in Argentina asked for the inclusion of controls in relation to occupational safety and health and the work environment in the context of the MERCOSUR Regional Labour Inspection Plan (PRIM) and that the proposal was well received by the representatives of other countries, the Committee requests the Government to continue to supply information on the joint activities carried out in the framework of this plan and especially on their impact on the national labour inspection system. The Committee also requests the Government to supply information on any progress made in the formulation and implementation of the training plan for labour inspectors in the context of the PRIM.*

*Articles 3(1)(a), 4 and 10 of the Convention.* *Supervision and control of labour inspection by a central authority and labour inspection staff.* According to the CTA, uniform criteria have not been established throughout the country for labour inspection, nor has appropriate legislation been adopted with a view to carrying out effective uniform controls throughout the national territory. Despite the fact that Act No. 25877 establishing the Integrated Labour Inspection and Social Security System (SIDITYSS) authorizes the central Government to exercise functions shared with the provinces with respect to labour inspection, this has not had any significant effect in practice and the Ministry has been relegated to a secondary position of supervision, support and assistance. According to the trade union, the inefficiency of labour inspection is due to exclusive powers being conferred on the provinces, in addition to the scarce material resources assigned to the provincial offices and the inadequate number of inspection staff employed there. According to the CTA, the lack of effective public policies in labour inspection is due to the enormous pressure exerted by local economic influences and the major national or multinational enterprises, which allows them to operate in an "exclusion zone" inside their establishments and carry out their own inspection and supervision of working conditions. The CTA also indicates that the persistently high number of industrial accidents and cases of occupational disease are evidence of the breakdown of enforcement of the standards relating to risk prevention and health protection in the workplace.

The CGT, for its part, points out that the inspection system in Argentina continues to experience major difficulties since it lacks a central authority and despite the fact that Act No. 25877 established a system of cooperation between the provinces and the federal State, the effectiveness of inspection activities is showing no sign of improvement, in a country with an informal employment rate of 37 per cent. The union also indicates that the effectiveness of controls varies

enormously between provinces since many of them have an insufficient number of labour inspectors and some even have only one inspector.

With reference to its previous comments, the Committee notes that each of the 23 provinces and the autonomous city of Buenos Aires has an administrative body dependent on the provincial executive which is responsible for labour inspection within its jurisdiction. The provincial authorities have competence for monitoring general working conditions and for enforcing occupational safety and health (OSH) standards and the terms of collective labour agreements. The Ministry of Labour and Social Security (MTEYSS) is responsible for supervising activities within the remit of the federal authority (ports, airports, multinational enterprises), activities comprising tasks spanning various jurisdictions, such as inter-provincial passenger and cargo traffic, and river, maritime and land transport. The Ministry also has competence for controls relating to social security contributions. Responsibility for OSH at national level lies with the Supervisory Authority for Occupational Risks (SRT), which also secures the enforcement of the obligations of the occupational hazard insurance companies. According to the Government, the Federal Labour Council drives general inspection policies according to the principles of coordination, cooperation, shared participation and shared responsibility. With regard to the number of inspection staff, the Government indicates that the number of inspectors currently stands at 320 and that the SRT has 67 inspectors, not including the staff specifically assigned to each province and the autonomous city of Buenos Aires. It adds that through Decision No. 670/10, the Ministry of Labour launched a competition in 2010 with a view to filling 300 vacancies.

The Committee reminds the Government that the objective of the Convention is to ensure the functioning of a coordinated and effective labour inspection system throughout the territory, under the supervision and control of a central authority. Where legislation provides for the distribution of inspection powers between a federal or central authority and provincial authorities, it is necessary to guarantee the establishment of an inspection system in each province or one covering more extensive jurisdictions or regions and to ensure the necessary resources for the functioning of such structures (see *Article 4(2)* of the Convention and paragraph 140 of the 2006 General Survey on labour inspection). ***The Committee requests the Government to supply further information on the manner in which effect is given to Article 4 of the Convention with respect to the structure and operation in practice of the labour inspection system, especially on the steps taken to ensure coordination between the federal and provincial inspection authorities. The Committee also requests the Government to supply information on the impact of the launching of a competition in 2010 by the MTEYSS on the number of inspection staff and their geographical distribution in the various provinces.***

***The Committee would be grateful if the Government would also provide information on the manner in which labour inspectors verify the information contained in reports relating to self-inspections undertaken by enterprises.***

*Articles 3(1)(a), 16, 18 and 24. Supervisory function of labour inspectors; frequency and scope of inspections; penalties.* The CTA deplores the fact that the national, provincial and municipal authorities have not taken the necessary steps to stop the illegal practices of unregistered work (whereby employers leave substantial numbers of workers devoid of any protection in terms of social benefits). The union emphasizes the fact that the legal framework provided for by Act No. 24013 of 1999 (Employment Act) – one of the objectives of which is to put a stop to these practices through the establishment of an incentive scheme for employers who are willing to make amends and rectify their practices in this respect and the imposition of harsher penalties for uncooperative employers is insufficient inasmuch as it has not been accompanied by inspections undertaken with the care and frequency required by the Convention.

With reference to its previous comments on *Article 18* of the Convention, the Committee notes with *interest* the information supplied by the Government in relation to the increase in the amounts of fines imposed for infringements of social security standards, with a reduction in the amount of penalties if the situation is rectified within a specific period and with subsidies for employer contributions for employers who create new jobs that are duly registered. It also notes with *interest* the various agreements signed between the MTEYSS and trade unions for combating undeclared work and ensuring effective inspection of working conditions and child labour, in the context of the “Integrated employment promotion plan: More and better work” and the “National plan for the regularization of work” (PNRT). ***The Committee requests the Government to supply information on the frequency and scope of inspections undertaken, including in cases where one single establishment is concerned. It also requests information on the impact of these measures on the implementation of legislation concerning conditions of work and the protection of workers, including undeclared workers and statistics on infringements of labour legislation detected by labour inspectors, specifying the relevant provisions and the penalties imposed.***

*Article 5. Cooperation between the inspection services and other institutions and collaboration with employers and workers.* With reference to its previous comments, the Committee notes that, in the context of the “National plan for the regularization of work” (PNRT), Ministry of Labour officials visited the federal courts in the interior of the country to explain the workings of the Ministry, and the judicial authorities empowered ministry officials to act as ad hoc judicial officers in the execution of judicial tasks. It also notes that, according to the CGT RA, cooperation between the judicial system and the administration has improved as regards the collection of fines imposed for infringements of labour legislation. ***The Committee would be grateful if the Government would continue to send information on the steps taken or contemplated to promote cooperation between the labour inspectorate and the judiciary.***

The Committee also notes that the SRT has been signing agreements with the provinces and with the autonomous city of Buenos Aires, with a view to conducting joint inspections and providing economic resources for the reinforcement

of local labour inspection. The SRT has also signed agreements with the trade unions, with a view to providing economic resources for the training of union leaders and workers, and to developing projects and actions aimed at improving working conditions and the working environment. ***The Committee requests the Government to supply detailed information on the inspections carried out jointly by the SRT and the autonomous city of Buenos Aires, and by the latter and the provincial delegations pursuant to the abovementioned agreements, and also on the impact of such collaboration with regard to the objective pursued by these agreements. It also requests the Government to provide information on any projects launched in the context of collaboration between the SRT and the trade unions, and on the results thereof.***

*Article 6. Stability of employment and conditions of service of labour inspectors.* In reply to the Committee's previous observation concerning the remuneration and prospects for career advancement of labour inspectors as compared to those of other public servants with similar duties, the Government reiterates that inspectors and controllers are covered by Act No. 25164 of 1999 on public employment at national level. It also indicates that the inspectors, perceive an average salary of 4,862.44 pesos (ARS) (about US\$1,206.55). The Government adds that under Decision No. 670/10, mentioned above, the profiles for the posts of labour and social security inspector and territorial planning analyst were established, and their tasks, requisite qualifications and conditions of promotion were specified.

The CTA alleges that in the city of Buenos Aires labour inspectors do not enjoy the guarantees needed to perform their duties. It indicates that this situation has been affirmed by various court decisions and refers to the case of a labour inspector recruited under a service provider scheme who was dismissed and lodged an appeal for reinstatement and definitive incorporation into the permanent staff of the local public administration. According to the CGT RA, however, progress has been made in this sphere since the passing of MTEYSS Decision No. 670/10 marks the start of a selection procedure for labour inspectors, the goal of which is to ensure stability of employment.

***The Committee requests the Government to send to the ILO a copy of Ministry of Labour Decision No. 670/10 and to supply information on the steps taken to ensure that labour inspectors benefit from working conditions in accordance with the principles of stability and independence laid down by Article 6 of the Convention.***

*Articles 7(3), 11(a) and 18. Resources allocated to the inspection services and in-service training for labour inspectors.* According to the Government, the MTEYSS provides its staff with an induction/re-induction course and another series of courses designed to improve their qualifications. The Committee observes that the Government's report contains information on the courses given to Ministry of Labour staff, in particular training on the supervision of cargo and passenger transport and the maritime, river, lake and port sectors. The Government further indicates that the SRT also provides its inspectors with refresher workshops.

In its previous comments the Committee noted that, according to section 34 of Act No. 25877 of 2004, the MTEYSS is required to allocate all proceeds from fines imposed for breach of the labour legislation to improvement of the labour inspection service and asked the Government to indicate the expenditure items of the labour inspectorate to which these resources are assigned. The Committee notes that according to the information supplied by the Government, the budget headings of the labour inspectorate which benefit from the allocation of fines collected for infringements of the labour legislation are those which ensure its ordinary operation (e.g. consumer goods (including paper, spare parts and fuel), technical and professional services, tickets and travel allowances, machinery and equipment etc.).

The Committee notes that according to the CTA, the lack of training of inspection staff combined with the inadequacy of the material resources allocated to the regional offices constitute one of the obstacles to the establishment of effective labour inspection. The CGT RA also stresses the importance of giving specific training to inspectors and equipping the inspection services with computing equipment in order to achieve a better level of performance.

***With reference also to its comments under Articles 3(1)(a), 4 and 10 of the Convention, the Committee requests the Government to provide information on the distribution of the budgetary resources of the labour inspection services throughout the central and provincial structures and the material means at their disposal including transport facilities.***

***The Committee would also be grateful if the Government would provide detailed information on the training courses given to labour inspectors performing their duties in the various provinces, including the frequency, number of participants, subjects covered and duration.***

*Article 9. Collaboration of technical experts and specialists in some inspections falling within the remit of labour inspectors.* In relation to its previous comments, the Committee notes that the Government's report contains a list of staff of the Department of Inspections and Preventive Programmes at the SRT, including architects, graduates in OSH, chemical engineers and mechanical engineers. ***The Committee requests the Government to describe the modalities for collaboration with technical experts and specialists at the level of the provinces and any cooperation with the SRT in this respect.***

*Article 14. Notification of the inspectorate regarding industrial accidents and cases of occupational disease.* In reply to the request for information on the manner in which effect is given to the present Article of the Convention, the Government indicates that the corresponding statistics are being compiled on the basis of notifications made and can be consulted on the SRT website at: <http://www.srt.gov.ar/data/fdata.htm>.

*Articles 20 and 21. Obligation to publish and send an annual report.* The Committee draws the Government's attention to its general observation of 2011 on the importance of drawing up and publishing an annual report on the work

of the labour inspectorate. It reminds the Government of the central inspection authority's obligation to publish and send to the ILO, in accordance with Article 20 of the Convention, an annual general report containing the information required in each clause of Article 21(a)–(g) and the possibility, if necessary, of seeking technical assistance from the ILO for this purpose. ***The Committee requests the Government to keep the ILO informed of progress made in this field.***

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

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1985)***

The Committee notes the Government's report received at the Office on 23 November 2010. It also notes the comments made by the General Confederation of Labour (CGT RA) in a communication dated 29 October 2010.

The Committee observes that the CGT RA, in the comments made in relation to the application of various Conventions ratified by Argentina, includes a copy of a communication from the Argentine Union of Rural Workers and Dockworkers (UATRE) addressed to the Ministry of Labour, Employment and Social Security (MTEYSS) [Ministry of Labour], which contains observations with regard to the Government's compliance with the present Convention.

As regards the issues related to the present Convention, the Committee refers the Government to its observation concerning the *Labour Inspection Convention, 1947 (No. 81)*, and raises the following points specifically relating to labour inspection in agriculture.

*Lack of information on the functioning of the labour inspection services in agriculture.* The UATRE states that it asked the Ministry of Labour to improve rural inspection activities by allocating adequate human resources, but no progress has been observed in this area at national level. The trade union also states that the establishment of the National Register of Rural Workers and Employers (RENATRE), aimed at monitoring the payment of employers' contributions to the integrated unemployment benefit system, has resulted in the registration of 800,000 workers.

The Committee notes that the Government does not supply the detailed information requested of it in a previous observation concerning the manner in which all provisions of the Convention are given effect in practice. ***The Committee hopes that the Government will send information in its next report on: (a) the number of labour inspectors exercising their functions in agriculture (disaggregated by provincial authority, if possible) (Article 14 of the Convention); (b) the material means (offices, transport facilities) at the disposal of each provincial authority (Article 15) to ensure that labour inspectors can perform their duties, in accordance with Article 6(1)(a) and (b); (c) the specific training given to labour inspectors to ensure the effective discharge of their functions related to prevention and control as provided for in Article 9(3) (including frequency, number of participants, subjects covered and duration, and preferably with a breakdown of the training activities organized for inspectors in the various regional offices); and (d) the manner in which collaboration is ensured between technical experts and the labour inspection services, especially in the provincial offices, in accordance with Article 11.***

*Articles 6(1)(a) and 24. Enforcement function of the labour inspectorate; adequate and effectively enforced penalties.* The Committee observes that, according to information published on the website of the MTEYSS (<http://www.trabajo.gov.ar>) concerning labour inspection activities in 2010 and 2011, it appears that inspections have been restricted, at least during the aforementioned years, to checking the labour register. The Committee also notes, from the documentation attached to the report on Convention No. 81, the various agreements signed between the MTEYSS and the trade unions for combating undeclared work and ensuring effective inspection of conditions of work and child labour, in the context of the "Integrated employment promotion plan: more and better work" and the "National plan for the regularization of work" (PNRT). ***The Committee requests the Government to continue to provide information on the enforcement activities of the labour inspection in agriculture, including with regard to child labour, and to send statistics relating to violations of the labour legislation found, stating the legal provisions concerned and the penalties imposed, and copies of court decisions relating to the latter.***

*Articles 17 and 19. Preventive control and notification of occupational accidents and cases of occupational disease.* In reply to the Committee's previous comments in this respect, the Government indicates that the provincial authorities conduct on-the-spot routine inspections or inspections resulting from complaints using qualified staff when occupational accidents or diseases have been brought to their attention. The Committee observes that, according to statistics placed on the website of the Supervisory Authority for Occupational Risks (SRT), there was a substantial increase between 2008 and 2009 in accidents in the workplace in provinces such as Tucumán, a major global producer of lemons, and Jujuy, which, according to the same data, accounts for 65 per cent of the workforce in agriculture.

***The Committee requests the Government to indicate the measures taken or envisaged to ensure that labour inspectors are associated with the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety (Article 17) and to send a copy of any relevant legal text. It also requests the Government to indicate the manner in which effect is given to Article 19 of the Convention, concerning the notification to the labour inspectorate of occupational accidents and cases of occupational disease (paragraph 1), or the association of the labour inspection services in agriculture with any inquiry into the causes of the most serious accidents or diseases that have affected a number of workers or had fatal consequences (paragraph 2).***

*Articles 26 and 27. Obligation to publish and send an annual report.* The Government indicates that the statistics relating to occupational accidents and diseases compiled by the SRT can be consulted on <http://www.srt.gov.ar/data/fdata.htm>. The Committee observes that the statistics contained in the different reports that appear on the SRT website do not appear to distinguish between occupational accidents and cases of occupational disease.

*The Committee refers the Government to its comments under Articles 20 and 21 of Convention No. 81 and requests the Government to keep the ILO informed of progress made in ensuring that the central labour inspection authority publishes and sends to the ILO, in accordance with Article 26 of the Convention, an annual report on the work of the labour inspection services in agriculture, either as a separate report or as part of its general annual report, containing the information required in Article 27(a)–(g). The Committee also reminds the Government that it may avail itself of the technical assistance of the Office in this regard.*

## Belgium

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)**

*Articles 3(1)(a) and (2) and 5 of the Convention.* Extension of the areas of legislation covered by the inspection services. For several years the Government has been emphasizing that it gives priority to the combat of cross-border fraud among the objectives of the labour inspectorate in the sphere of action against illegal work and social fraud. The Committee had asked the Government in this framework to clarify whether non-declaration by the worker was an offence for which the worker incurred liability, to indicate the manner in which the same protection was secured to foreign workers having irregular status in terms of the right of residence as to other workers who were employed in breach of regulations, and to clarify the possible role of the inspection services in this respect.

The Government indicates that the Framework Act of 23 December 2009, which amended the Act of 30 June 1971 concerning administrative fines, introduces an additional administrative fine for which the worker himself is liable, in the event that the latter exercises an activity, as an employee, self-employed person or official, that is not declared by his employer alongside another (declared) primary activity. Nevertheless, the application of this penalty requires prior establishment of the fact, via a separate report, that the employer knowingly employed, for the provision of an undeclared activity, the worker whose primary activity is declared and requires the employer to be reported on account of this infringement. It also declares that, in the event of the illegal occupation of foreign workers, it is customary practice for the labour inspectorate to draw up a report against the employer, in view of the particular seriousness of this type of infringement. Furthermore, if the employer does not comply with the obligation to declare the occupation of the worker (whether foreign or not) to the National Social Security Office (DIMONA declaration), the labour inspectorate of the Federal Public Service (SPF) for social security systematically proceeds with regularization of the situation and, if the employer does not make the payments, he becomes liable to criminal or administrative and civil penalties. The inspection services also examine the conditions of work of foreign workers in relation to the regulations concerning action against human trafficking and against economic exploitation, with a view to providing protection. Foreign workers in an irregular situation which, in the opinion of the labour inspectorate, may be one involving economic exploitation, are subject to specific provisions relating to their residence status in the country and may be entitled to social assistance and other social benefits.

In its previous comments the Committee had noted the establishment of a Labour Research and Information Department (SIRS), with regard to action against illegal work and social fraud. The SIRS consists of two bodies, namely, the General Assembly of the Partners and the Federal Guidance Office, which contain representatives of the Attorney-General's Office and the four inspection services, and also of other public institutions, and representatives of the employers and workers.

The text which founded the SIRS has been modified and integrated into the Act of 6 June 2010 establishing the Social Penal Code. The SIRS is a department which depends on the Ministers of Labour, Social Affairs, Justice, the Minister responsible for self-employed workers and the State Secretary responsible for the coordination of action against fraud. Its mission consists of coordinating at federal level the activities of the various inspection services entrusted with the combat of social fraud and illegal work. The Government indicates that the activities of the inspection services in the context of SIRS account for a maximum of 25 per cent of their overall work.

The Committee recalls that, as indicated in the 2006 General Survey on labour inspection, paragraphs 76–78, the labour inspection systems established in accordance with the Convention should perform the labour inspection functions which are defined in *Article 3(1)* with the main objective of enforcing the legal provisions relating to conditions of work and the protection of workers. The Committee has emphasized that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Efforts to control the use of migrant workers in an irregular situation often require the mobilization of considerable resources in terms of staff, time and material resources, which inspectors can only provide to the detriment of their primary duties. The Committee also underlines the fact that, with the exception of a few countries, only the employer is held accountable for illegal employment as such, with the workers involved in principle being seen as victims. The fact that the labour inspectorate in general has the power to enter establishments without prior authorization allows it more easily than other institutions to put an end to abusive working conditions of which foreign workers in an irregular situation are often the victim, and to ensure that workers benefit from recognized rights. In these

circumstances, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers.

*Noting that, according to the Government, the labour inspection activities performed in the framework of the SIRS represent a quarter of its overall work, the Committee requests the Government to provide information on the impact of these activities on the enforcement of the legal provisions relating to conditions of work and the protection of workers (Article 3(1)(a)). The Government is requested to communicate, in particular, information on the number of infringements detected, the legal provisions concerned and the measures taken as well as the sanctions imposed. Also noting that, under section 2 of the Social Penal Code, a strategic plan and an operational plan must be drawn up each year in the context of action against illegal work and social fraud, the Committee would be grateful if the Government would provide information on the content of these plans.*

*Also drawing the Government's attention to the fact that the cooperation provided for in Article 5(a) of the Convention is designed to strengthen the means for enforcing the legal provisions relating to conditions of work and the protection of workers (Articles 2 and 3(1)), the Committee requests the Government to state the manner in which the labour inspectorate controls the discharge of the obligations of employers (such as payment of wages and other benefits with respect to work that has been done) with regard to foreign workers in a situation which is irregular but does not come under the heading of human trafficking or evident exploitation. It asks the Government to explain the procedure followed in these cases and the role of labour inspectors in this procedure, especially in cases where these workers are facing expulsion from the country pursuant to the immigration laws.*

With regard to its previous comments concerning the adoption of the new code of conduct for labour inspectors in the context of action against illegal work, the Committee notes that under section 61 of the Act of 6 June 2010 establishing the Social Penal Code, the King shall establish the code of conduct for labour inspectors further to an opinion from SIRS. *The Committee requests the Government to send the ILO a copy of the text of the code of conduct for labour inspectors in the context of action against illegal work, once it has been adopted.*

*Communication of the judicial action taken on cases referred by labour inspectors.* Further to its previous comments, the Committee notes with *interest* that the labour inspectorate systematically receives information in writing on the action taken with regard to infringements reported by the service and that the GINAA and e-PV IT projects relating to the creation of a database on the action taken on infringements and to improved collaboration between the labour inspectorate and the judicial authorities, would probably be operational during 2011. *The Committee requests the Government to send information on the progress made in this matter and the results on the functioning of the labour inspection system.*

*Articles 17 and 18. Progressive decriminalization of violations of certain provisions of the labour legislation.* With reference to its previous comments on this issue, the Committee notes that the Social Penal Code introduces amendments to criminal legislation on labour matters, such as the reorganization of the scale of penalties, systematic use of administrative fines and less recourse to judicial proceedings. *The Committee requests the Government to provide information on the impact of this reform on the development of the level of adherence to the legal provisions concerning the conditions of work and the protection of workers.*

*Articles 20 and 21. Content of the annual labour inspection report.* With reference to its general observation of 2010 on the importance of annual inspection reports, the Committee draws the Government's attention to the guidance given by the *Labour Inspection Recommendation, 1947 (No. 81)*, as regards the way to present and disaggregate the information contained in this report. *The Committee requests the Government to take the necessary measures to ensure that annual inspection reports are written and published in such a way as to enable an overview of the functioning of the labour inspection system. The Committee also requests the Government to ensure that these reports contain information on all the subjects covered by Article 21(a)–(g) of the Convention.*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1997)**

Referring to its comments under Labour Inspection Convention, 1947 (No. 81), the Committee would like to draw the Government's attention to the following issues.

*Article 6(1)(a) and (3) of the Convention. Enforcement of the legal provisions relating to conditions of work and combating illegal employment.* In its previous comments the Committee asked the Government to indicate the legal action taken as a result of the infringements identified relating to undeclared work against the employers concerned and the practical consequences of the identification of such offences for workers who are not registered with the social security system and who are in an illegal residence situation.

The Government indicates in its report that, for the labour inspectorate (responsible for the enforcement of labour legislation), combating undeclared work comes under the tasks assigned in accordance with *Article 6(1)(a)* of the Convention, since regular declaration by the employer of workers who he employs gives the latter entitlement to the full range of social security rights. During inspections targeting illegal or undeclared work and also those undertaken to

combat the trafficking of persons, the inspectorate takes action not only to identify offences relating to irregular or undeclared employment but also to enforce the legal provisions relating to conditions of work, both in terms of workers' health and safety and in terms of the labour regulations (pay scales applicable to the sector of activity, observance of hours of work, public holidays, etc.). The Government specifies that the inspection services responsible for monitoring social security provisions ensure systematically that the work done by workers found in a given workplace, even in the event of employment in breach of the regulations, is duly and completely declared to the National Social Security Office (ONSS), so as to ensure that these workers enjoy the related social benefits. When an irregularity is observed, the inspectors proceed to regularize the situation by sending a specific form to the ONSS, on the basis of which the ONSS can calculate and claim from the employer the amount of social security contributions which have been unpaid as a result of the undeclared employment and thus ensure that the workers concerned enjoy the social rights which are their due as a result of their employment.

It results from the statistics sent by the Government that, of 1,557 inspections carried out in agriculture between June 2008 and May 2010, 1,223 took place in the context of combating undeclared work. In this context, inspections focused on the employment of foreign workers, part-time work and social documentation. In most cases the inspectorate draws up an infringement report, mainly with regard to the employment of foreign workers and social documentation, and reports the facts to the judicial authorities.

With regard to the protection of pay, hours of work and the application of collective agreements, the Committee notes that during the 2008–10 period only 254 out of 1,557 inspections were concerned with these matters. According to the Government, the figures relating to the reports of violations show that the labour inspectorate achieves compliance with the regulations in a large number of cases.

***The Committee requests the Government to provide information on the impact of enforcement activities targeting violations coming under the heading of undeclared work on the level of activity and the scope and effectiveness of the enforcement of legal provisions relating to conditions of work, and the protection of workers including workers who are illegally resident.***

***In particular, the Committee would be grateful if the Government would indicate the manner in which the labour inspectorate ensures the discharge of employers' obligations (such as the payment of wages and other benefits owed) with regard to foreign workers in an employment relationship who are in an illegal residence situation, in cases where such workers are facing expulsion from the country pursuant to immigration laws.***

***Articles 26 and 27. Publication of information on labour inspection in agriculture. While noting the information provided by the Government in its report on the activities of the labour inspection and their results, the Committee would be grateful if the Government would take the necessary measures for the publication, in a separate part of the general report of the social inspection, of an annual report on the work of the inspection services in agriculture, containing information required by items (a)–(g) of Article 27.***

## Plurinational State of Bolivia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

***Multilateral technical cooperation project (FORSAT/ILO).*** The Committee takes note of the information provided by the Government on the FORSAT/ILO project to strengthen labour administration services which lasted until April 2007. It notes that, the most noteworthy contributions of this project as far as labour inspection is concerned, are the proposals relating to: the update of the Labour Inspection Regulations; the separation of labour inspection functions and conciliation and mediation functions; model forms, reports on inspection activities, periodic inspection summaries, summonses, inspection records and inspection orders; model work stoppage orders and notifications of violations and proposed penalties; and an analysis of the situation concerning penalties. The project also included proposals for improving the Ministry of Labour's business register and information exchange and enhancing institutional collaboration. ***The Committee requests the Government to indicate the measures taken or envisaged to ensure the follow-up to the proposals that emerged during the development of the FORSAT/ILO project.***

***Articles 19, 20 and 21 of the Convention. Periodical reports and publication and communication of an annual report on the work of the inspection services.*** The Committee notes with ***interest*** that the Labour Statistics Bulletins appended to the Government's report under *Labour Inspection (Agriculture) Convention, 1969 (No. 129)* contain statistics on industrial accidents and cases of occupational diseases, disaggregated by department. The Government indicates that the regional and departmental authorities prepare monthly reports that are submitted to the General Directorate of Labour and Occupational Health and Safety, but that an annual report is not published as yet, owing to the fact that data collection and registration is done manually, which makes it difficult to process the information in a timely manner. ***The Committee requests the Government to communicate in its next report information on any progress made towards the publication and communication of an annual report within the time limits and in the form prescribed by Articles 20 and 21 of the Convention.***

*The Committee takes note of the Government's wish to avail itself of the technical assistance of the Office for designing and implementing an electronic system for labour inspection activities and invites it to make a formal request to the Office in that regard.*

*Part V of the report form and article 23(2) of the ILO Constitution.* The Committee once again observes that for years the Government has not been indicating in its reports the representative organizations of employers and workers to which copies of the reports have been communicated. *The Committee draws the Government's attention to the fact that this obligation to communicate is enshrined in article 23 of the ILO Constitution. It requests the Government to ensure that this information is included in future reports on the application of Convention No. 81.*

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

## Bulgaria

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)**

*Articles 3(2) and 16 of the Convention. Additional functions entrusted to labour inspectors.* The Committee notes that the number of inspections carried out in 2009 was according to the Government more than double the inspections carried out the previous year and the number of violations found was 26 per cent higher, as a result of the increase in the number of inspections. The Government attributes this increase to significant improvements in the organization, preparation, execution and reporting of the inspections as well as the reduction of the duration of a single inspection. The Government also reports that the labour inspectorate has at its disposal facilities in 30 locations and 143 motor vehicles of which 38 are off-road vehicles. Each labour inspector has an average workload of 588 enterprises and 7,250 "insured persons" and is provided with a notebook, mobile internet and mobile phone with limited calls covered by the budget of the General Labour Inspectorate Executive Agency (GLIEA).

The Committee notes with *interest* from the Annual Report of the GLIEA that in 2009, emphasis was placed on ensuring wage payment in the context of the economic crisis and that consequently, delayed payments of wages and other remuneration were settled in the order of 39 million Bulgarian levs (BGN).

The Committee also notes however from the Government's report that the control on the compliance with the provisions of the Employment Promotion Act was also aimed at the lawful employment of foreigners. According to the 2009 activity report of the GLIEA, this control appears to take place on certain occasions with the involvement of representatives of the Ministry of the Interior following alerts that foreign citizens perform work without a permit. The Committee also notes that article 7(2) and (3) of the Labour Inspection Act sets out certain conditions under which joint investigations can be carried out with other agencies.

*The Committee would be grateful if the Government would provide details on the nature and scope of the activities carried out by the labour inspectorate in the area of controlling undeclared work and in particular the employment of irregular foreign workers, including information on the detected violations and the legal provisions concerned as well as the legal proceedings initiated, remedies applied and sanctions imposed. It requests the Government to specify the impact of the activities of the labour inspectorate focused on undeclared work in relation to the enforcement of provisions on conditions of work and the protection of workers, including undeclared workers.*

*In particular, the Committee would be grateful if the Government would indicate the manner in which the labour inspectorate ensures the enforcement of the employers' obligations with regard to the rights of foreign workers in an irregular situation, such as the payment of wages and social security benefits for the period of their effective employment relationship, especially in cases where such workers are liable to expulsion from the country; and asks the Government to provide information on the number of cases where workers found to be in an irregular situation have been granted their due rights.*

*The Committee also requests the Government to describe the method and nature of the joint investigations carried out by the labour inspectorate with other agencies including the Ministry of the Interior.*

## Burkina Faso

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1974)**

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

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 these services cover 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 undertakings and the workers employed therein. In the absence of such data, no assessment of the extent to which the Convention is applied is possible, either by the national authorities with a view to improving its 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 undertakings (*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 undertakings 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 undertakings. 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 undertakings and the workers employed therein, and to specify the geographical distribution of labour inspectors who in practice discharge their duties in agricultural undertakings.**

**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 action in the near future.**

## Burundi

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)**

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

*Primary duties of labour inspectorates.* In its previous comments the Committee had observed that labour inspectorates' activities focused mainly on dispute resolution issues, instead of activities aiming at the enforcement function provided for by *Article 3(1) of the Convention*. Its appreciation was based on the reports on 2000 and 2001 first-quarter labour inspection activities, showing also the performing of a huge amount of administrative tasks. The Committee notes that five out of the nine inspectors are entrusted with collective dispute resolution issues, only three others dealing with control of conditions of work, though all of them have participated in a seminar organized by the Programme for promoting social dialogue in African French-speaking countries (PRÓDIAF) on proceedings relating to labour dispute resolution, during the first quarter of 2006. This information confirms that labour inspection continues to be taken off its main role to be put on labour dispute resolution missions.

According to the Government, the absence of a special status, the lack of means of transport, of qualifications and of technical equipment seem to have led to a lack of confidence from the employers towards labour inspectors.

The Committee once again stresses that it is necessary for labour inspectors to focus on the enforcement of legal provisions on labour conditions and protection of workers while engaged in their work (*Article 3(1)*) and that any further duties entrusted to them should not interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary in their relations with employers and workers (*paragraph 2*). It also recalls the Government's obligation of the competent authority to take measures to make available to labour inspectors the necessary means, such as transport facilities where no appropriate public transport facilities exist and reimbursement of any travelling and incidental expenses which may be necessary for the performance of their duties (*Article 11*). It expresses the hope that appropriate financial support will soon be granted through international cooperation to this end. **The Committee would be grateful if the Government would indicate any steps taken and any progress achieved in this regard and communicate in the nearest future any available report on labour inspection activities in industrial and commercial workplaces, concerning the application of legal provisions on conditions of work and protection of workers.**

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

## Central African Republic

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)**

The Committee notes with *interest* the adoption of Act No. 09-004 of 29 January 2009 establishing the Labour Code chapter II of which concerns labour inspection and gives effect to many provisions of the Convention.

*Articles 3(2), 10, 11 and 16 of the Convention. Duties of labour inspectors and human and budgetary resources of the labour inspection service.* The Committee notes that, according to the Government's report, the application of the Convention poses a problem in so far as the resources which should be available to labour inspectors for the performance of their duties are mostly lacking. Notwithstanding section 319(2) of the Labour Code, under the terms of which labour inspection services must have premises that are suited to their needs, the Government states that no significant measures have actually been adopted to this end. In particular, some offices lack even the most essential items, namely, doors, lights, chairs and tables, and are inaccessible when it rains because of flooding. Furthermore, according to the Government's report, no transport facilities have been established for inspectors since the ratification of the Convention and, apart from the transport expenses which they cover in the course of their duties, labour inspectors themselves pay the costs of communications, reprographics, printing, etc., necessary for the performance of their duties. The Government also

states that out of the 53 inspectors, only 18 are assigned to enforcement duties. Some inspectors and controllers who were recruited in 2010 and 2011 are engaged in internships within the technical departments.

The Committee notes with *concern* the description that the Government has made of the situation faced by the labour inspection services, both from the point of view of human resources and material means. The Committee notes that the Government has not provided the information requested on any steps taken to obtain the technical assistance of the Office and to seek resources through international financial cooperation to improve on this situation.

***The Committee urges once again the Government to avail itself of ILO technical assistance, including in order to obtain support in its search for the necessary funds in the framework of international cooperation, with a view to the progressive establishment of a labour inspection system which meets the requirements of the Convention. It requests the Government to provide information on any formal step taken to this end.***

## Chad

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)***

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

Further to its previous comments, the Committee once again notes with *concern* that the information sent by the Government is the same as that already received in April 2005 and 2006, and that the reports on the work of the inspectorate and the local inspection offices announced time and again in the Government's reports as being attached have still not been sent. Consequently, while noting that between 2005 and 2009 the number of labour inspectors rose from 15 to 23, the Committee is bound to draw the Government's attention once again to the commitments it made when it ratified the Convention, and accordingly to urge it to provide the Office with up to date information on the legislative and practical measures taken or envisaged to apply the Convention, and on any difficulties encountered.

*Legislation. The Committee once again asks the Government to take steps for the adoption of texts giving effect to the provisions of the Labour Code on the powers and duties of labour inspectors and controllers and for the enactment of the draft decree issuing regulations governing labour inspectors and controllers to which the Government has been referring for many years. Please report any progress made in this regard.*

*Article 10 of the Convention. Increasing the numbers and qualifications of the labour inspectorate. The Committee requests the Government to specify the context in which the number of labour inspectors was increased and to indicate whether measures have been taken or are envisaged for the training of the staff of the inspectorate, either to update their skills or to give them further training to enable them to perform their duties effectively. Please describe any such measures and indicate their impact in terms of the achievement of the objectives of labour inspection.*

*Articles 11 and 16. Material resources and transport facilities made available to labour inspectors for the performance of their duties. Noting the information contained in an earlier report about possible financial support in the context of international cooperation, the Committee would be grateful if the Government would provide information on any developments in this matter in recent years and on any progress made in providing the labour inspection services with material resources for their work, particularly transport facilities, so that they are able to implement workplace inspection programmes. If the Government has been unable to obtain financial support, the Committee asks it to indicate the obstacles encountered and the measures envisaged for this purpose.*

*Articles 20 and 21. Publication and communication to the International Labour Office of an annual report on labour inspection activities. Further to its previous comments, the Committee once again urges the Government to take the necessary steps to ensure that the central labour inspection authority publishes and sends to the ILO an annual report, in accordance with these provisions of the Convention and with section 469 of the Labour Code, and to provide information in this respect.*

*While aware of the financial difficulties that are preventing the strict application of the relevant provisions of the Convention, the Committee requests the Government to provide all the information and documentation that is currently available on the legislation covered by the Convention (Articles 2, 3(1)(a) and 21(a)) and on the work of the inspectorate and the results achieved (Article 21(c)–(g)), to enable the Committee to assess the situation and provide useful recommendations for the progressive application of the requirements of the Convention.*

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

## Comoros

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)***

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

According to the information sent by the Government, a special appropriation for labour inspection will not be introduced in the budget until after the meetings to prepare the budget for the 2009 financial year. The Committee nonetheless notes that the labour administration has embarked on a diagnosis of the labour inspection services with a view to determining their budget and its inclusions in the 2009 national budget. ***It asks the Government to provide information on the results of this evaluation as soon as they are available.***

The Committee notes that the Government has submitted a request for the inclusion in the Decent Work Country Programme (DWCP), currently under preparation, of an application for technical assistance to gradually train enough labour inspectors to cover the entire territory. ILO support has also been sought to train two labour inspectors at the National School of Administration (ENA) of Madagascar. ***The Committee requests the Government to keep the Office informed of results of these***

*steps. It trusts that it will take all necessary steps to obtain, particularly in the context of the future DWCP, support and assistance from the ILO for the development of an efficient labour inspection service.*

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

## Congo

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)**

*Absence of practical information to enable the Committee to assess the operation of the labour inspectorate in relation to the provisions of the Convention and relevant national laws.* The Committee notes that the report provided by the Government on the manner in which the Convention is given effect in law to a large extent reproduces the report received in 2008.

The Committee notes the updated information regarding the number and geographical distribution by category of labour inspection staff. It notes, by comparison with the data given in the report received from the Government in 2008, a substantial reduction in labour inspection staff, in particular labour inspectors (from 75 to 55) and principal controllers (from 96 to 72). The Committee recalls that, according to *Article 10*, in order to secure the effective discharge of the duties of the labour inspectorate, the number of labour inspectors must be determined with due regard to the importance of the duties which inspectors have to perform, in particular the number, nature, size and situation of the workplaces liable to inspection; the number and classes of workers employed in such workplaces; the number and complexity of the legal provisions to be enforced; the material means placed at the disposal of the inspectors; and the practical conditions under which visits of inspection must be carried out.

While the laws and regulations concerning labour inspection and its mandate and prerogatives are available, it must be noted that there are no numerical data on other areas defined in *Article 10* and, as the Government admits, there are no specific measures for giving effect to the provisions of *Article 11* concerning the material conditions of work of labour inspectors, who do not have access to the transport facilities required for them to carry out their duties. The Committee notes, on the other hand, that according to the Government, inspectors' travel and related costs are reimbursed by the competent authority on presentation of invoices, which was not always the case, according to the report received in 2008.

With regard to the tools needed to assess the operation of the labour inspection system in practice, namely, the reports on inspection activities (*Article 19*) and the annual report of the central inspection authority, which under the terms of *Articles 20* and *21* has to be published and transmitted to the ILO, the Committee notes with *regret* that none of the regional labour inspection activity reports referred to by the Government as having been transmitted to the Office since the date of ratification of this Convention has actually been received to date. Furthermore, the Government has not communicated a copy of Decree No. 2009-469 of 24 December 2009 concerning the organization of the Ministry of Labour and Social Security.

The Committee notes, however, that the Government is preparing a memorandum with a view to improving the functioning of the labour inspection service and that the Labour Code is currently being revised, in particular with regard to the powers and prerogatives of the labour inspectors.

The Committee also notes that the Government refers for the first time to a draft text on the status and conditions of service of labour inspectors (*Article 6*), which was supposedly drawn up in 2000 and submitted to the ministry responsible for the civil service. According to the Government, the final examination of that draft will depend on the revision now under way of the general civil service statutes. The Committee notes that this document has not been received by the Office, although according to the Government it was transmitted.

*The Committee once again requests the Government to provide in its next report all the available information needed to assess the application of the Convention in law and in practice. This information should cover, among other matters: (i) the up-to-date geographical distribution of public officials responsible for labour inspection as defined in Article 3(1) of the Convention; (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services; (iii) the frequency, content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career advancement in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors visit enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.*

*The Committee also requests the Government to communicate a copy of any inspection activity reports originating from regional directorates, including the reports cited in the Government's reports sent to the ILO in 2008 and 2011; a copy of the draft or final text of the regulations relating to the status and conditions of service of labour inspectors; copies of the proposed amendments to the Labour Code, and of the memorandum which was reportedly sent to the ILO and is intended to improve the functioning of the labour inspection service.*

*In order to establish a labour inspection system that will respond to the social and economic goals which are the object of the Convention, the Committee urges the Government to make every effort to adopt the measures needed to*

*implement the measures described in the Committee's general observations made in 2007 (concerning the need for effective cooperation between the labour inspection service and the judicial system), in 2009 (concerning the need for statistics on industrial and commercial workplaces subject to labour inspection and the number of workers covered, and 2010 (concerning publication of the content of an annual report on the functioning of the labour inspection system). The Committee recalls once again the possibility of obtaining technical assistance from the ILO and of requesting, within the context of international financial cooperation, financial assistance in order to give the necessary impetus to the establishment and operation of the labour inspection system, and would be grateful for any information on progress made and difficulties encountered.*

## Costa Rica

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes the comments of the Confederation of Workers Rerum Novarum (CTRN), dated 22 August 2010, as well as the Government's reply dated 30 March 2011. The Committee also notes the new comments of the CTRN, dated 31 August 2011 which were transmitted to the Government on 22 September 2011. **The Committee requests the Government to communicate any information or comment that it may deem appropriate in that regard so as to enable the Committee to examine these comments at the next session.**

*Articles 3(1)(a) and (2) and 5(a) of the Convention. Labour inspection, economic crisis and collaboration of inspection services with the social partners.* In its 2009 observation, the Committee had noted the comments of the CTRN and the Labour Union of the National Bank of Costa Rica (SEBANA), denouncing the incompatibility of a Bill "for the protection of employment in times of crisis", that had been supported by the Government and entrepreneurs, with the Decent Work Country Programme, since it had been drafted without any consultation with the social partners, in particular with regard to the right of employers to reduce workers' wages. Moreover, the Committee had noted with concern that, pursuant to Directive No. 004-009, a labour inspector would be designated in order to verify whether, upon the employer's request, there was a necessity to reduce working days or wages or adopt any other measure affecting workers' rights during a period of up to six months, as well as whether the request was supported by all the workers, and to submit a report to the regional chief, who would transmit it to the National Directorate of the Labour Inspectorate, so that a decision could be taken in accordance with the law and the directives issued for that purpose by the higher administration of the ministry.

The Committee notes that, by the end of January 2011, the Bill "for the protection of employment in times of crisis" was before the Economic Affairs Commission of the Legislative Assembly and had not been submitted before the Plenary for its discussion nor convoked for analysis, nor subjected to a consultation with the social partners. Furthermore, the Committee notes with *interest* that Directive No. 007-09 issued by the National Directorate and the Chief Legal Adviser of the General Labour Inspectorate suspends Directive No. 004-09 of 24 March 2009 until a legal framework permitting, supporting and sustaining eventual changes in working time, reduction of wages or of any other entitlement is in place. **The Committee requests the Government to provide information on any developments regarding the adoption process of the Bill "for the protection of employment in times of crisis" and, in particular, on the role of inspection within that framework.**

The Committee notes that, according to the Government, the Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) and the trade union confederations have been requested to forward a list of possible candidates for the National Advisory Council in order to bring it into operation as a tripartite body on labour inspection. The Committee also notes that, in order to bring the Council into operation, the Management Unit of the National Directorate of the Labour Inspectorate included within the objectives of the Institutional Plan of Operations for 2010 the fostering of instances of participation and social dialogue to improve compliance with the labour legislation. **Recalling that the issue of the composition of the National Advisory Council has been addressed in its comments since 2004, the Committee hopes that the Government will soon be able to give an account in its next report of the composition of the Council and the commencement of its work and requests the Government to keep the ILO informed of any progress in this regard.**

*Articles 3(2), 10, 11, 16 and 21(c).* The CTRN alleges that, in addition to the fact that the inspectors' volume of work has increased due to the increase in the number of workers, the amount and complexity of the legislation whose application they have to supervise since the implementation of the transfer of competencies from the inspectorate to the regional offices (established by the Plan of Transformation and by Regulation No. 28578). Moreover according to the CTRN, a greater volume of administrative work has been generated, which has been undertaken by the labour inspectors, due to the fact that regional offices lack clerks and bailiffs. The Union mentions an assessment made by the National Directorate of the Labour Inspectorate in March 2006 where it was stated that one of the obstacles to the inspection work was the fact that the transfer of competencies towards regional offices was not accompanied by the transfer of the necessary resources, in the manner foreseen, and reiterated that inspectors devoted a great part of their working day to conciliation. Owing to that situation, inspection visits were not performed with the required regularity and their number had suffered a steady decrease since 2004. The CTRN also highlights that this 2006 assessment mentioned the scarcity

and restrictions to the use of regional offices' vehicles, the inadequacy of the travel budget, the difficulties in obtaining travel allowances, as well as other shortages.

The Committee notes that according to the Government's report, as of April 2011, the total number of labour inspectors was 102, approximately half of whom were assigned positions at the Central Regional Office which groups the provinces of San José, Cartago, Heredia and the cantons of Puriscal and Los Santos. The Committee notes that the efforts made by the Ministry of Labour and Social Security between 2008 and 2010 to staff regional offices, particularly with more inspectors, have not been successful, owing to the implementation of austerity policies and the reduction of the state budget in the wake of the international financial crisis. The Government outlined the steps taken vis-à-vis the Ministry of Finance for the creation of 15 additional posts for support staff to assist labour inspectors and conciliators, and refers to the need to hire at least 27 more inspectors in order to be able to meet the needs of the regional offices.

The Government also indicates that: (i) the Ministry of Labour and Social Security endeavours to ensure that labour inspectors devote as much time as possible to their duties to ensure good coverage; (ii) with the support of phase III of the "Cumple y Gana" Project, it has been possible to equip all the inspectors with computers; (iii) the relocation of the office is in process; and (iv) the acquisition of six vehicles has been planned for the transportation of inspectors.

***The Committee would be grateful if the Government would provide in its next report information on the number of industrial and commercial workplaces liable to inspection, together with their geographical distribution; the number and category of workers employed in such undertakings (men, women, and young people); the number of vehicles available for labour inspectors or the transport facilities that they may benefit from in the course of duty, together with their geographical distribution; as well as any other useful information for the evaluation, by the competent authority, of the needs of the labour inspection in regard to human resources (inspectors and administrative staff), material means, means or facilities of transport.***

***Noting with interest that the Government has requested ILO technical assistance with a view to carrying out an evaluation of the labour inspection system to be followed by a plan of action, the Committee requests the Government to keep the ILO informed of all progress made in this respect.***

*Articles 5(a), 17 and 18. Cooperation between labour inspection services and the judicial system.* The Committee notes with **interest** the information that, in the course of the year 2010, the Advisory Unit of the National Directorate of the Labour Inspectorate sent an official communication to the judicial authorities, to coordinate actions in the labour sphere. The modalities for cooperation through the judicial school are being explored. Similarly, joint activities have been projected for the analysis of labour issues by the Supreme Court of Justice and the Ministry of Labour and Social Security. Furthermore, the Government indicates that, in order to accelerate the administration of justice, a Bill on the reform of the labour procedure had been introduced before the Legislative Assembly.

***The Committee would be grateful if the Government would keep the Office informed of the progress made towards strengthening the cooperation between the labour inspection and the justice system in particular with a view to accelerating the administration of labour justice. The Committee also requests the Government to provide information on any measure adopted to improve enforcement and sanction mechanisms for labour law infringements in accordance with Articles 17 and 18 of the Convention.***

*Article 12(1)(a) and (b). Right of inspectors to freely enter workplaces.* The Committee notes that the Government transmits part of Directive No. 23-2008, by the Ministry of Labour and Social Security of 31 July 2008, which contains the new Handbook of Procedures of the Labour Inspection. It notes that the latter does not provide a response to the comments made since 2003 with regard to the scope of the right of inspectors to enter workplaces covered by the Convention. ***Consequently, and noting that labour inspectors are authorized under section 24(i) of Decree No. 28578 of 3 February 2000 (Regulation on the Organization and Services of the Labour Inspectorate) to visit workplaces during the daytime and night-time, while the right to enter freely at night workplaces liable to inspection is limited by section 89 of the Organic Act of the Ministry of Labour and Social Security to workplaces in which night work is carried out, the Committee urges the Government to take the appropriate measures without further delay in order to bring its national legislation into conformity with the requirements of the Convention in that regard, so that labour inspectors are authorized to enter during the night into all workplaces liable to inspection, regardless of their working hours. The Committee requests the Government to keep the ILO informed of all developments in this regard.***

*Articles 12(2) and 15(c). Notification of the inspector's presence when carrying out an inspection and efficiency of supervision and principle of confidentiality.* The Committee emphasizes since 2004, the need to set out in the legislation the right of labour inspectors to refrain from informing the employer or his representative of their presence where they consider that such notification may be prejudicial to the effectiveness of the inspections. The Government indicates that it acts in conformity with the Handbook of Procedures of the Labour Inspection, which specifies that, whenever possible, the inspection will be initiated with an interview of the employer or his or her representative in order to indicate its scope, objectives and possible consequences. The Committee draws the Government's attention to the fact that indicating the objectives of the visit when it originated in a complaint or a denunciation constitutes an obstacle to the principle of confidentiality enshrined in *Article 15(c)*. ***The Committee requests the Government to endeavour to take the appropriate measures without further delay in order to grant inspectors the right to abstain from notifying their presence to the employer or his or her representative at the beginning of the inspection visit, when they consider that such notification***

*may be prejudicial to the performance of their duties. Furthermore, the Committee requests the Government to take the appropriate measures for the modification of the Handbook of Procedures of the Labour Inspection in accordance with the principle of confidentiality of complaints provided for in Article 15(c) of the Convention.*

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)**

The Committee notes the comments of the Confederation of Workers Rerum Novarum (CTRN), in a communication dated 22 August 2010, as well as the Government's reply dated 30 March 2011. *Considering that they refer both to the present Convention and to the Labour Inspection Convention, 1947 (No. 81), the Committee draws the Government's attention to its comments made under the latter and requests the Government to communicate any information that it may deem relevant with regard to the labour inspection in agricultural undertakings.*

The Committee also notes the new comments of the CTRN, dated 31 August 2011 which were transmitted to the Government on 22 September of 2011. *The Committee requests the Government to communicate any information or comment that it may deem appropriate in that regard, so as to enable the Committee to examine these comments at its next session.*

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

## **Croatia**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1991)**

*Article 3(1)(a) and (b) of the Convention. Functions of the system of labour inspection.* The Committee takes note of the communication of the State Inspectorate Act 2008 (OG 116/08 and 123/08) adopted in the framework of the Plan of Short-term and Long-term Measures to Combat the Grey Economy. It notes, however, that the text of this Act has been translated too late to be examined during the current session of the Committee. *The Committee will examine this text together with the next report of the Government.*

*Article 3(2). Additional duties entrusted to labour inspectors.* The Committee has noted in previous comments that one of the priorities of the labour inspectorate since 2005 has been to combat undeclared work including by foreigners without a work permit. It notes from the Government's latest report that, in 2008–09, labour inspectors responsible for labour relations focused their activities on the enforcement of the Aliens Act in addition to legislation related to conditions of work and the protection of workers such as social security, child labour, hours of work, wages, etc. In 2008, out of 2,215 cases of illegal employment detected, 880 concerned aliens working in contravention of the provisions of the Aliens Act (in 2009, out of 1921 cases, 605 concerned aliens). In the previous period (2006–07), around half of the reported cases of illegal employment concerned aliens working without a permit. In such cases, labour inspectors have been conferred the powers to impose a temporary ban on business operations under the Aliens Act and to bring these cases to the courts. General statistical information is provided in this regard without specifying how many court decisions concern in particular the employment of foreigners in violation of the Aliens Act and whether such decisions also enable foreign workers to recover the wages owed to them for the work performed or specifying the role of labour inspectors in this regard.

Referring to its General Survey of 2006 on labour inspection (paragraphs 75–78), the Committee recalls that Convention No. 81 does not contain any provision suggesting that any workers be excluded from the protection afforded by labour inspection on account of their irregular employment status. The primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers and not to enforce immigration law. To be compatible with the protective function of labour inspection, the verification of the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers. Furthermore, since the human and other resources available to labour inspectorates are not unlimited, the major role sometimes assigned to labour inspectors in the area of illegal employment would appear to entail a proportionate decrease in inspection of conditions of work. *The Committee requests the Government to indicate the measures taken or envisaged to ensure that the activities of the labour inspectorate targeted at the enforcement of the Aliens Act do not prejudice the exercise of its primary duty to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, and to describe the role of the labour inspectorate and the justice system in ensuring the discharge of the employers' obligations with regard to the statutory rights of foreign workers found to be illegally employed, such as the payment of wages and any other benefits owed for the work performed in the framework of their employment relationship, including where they are liable to expulsion or after they have been expelled.*

*Article 5(a). Effective cooperation between the inspection services and other government services and public institutions.* In its report, the Government indicates that high detection rates of irregularities in the area of labour relations has been the fruit of cooperation between labour inspectors and other inspectors, primarily from the Ministry of the Interior. *The Committee requests the Government to specify the nature of this cooperation and the categories of the other inspectors involved in operations aimed at combating undeclared work.*

*Articles 5(a), 17 and 18. Institution of legal proceedings and enforcement of adequate penalties.* In its previous comments, the Committee had noted the high rate (58 per cent) of cases in which the legal proceedings initiated by labour inspectors were declared inadmissible by the misdemeanour courts due to the expiration of the statute of limitations. It notes that this rate has now decreased to 36.5 per cent, due primarily to the adoption of the Misdemeanours Act (OG107/07) which modified the statute of limitations as of 1 January 2008.

Furthermore, pursuant to its previous comments concerning the insufficient level of the penalties imposed, the Committee notes that, according to the Government's report, the decisions rendered by the Courts almost never order restitution for unjust enrichment and therefore are often not proportionate to the gravity of the offence.

*With reference to its 2007 general observation on the importance of cooperation between the labour inspection system and the justice system, the Committee requests the Government to indicate any additional measures taken or considered with a view to accelerating the examination of cases referred by labour inspectors to the courts and ensuring the effective enforcement of adequate and sufficiently dissuasive penalties. It would be grateful if the Government would continue to indicate the progress achieved or difficulties encountered in this regard.*

*With reference to its comments under the Equal Remuneration Convention, 1951 (No. 100), on the role of the labour inspectorate in the protection of the rights of men and women to equal remuneration for work of equal value, the Committee requests the Government to indicate any awareness-raising activities carried out by the labour inspectorate in this area and once again urges the Government to ensure that legal provisions establishing adequate penalties in the case of violations of section 83 of the Labour Act, 2009 concerning equal remuneration are adopted and are effectively enforced.*

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

## Cuba

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1954)**

*Article 6 of the Convention.* The Committee notes with *interest* the information contained in the annual inspection report according to which, during 2010, priority was given to training and educational activities for labour inspection personnel through masters' degrees, diplomas, postgraduate courses, communication, information technology and languages. *The Committee would be grateful if the Government would provide information on the number of labour inspection staff who benefited from such training, the areas and educational institutions concerned, and the impact of these training activities on the operation of the labour inspection system.*

*Articles 12 and 15(c) of the Convention. Restrictions on the principle of the freedom of access of labour inspectors to workplaces liable to inspection and the principle of confidentiality.* The Committee recalls that its previous comments related to sections 11 and 12 of the Regulations of 2007 on the system of national labour inspection, which establish the requirement for inspectors, at the beginning of each inspection visit, to present to the employer a copy of a written inspection order by the National Inspection Office, indicating the subjects and purpose of the inspection. In its report, the Government indicates that confidentiality with regard to complaints and their source is maintained in those provisions and that notification is not given prior to surprise inspections, for which reason it considers that the legislation is not contrary to the Convention, and that the inspection order does not constitute prior notice, but only notification of the presence of the inspector at the time that the inspection begins. The Committee reiterates that the obligation of labour inspectors to present to the employer, when they enter the establishment, not only the corresponding credentials, as provided for in *Article 12(1)*, but also an order to conduct the inspection, is in total contradiction with *Articles 12(1) and (2) and 15(c)* of the Convention, and makes it impossible to guarantee the confidentiality of complaints and their sources (*Articles 12 and 15(c)*). Moreover, the Committee draws the Government's attention once again to *Article 12(2)*, according to which labour inspectors should be authorized to abstain from notifying the employer of their presence during an inspection visit if they consider that such notification may be prejudicial to the performance of their duties. *The Committee therefore urges the Government to ensure the adoption without further delay of the necessary measures to bring the national legislation into conformity with Articles 12(1) and (2) and 15(c) of the Convention in this respect. The Committee would be grateful if the Government would provide a copy of any relevant legal text as soon as it is adopted.*

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

## Cyprus

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

*Article 3(1) of the Convention. Functions of the labour inspection system in the area of occupational safety and health.* The Committee notes with *interest* from the 2009 annual report a number of practices which deserve to be highlighted and particularly the activities carried out by the labour inspectorate responsible for occupational safety and health in schools to raise public awareness from an early age concerning occupational safety and health issues, as well as the promotion of safety committees at the workplace and the participation in the European Safety and Health at Work Campaign with the slogan "Healthy workplaces – Good for you. Good for business", which emphasizes the financial

value to enterprises of beneficial conditions of work for workers. The Committee also notes with *interest* the information on the inspection campaigns targeting certain branches of activity, such as construction. ***The Committee would be grateful if the Government would keep the Office informed of the impact of these activities, for example, in terms of reduced accident rates, etc.***

*Articles 3(1) and (2), and 5(a). Functions of the labour inspection system and effective cooperation with other public and private institutions including the courts.* The Committee notes from the annual reports for 2007, 2008 and 2009 that there has been an important increase in the number of visits by the labour inspectorate responsible for labour relations and in the number of corresponding cases brought to the courts in collaboration with a Public Prosecutor assigned for special duties to the Ministry of Labour and Social Insurance. The Committee also notes, however, that, in 2009, almost half of the inspection visits carried out by the inspectorate responsible for labour relations (2,568 out of 5,431 visits) were related to the question of undeclared and illegal work, including by undocumented migrant workers. The inspection visits in question demonstrated that 24.49 per cent of the 8,858 workers occupied in the workplaces inspected were undeclared and that 11 per cent of these workers were foreigners from third countries, and many of them were irregular residents. Moreover, 72 out of 123 cases brought to the courts by labour inspectors in 2009 concerned undeclared and illegal work. The Committee understands from this information that the main priority of the labour inspectorate in the area of labour relations is to combat undeclared work, inter alia, by verifying the residency status of foreign workers.

The Committee recalls that, under *Article 3(1)(a)*, the primary function of labour inspectors is to secure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours of work, the payment of wages, the prevention of child labour, the promotion of freedom of association, etc. As indicated in the General Survey of 2006 on labour inspection (paragraphs 77–78), the Convention does not contain any provision suggesting that any workers be excluded from the protection afforded by labour inspection on account of their irregular employment status. With regard to foreign workers in particular, the Committee has stated in unequivocal terms that “the primary duty of labour inspectors is to protect workers and not to enforce immigration law”. In conclusion, the Committee recalls that, to be compatible with the protective function of labour inspection, the verification of the legality of employment by labour inspectors should have as its corollary the reinstatement of the statutory rights of all workers, including undocumented ones. This objective can only be met if the workers covered are convinced that the primary task for the labour inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers.

The Committee also recalls that, under *Article 3(2)*, additional duties that are not aimed at securing enforcement of the legal provisions relating to conditions of work and the protection of workers should be assigned to labour inspectors only in so far as they do not interfere with their primary duties or do not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with workers. Since the human and other resources available to labour inspectorates are not unlimited, the major role assigned to labour inspectors in the area of illegal employment would appear to entail a proportionate decrease in inspection of conditions of work. Consequently, the Committee of Experts has welcomed in paragraph 78 of its 2006 General Survey the initiative of certain governments to relieve the inspectorate of the task of policing illegal employment and transfer it to another body.

***The Committee would be grateful if the Government would take the necessary measures to ensure that the additional duty of verifying the residency status of foreign workers is entrusted to a body separate from the labour inspectorate so that labour inspectors can focus on their main function which is to secure the enforcement of legal provisions relating to conditions of work and the protection of workers. The Committee also requests the Government to specify the applicable legal provisions, the types of violations and the nature of the sanctions imposed by the courts in cases concerning undeclared work. It would be grateful if the Government would provide copies of legal decisions ordering the payment of outstanding wages to workers, including undocumented foreign workers, who were found to be in an illegal employment relationship for the period worked, and details on any remedial measures taken, in accordance with the law, in order to ensure that workers found to be in an illegal employment relationship are regularized in their employment. The Committee would also be grateful if the Government would specify the types of violations involved in the 51 cases decided by penal courts in 2009, which did not relate to the issue of undeclared employment.***

*Articles 14 and 21(g). Notification of industrial accidents and cases of occupational disease and relevant statistics.* The Committee notes with *interest* the texts communicated by the Government, notably the National Strategy on Safety and Health at Work for the period 2007–12 as well as the Safety and Health at Work (Accidents and Dangerous Occurrences Notification) Regulations of 2007. The latter requires the notification to the Department of Labour Inspection of all accidents to employed and self-employed persons, arising out of their employment or occurring during their normal travel between home and their workplace, and all accidents occurring to any person not at work when those accidents are related to a place of work or a work activity (accidents to be reported are those which cause physical or mental harm as a result of which the worker is unable to perform the usual work for more than three days). The Government also indicates that, in order to minimize the under-reporting of accidents, close and continuous cooperation has been developed between the Department of Labour Inspection and the Social Insurance System which led to an increase of notified accidents by almost 50 per cent since 2002. The Committee also notes, however, that the statistical data provided in the 2009 annual

report on the numbers of occupational accidents notified between 2003 and 2009, shows that the recent measures have not yet produced an impact. *The Committee requests the Government to keep the Office informed of further measures taken to improve the reporting of occupational accidents and of any progress noted in this regard.*

With regard to the recording of cases of occupational disease, the Government indicates that only a few cases were notified during the reporting period. In its previous comments, while welcoming a number of measures to improve the recording of occupational diseases, the Committee had also noted that, in view of the insufficient number of occupational physicians in the country, it would take some time before an accurate pool of such statistics would be established.

*The Committee would be grateful if the Government would continue to supply information on any measures taken or envisaged with a view to improving the notification rate of cases of occupational disease and enabling the inclusion of the most accurate possible statistical data in future annual reports on the work of the labour inspection services. It also once again requests the Government to describe the functioning in practice of the notification and recording system established by the Safety and Health at Work (Occupational Diseases Notification) Regulations of 2007, and indicate any measures taken or envisaged to increase the number of occupational physicians.*

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

## Democratic Republic of the Congo

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1968)**

*Articles 4, 5, 7, 10, 11, 20 and 21 of the Convention. Administrative decentralization and labour inspection.* The Committee notes the information provided by the Government in its report that labour inspection is a function that is considered to be an integral part of the national public service. The Government adds that it has prepared a draft Decree containing general provisions governing officials and managerial staff in the General Labour Inspectorate, and that this draft text has been submitted to the Prime Minister for signature. It adds that it undertakes to make the labour inspectorate a General Directorate and, at the 100th Session of the International Labour Conference, it referred to the reform of the General Labour Inspectorate into a specialized service enjoying administrative and financial autonomy to increase its effectiveness.

While noting these developments, the Committee also observes that the Government has not provided any documents enabling the Committee to assess the manner in which effect is given to the provisions of the Convention throughout the country. In particular, no report on the work of the inspection services has been received. With reference to previous comments, the Committee draws the Government's attention to the risk of the weakening of the labour inspection system following the decentralization of the respective functions and responsibilities, if this decentralization is not accompanied by the effective transfer of the necessary resources for the functioning of the decentralized labour inspection services, to guarantee the protection of the workers covered by the Conventions throughout the national territory. *The Committee therefore requests the Government to provide a copy of the Decree issuing general provisions governing officials and managerial staff in the General Labour Inspectorate as soon as it has been adopted, and to provide detailed information on the announced reform of the General Labour Inspectorate and the organizational plan of the labour inspection system at both the national and provincial levels. The Committee also once again requests the Government to provide copies of any texts or documents, including any report on the activities of the labour inspection, which would enable the Committee to assess the manner in which effect is given to the provisions of the Convention in practice.*

*Articles 3(2), 6 and 15(a). Integrity, independence and impartiality of labour inspectors.* In reply to the Committee's previous comments concerning the allegations of corruption of labour inspectors exercising parallel activities made by the Confederation of Trade Unions of Congo (CSC), the Government indicates that, in accordance with Act No.81-003 of 17 July 1981, labour inspectors cannot perform a second job. The Committee also notes with *interest* that with a view to improving their status and conditions of service, a permanent bonus has been awarded for special duties to labour inspectors and controllers. *The Committee would be grateful if the Government would provide clarifications on the status and conditions of service of labour inspectors at both the central and provincial levels and to transmit copies of the relevant legal texts. Please also indicate the percentage increase in the permanent monthly bonuses provided to labour inspectors and whether this increase covers the staff of the labour inspection in all the provinces of the country. The Committee also requests the Government to provide information on the disciplinary procedures and sanctions applicable in the event of violations of Act No. 81-003 of 17 July 1981 on the prohibition of the exercise of a parallel activity by labour inspectors.*

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

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1987)**

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

*Re-establishment of the exercise of the right to organize.* The Committee notes that the work of the National Labour Council in 2004 gave rise to the adoption, among other regulatory texts on workers' right of representation, of Ministerial Order No. 12/CAB/MIN/TPS/VTB/053/2004 of 12 October 2004 lifting the suspension of trade union elections in enterprises and

establishments of all types. *The Committee would be grateful if the Government would provide information on the impact of this Order on industrial relations.*

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

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

## Djibouti

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)

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

In its previous comments, the Committee referred to comments made by the General Union of Djibouti Workers (UGTD) in 2007 calling for an urgent review of the labour inspection system and the strengthening of its resources. In the absence of any recent statistics on the working of the labour inspectorate, the Committee also asked the Government to report in as much detail as possible on the following matters: (i) the supervision of working conditions and the protection of workers in enterprises in export processing zones excluded from the scope of the new Labour Code by section 1 of the Code; (ii) the impact of the conciliation work carried out by labour inspectors on the volume and quality of their inspection duties (*Article 3(2) of the Convention*); (iii) human resources and means of action of the labour inspectorate in relation to the requirement of *Article 16* that workplaces shall be visited as often and as thoroughly as necessary; and (iv) the need to give effect to *Articles 20 and 21* concerning the requirement that the central inspection authority shall publish and communicate to the ILO an annual general report on the work of the inspection services.

On the basis of the information sent by the Government, the Committee wishes to draw attention to the following points.

*Articles 1 and 2 of the Convention. Supervision of working conditions and protection of workers in industrial and commercial establishments in export processing zones.* The Committee noted in its previous comments that, under section 1 of the Labour Code, the Code applies throughout the national territory except in export processing zones (EPZs) which are governed by special legislation. According to the Government, not only are the EPZs beyond the competence of the labour inspectorate but the legislation applying to them, which has prompted objections in the country, grants excessive privileges to employers at the expense of the workers. The Government explains that supervision of the enterprises allowed to operate in EPZs is the responsibility of the ports and EPZs authorities, which also issue visas for foreign workers and deal with any disputes regarding the election of staff delegates in the zones. The Committee notes, however, that pursuant to section 31 of the EPZ Code issued by Act No. 53/AN/04 of 17 May 2004, "the Djibouti Labour Code governs labour relations in the export processing zones", and that the legislation on EPZs available at the ILO contains no provisions on this subject. **The Government is asked to indicate whether section 31 of the EPZ Code has been repealed and if so, to provide the relevant text, and in any event to provide copies of the texts governing the working conditions and protection of the workers occupied in establishments in the EPZs together with the legal provisions respecting their enforcement.**

*Articles 3(1)(a) and (b), and 17. Need to ensure a balance between the enforcement and advisory functions of labour inspection.* According to the Government, the work of inspection services pertaining to labour legislation focuses largely on persuasion and information. The Committee nonetheless notes that the national legislation contains, as the Convention requires, a whole set of legal provisions that also enable inspectors to prosecute those who are in breach of the law on working conditions. In paragraph 279 of its General Survey of 2006 on labour inspection, the Committee pointed out in this connection that although advice and information can only encourage compliance with legal provisions, it should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. In keeping with its assertion that no labour legislation, however developed it may be, can exist for long without an effective labour inspection system, the Government should ensure that the inspection system is able to make use of all means of action available to it under the law to attain its objectives. A balance between the advisory and enforcement roles of the inspection services would, without doubt, contribute to reducing the number and scale of labour disputes. **The Committee accordingly asks the Government to take the appropriate steps to ensure that, where necessary, inspectors exercise in practice the authority conferred by Article 17 of the Convention, to which section 196 of the Labour Code gives effect, themselves to initiate legal action before the competent jurisdiction against those who breach labour laws and regulations, on the basis of the provisions of Title IX of the Code which defines offences and establishes the penalties applying to them.**

*Article 3(2). Accumulation of tasks assigned to labour inspectors and its impact on the volume and quality of their inspection duties.* In its observations of 2007, the UGTD expressed the view that in future the duties of the inspectorate should encompass conciliation and prevention. The Committee drew the Government's attention in this connection to *Article 3(2)*, which places restrictions on the additional duties that may be required of labour inspectors, and asked the Government to send the Office information on the manner in which observance of this provision is ensured. The Government acknowledges that workplace inspection has its shortcomings. Furthermore, the data the Government provided on the work of the inspectorate in the area of occupational safety and health are slight in comparison with those pertaining to the settlement of individual and collective labour disputes. The Government nonetheless hopes that in future, the labour inspection service will be able to conduct three visits a week. The Committee notes this information with *concern*, observing that it bears out the UGTD's assertion that the labour inspection system needs to be reviewed and strengthened so that it can perform its duties fully. It furthermore regrets that it has not been informed of the number of workplaces subject to inspection and is therefore unable to assess the extent to which the needs for inspection are covered. Observing that the time and energy that labour inspectors spend in attempting to settle collective labour disputes interfere with the performance of their primary duties, the Committee suggests, in paragraph 74 of its General Survey mentioned above, that conciliation or mediation in collective labour disputes be entrusted to a specialized body or officials. It notes in this connection that section 181 of the new Labour Code in fact provides for the establishment of an arbitration council to hear collective labour disputes that conciliation has failed to settle. It notes, however, that the Council will hear the dispute only after the labour inspector or labour director has attempted conciliation and referred the matter to it within eight full days (section 180 of the Code). **The Committee reminds the Government of the specific warning in Paragraph 8 of Recommendation No. 81 that "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes" and it urges the Government to envisage taking steps to relieve inspectors of their role as preliminary conciliators in labour disputes. It would be grateful if the Government would also take measures to ensure, as required by Article 16 of the Convention, that the strength of the inspectorate is sufficient to cover the workplaces liable to**

*inspection and send the Office information with as much supporting documentation as possible on all progress made in this matter and on any difficulties encountered.*

*Articles 10, 11 and 16. Reinforcement of the labour inspection system.* The Committee notes that in order to reinforce the labour inspection system, the Government plans to create four new sections of the inspectorate, two in the capital and two in the interior of the country, and to take advantage of technical support from the ILO Subregional Office in Addis Ababa to organize a training course for labour controllers and the single labour inspector at the ILO International Training Centre in Turin. It also notes that the Government is examining possibilities for cooperation between the labour inspectorate and the competent medical and technical institutions, and that a tripartite workshop on Convention No. 81 was to be organized by the ILO subregional office in 2008. *The Committee hopes that the Government will not fail to keep the ILO informed of any developments relative to any of these matters.*

*Further to its previous comments, the Committee once again asks the Government to provide the most recent data available on the number and geographical distribution of the workplaces liable to inspection (including mines and quarries), the number of workers employed therein and the transport facilities available to the labour inspector and labour controllers for duty travel.*

Such information is essential to the central inspection authority in evaluating the human and material resources needed in order to attain the objectives of labour inspection and hence to estimating the funding of the inspectorate in the national budget.

*Articles 20 and 21. Publication, communication and content of the annual inspection report.* While taking note of the table of statistics attached to the Government's report on the work of the inspection services, the Committee observes that it covers a period of five years and that, in terms of activities and results, it is not sufficiently specific or relevant to be of use in evaluating the operation and efficiency of the labour inspection system. *The Committee is therefore once again bound to ask the Government to take the necessary measures for the publication of an annual inspection report, as provided in section 192 of the Labour Code, within the time limits prescribed in Article 20 and containing the information required by Article 21. Emphasizing that such a report is an essential tool in evaluating the efficiency of the inspection system and in identifying the resources required for its improvement, in particular through appropriate budgetary estimates, the Committee requests the Government to pay due attention to the indications in Part IV of the Labour Inspection Recommendation, 1947 (No. 81) as to the level of detail that would be appropriate in the information required by clauses (a) to (g) of Article 21 of the Convention. It recalls that it may request ILO technical assistance for this purpose.*

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

## Dominican Republic

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee notes the Government's report, which was received at the office on 6 October 2010. It also notes the comments made by the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Trade Union Unity (CNUS) and the National Confederation of Dominican Workers (CNTD), which were dated 31 August 2010.

*Articles 3, 10, 16 and 23 of the Convention. Number of labour inspection staff for the effective discharge of labour inspection duties.* According to the trade unions, the number of labour inspectors is insufficient to guarantee the effective discharge of inspection duties. In its previous comments the Committee noted the announcement of a competition to fill 12 labour inspector posts in order to add to the current staff of 178 serving inspectors. It also asked the Government to indicate any changes in numbers and geographical distribution of inspectors and to provide figures in respect of the replacement of inspectors who had retired. The Committee notes that the Government does not reply to the points raised by the unions or to its previous comments. It draws the Government's attention to paragraph 174 of the 2006 General Survey on labour inspection in which it emphasizes that measures should be taken to ensure that the number of labour inspectors is sufficient to secure the effective discharge of the duties of the inspectorate, taking into account the importance of the duties which they have to perform, in particular: the number, nature, size and situation of the workplaces liable to inspection; the number and the range of categories of workers employed in such workplaces; and the number and the complexity of the legal provisions to be enforced. *The Committee would therefore be grateful if the Government would supply: (i) up-to-date information on the number of labour inspectors and their geographical distribution; (ii) details of the distribution of activities and duties entrusted to labour inspectors, in both central and regional offices, in relation to the inspection duties defined in Article 3(1) of the Convention; and (iii) any available information on the number and geographical distribution of industrial and commercial workplaces liable to inspection and the workers employed therein. If such information is unavailable, the Committee requests the Government to take the necessary steps to identify and register such workplaces, so as to ensure the programming of inspection visits and to keep the ILO informed of any developments in this respect.*

*Articles 6 and 15(a). Conditions of service and integrity, independence and impartiality of labour inspectors.* The unions regret that lack of integrity on the part of labour inspectors continues to be widespread, even though they acknowledge that the situation has seen some improvement in recent years. They also point out that inspectors put pressure on workers to renounce their claims or enter into agreements that are detrimental to them, in order to avoid disputes and preserve jobs. The Committee notes that the Government does not comment on this matter in its report. The Committee reminds the Government that, under Article 6 of the Convention, the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. It wishes to emphasize, with reference to the 2006 General Survey, paragraph 204, that it is vital that the status, levels of remuneration and career prospects of inspectors be such that high-quality staff are attracted, retained, and protected from any improper influence. *The*

**Committee therefore requests the Government to take all the necessary steps to ensure that the remuneration and conditions of service of labour inspectors are in conformity with the principles laid down by Article 6 of the Convention.** Moreover, the Committee observes that section 438 of the Labour Code prohibits labour inspectors from having any direct or indirect interest in the enterprises under their supervision. **The Committee requests the Government to send a copy of any legislative provisions adopted pursuant to section 438 of the Labour Code, especially as regards the penalties applicable to any labour inspector who violates the prohibition contained in section 438. It also requests the Government to supply information on complaints made against labour inspectors on grounds of conduct contrary to the principles laid down in Article 15 of the Convention and on action taken further to such complaints.**

*Articles 7 and 8. Training of labour inspectors and mixed nature of inspection staff.* The unions highlight the lack of skill and sensitivity on the part of inspectors regarding matters concerning the rights of women workers, such as discrimination, sexual harassment and violence, and concerning freedom of association, since inspectors have been reluctant to report violations relating to dismissals or other acts of anti-union discrimination, arguing that the workers concerned were not protected by trade union immunity. With regard to these points, the Committee draws the Government's attention to the fact that, according to *Article 7* of the Convention, subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties and shall be adequately trained for the performance of their duties. **The Committee requests the Government to supply information on the qualifications that labour inspectors must possess (Article 7(1)) and to specify the manner in which it is ensured that labour inspectors receive adequate initial and subsequent training for the effective performance of their duties (Article 7(3)). It also requests the Government to provide information on the training activities for labour inspectors in particular in the areas of non-discrimination and freedom of association, giving details of frequency, number of participants, subjects covered and duration.**

**Furthermore, reminding the Government that, according to Article 8 of the Convention, both men and women shall be eligible for appointment to the inspection staff and, where necessary, special duties may be assigned to men and women inspectors, the Committee would be grateful if the Government would indicate the proportion of women who perform labour inspection duties and to specify whether they are assigned special duties, such as the inspection of workplaces where the staff are predominantly women or young people.**

*Article 11. Equipment and transport facilities for labour inspectors.* The trade unions deplore the inadequacy of the computer equipment and transport facilities made available to labour inspectors. According to the unions, the inspectorate had 221 computers and ten vehicles for a total of 33 provinces in 2009. The Committee had noted in its previous comments that four new vehicles had been made available to inspectors for duty travel and had asked the Government to provide information on the impact of this measure on inspection activities and their results. The Committee observes that the Government has not replied in its report to the comments made by the unions or to its previous comments in this regard. With reference to the 2006 General Survey, paragraph 238, the Committee emphasizes that for a labour inspectorate to carry out its functions effectively, its staff must be given the necessary resources to perform their tasks and to ensure that their role and the importance of their work receive due recognition. **The Committee hopes that the Government will take the necessary steps to ensure that labour inspectors have the necessary material means to perform their duties. It requests the Government to supply information on the office equipment provided for the inspection services, in both the capital and the regions, and on the accessibility thereof to all persons concerned (Article 11(1)(a)), and also on the transport facilities made available to inspectors at all offices (Article 11(1)(b)), and on the reimbursement of travelling expenses incurred by labour inspectors in the performance of their duties (Article 11(2)).**

*Article 18. Effective enforcement of adequate penalties.* The trade unions also allege that labour inspectors allow themselves to be intimidated by the executives, directors and security personnel of certain enterprises, who prevent them from entering the workplace and from establishing violations denounced by workers or trade unions. The Committee reiterates the comments it has been making since 2007, in which it noted 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. **The Committee again urges the Government to take the necessary steps to ensure that effect is given to the provisions of this Article of the Convention, according to which adequate penalties for obstruction of labour inspectors in the performance of their duties must be provided for by national laws or regulations and effectively enforced. Reiterating its previous comments on this matter, the Committee urges the Government to ensure that a method is devised promptly to review the amount of the fines imposed so that they remain dissuasive despite any monetary fluctuations and to ensure that these penalties are effectively enforced.**

Furthermore, noting that the Government's report does not reply for the second time in succession to its previous observation, the Committee is bound to repeat the following parts thereof:

*Article 12(1)(a) and (b). Right of labour inspectors to enter any workplace freely.* The Committee notes 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.**

*Article 12(1)(c)(iv). Testing of substances and materials used or handled. 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.*

*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.*

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

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

## Egypt

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)**

*Article 3(1)(b) of the Convention. Labour inspection and child labour. The Committee notes the information provided by the Government in its report on the present Convention and on the *Minimum Age Convention, 1973 (No. 138)*, concerning the awareness-raising activities on child labour which have been undertaken, including national and local seminars. The Committee notes with *interest* from the Government's report that awareness-raising seminars were held at schools, high schools and colleges on the matters related to occupational safety and health like the preparation of an emergency plan, crisis management and fire responses. Referring also to its comments under *Convention No. 138*, the Committee requests the Government to continue to provide information on measures adopted to reinforce the role of the labour inspectorate in the field of child labour. With reference to *Paragraph 7 of the Labour Inspection Recommendation 1947 (No. 81)*, it requests the Government to indicate the measures adopted with a view to organizing the broad dissemination of information by the labour inspection services, through media accessible to the majority of the population (radio, television, the written press and cars equipped with megaphones) on the harm caused by child labour and the proceedings envisaged by the law against users of child labour. The Committee also requests information on the number of violations reported by labour inspectors and the sanctions applied (the amount of fines and other measures, such as the suspension of operations, imprisonment or other administrative or judicial measures) in the field of child labour, and particularly in high-risk sectors.*

*The Committee hopes that the Government will be able to provide information on any measure adopted in this respect and that it will ensure that statistics of the inspection services on cases of violations and the sanctions applied are published regularly, broadly disseminated and communicated to the ILO.*

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

## France

### French Polynesia

#### **Labour Inspection Convention, 1947 (No. 81)**

The Committee notes that the transfer of the labour inspectorate pursuant to the Statute of Autonomy of French Polynesia was completed on 1 January 2009. It notes national Act No. 2010-5 of 3 May 2010 concerning labour inspection in French Polynesia. The Committee notes with *interest* that, under section LP 83-12 of this Act, labour inspectors now have the power to take, in accordance with *Article 13(2)(b) of the Convention*, any measures aimed at ensuring health protection, including the temporary stoppage of work or activities, in cases of serious risk defined in 11 situations listed in the text. Their decision is of immediate application and is not suspended if the employer makes use of the right of appeal to a higher authority (section LP 83-24 of the Act). *The Committee requests the Government to provide information and statistics in its next report on the impact of this new power of direct injunction by labour inspectors on the level of compliance by employers with the legal requirements and prescriptions relating to the safety and health in workplaces characterized by a high rate of accidents.*

The Committee further notes with *interest* that the abovementioned Act has replaced, by administrative fines, the system of penalties envisaged in the legal provisions relative to the obligation to submit a declaration prior to recruitment

and to combat clandestine work, as well as in Decision No. 2000-130 APF of 26 October 2000, as amended, on professional divers and establishing specific protection measures for workers engaged in a high pressure environment and the organization of their vocational training (Chapter II of Act No. 2010-5). According to the explanations provided by the Government, this change is aimed at mitigating the near absence of repression by penal courts, the length of the procedures, and the very low amounts of the penalties imposed. Crimes as well as certain infringements still remain under penal court jurisdiction. ***The Committee would be grateful if the Government would supply examples of judicial decisions rendered before the adoption of Act No. 2006-20 of 28 November 2006 in cases of violation of the abovementioned legislation and administrative fines imposed since then, as well as information on the impact in terms of the evolution of the level of observance of this Act.***

***The Committee would also be grateful if the Government would indicate if it is intended to extend the new system of penalties to other matters relating to the conditions of work and the protection of workers while engaged in their work in order to reinforce the dissuasive effect of the repressive measures taken by labour inspectors, or if steps have been taken or envisaged to promote an effective cooperation between the labour inspection services and the justice system to the same end, as recommended in the general observation of 2007 under this Convention. The Committee also requests the Government to send the ILO a copy of Order No. 616 CM of 5 May 2009 establishing the labour inspection service of French Polynesia. It would be grateful if the Government would also provide information on the procedure for the adoption of the decision on the conditions for nomination to the positions of head of department, head of inspection and supervisors, referred to in its report received in November 2010.***

*Articles 3(1)(a) and (2), and 5(a) of the Convention. Additional duties assigned to controllers. Action against undeclared work.* The Committee notes national Act No. 2006-20 of 28 November 2006 concerning the obligation of a declaration prior to recruitment and the action against undeclared work. With reference to its previous comments on this issue, the Committee notes that, according to the annual inspection report for 2009, the work of the labour inspectorate focused in priority on action against undeclared work and on measures to prevent falls from height in the construction and public works sector.

According to the information in the Government's report received in 2008, since few cases are recorded of employment of foreigners without official papers owing to the geographical situation of the country, undeclared work is primarily the result of non-declaration of employees to the Social Security Fund (CPS), and controls made in this context generally lead to the regularization of the situation and not to dismissal of the employee. In the event of termination of the employment relationship under Act No. 2006-20 of 28 November 2006, workers employed in breach of the regulations are entitled to lump-sum compensation equivalent to six months' wages, unless the application of other legal provisions would lead to a more favourable solution in accordance with national Act No. 2006-20 of 28 November 2006. However, the Government indicated in its report of 2008 that nothing has been undertaken to facilitate the implementation of this right. In the same report, the Government indicated that action against undeclared work was henceforth the subject of a meeting within an informal committee under the auspices of the Public Prosecutor and the labour inspectorate, with the participation of the monitoring service of the CPS, the gendarmerie, the police and the border police, and that common action was organized on a quarterly basis.

***The Committee requests the Government to indicate the number of infringements reported in the context of action against undeclared work relating to conditions of work and the protection of workers, the legal provisions concerned, the penalties imposed and the corrective measures taken (for example, to guarantee the payment of the minimum wage and social benefits for work actually done). The Government is also requested to state in what manner the labour inspectorate ensures, in accordance with section L.341-6-1 of the Labour Code, and in the relevant provisions of the abovementioned Act No. 2006-20, that employers' obligations are discharged with regard to work done by foreign workers who are illegally resident, where such workers are facing expulsion or removal from the country and to specify the number of regularizations for undeclared workers to the CPS.***

***The Committee requests the Government to also describe the procedure for the collaboration between the labour inspectorate, on the one hand, and the gendarmerie, police and border police, on the other, in the context of the informal committee which is responsible for action against undeclared work and to supply details of the joint action undertaken by this committee and the impact thereof.***

*Conciliation duties.* With regard to its previous comments concerning the discharge of conciliation duties by the labour inspectorate in addition to their primary duties, the Committee notes with *interest* that, even though the regulations in force assign to controllers the task of taking action to resolve labour disputes, since 2006 all individual disputes has been handled by labour service staff and that action in cases of collective disputes has come within the competence of the labour director. ***The Committee requests the Government to indicate any measures taken or contemplated to ensure that the regulations in force are amended so that controllers are discharged of the duty of intervening in the resolution of labour disputes. The Government is also requested to continue to keep the ILO informed of the impact of relieving labour inspectors from conciliation duties on the exercise of their primary duties (inspection activities relating to conditions of work) and the protection of workers while engaged in their work.***

*Article 5. Effective cooperation between the labour inspection services and other government services and collaboration with social partners in the area of occupational safety and health.* The Committee notes that cooperation is continuing between the labour inspection service and the Social Security Fund (CPS), especially its risk prevention

service. In particular, it notes with *interest* that: (i) a guide for evaluating the main occupational hazards has been produced and disseminated; (ii) nine enterprises have been supported and monitored in this process; (iii) an information pamphlet on noise has been produced and disseminated; (iv) cooperation between occupational physicians and doctors in public health is planned with a view to improved prevention in the remote islands; and (v) the setting up of a hazard database continued in 2009 and related projects were expected to be completed in 2010. The Committee also notes that the inspection service is participating in training for trade unionists who are members of occupational safety and health committees and for new enterprise chiefs, and that a labour inspection council with an advisory function, the structure and operation of which are due to be fixed by the Council of Ministers, has been established under the auspices of the labour minister. ***The Committee requests the Government to keep the Office informed of all progress made through cooperation inter-institutional and collaboration with employers' and workers' organizations.***

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

## Gabon

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)***

*Articles 20 and 21 of the Convention and Part IV of the report form.* Pursuant to its previous comments, the Committee takes note of the annual activities report of the General Inspectorate for Hygiene and Occupational Medicine for 2010, and the activities report of the General Directorate for Labour, Manpower and Employment for 2010, which were attached to the Government's report.

The Committee notes with *interest* that, following the Government's request, the ILO has conducted a diagnostic study of Gabon's labour administration and inspection systems, and that recommendations have been made regarding the organization and strengthening of labour inspection. ***The Committee would be grateful if the Government would indicate all the measures adopted or envisaged in order to implement the recommendations made in the context of the ILO's diagnostic study, as well as any practical difficulties that may have been encountered.***

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

## Germany

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)***

*Articles 7 and 10 of the Convention. Shared training network between six federated states (Länder).* The Committee notes with *interest* that in order to retain professional competences in a situation where the number of labour inspectors is decreasing due to budgetary constraints, six *Länder* (Mecklenburg-Pomerania, Saxony, Saxony-Anhalt, Brandenburg, Thuringia and Berlin) have joined forces to create a shared training network designed to provide uniform training to labour inspectors on the basis of a harmonized curriculum. ***The Committee requests the Government to provide detailed information on the training provided to labour inspectors (content, participation, frequency, duration) in the framework of the shared network and on the impact of such training on inspection activities in the individual Länder.***

## Ghana

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)***

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

*Article 12(1)(a) of the Convention. Right of labour inspectors to enter freely workplaces liable to inspection.* In its previous comments, the Committee pointed out that section 124(1)(a) of the 2003 Labour Act, which limits the timing of workplace inspections to "working hours", is not compatible with *Article 12(1)(a)* of the Convention. It notes the Government's indication that the above provision of the Labour Act is sufficient to uncover clandestine moves by employers. Referring to its General Survey of 2006 on labour inspection (paragraphs 268–271), the Committee wishes to recall that the conditions for the exercise of the right of free entry to workplaces laid down by the Convention are intended to allow inspectors to carry out inspections, where necessary and possible, to enforce the application of legal provisions relating to conditions of work. The protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It should be for the inspector to decide whether a visit is reasonable and inspections should only be carried out at night or outside working hours where this is warranted. ***The Committee once again requests the Government to take the necessary measures to remove the restriction on the right of labour inspectors to enter freely workplaces from section 124(1)(a) of the Labour Act of 2003 and to keep the ILO informed.***

*Article 3(1) and Articles 17 and 18. Inspection duties. Enforcement of legal provisions relating to the conditions of work and the protection of workers. Legal proceedings and provision of adequate penalties for violation of legislation.* In its previous report, the Government indicated that it wishes to encourage compliance with legal provisions through the promotion of a social partnership attentive to the mutual interests of employers and workers, rather than through legal proceedings against employers who have committed a violation. The Committee requested the Government to provide practical information on any mechanisms established to that effect and to specify the role of labour inspectors in this regard. It notes that, in its report of 2008,

the Government only reaffirms that it wishes to promote partnership and compromise between employers and workers. The report provides no information on the findings of the labour inspectors during the visits that they conducted in workplaces throughout the country in 2007, nor on any actions undertaken following such inspections. The Committee would like to draw the Government's attention to paragraph 280 of its General Survey, in which it emphasizes that, even if the credibility of any inspectorate depends to a large extent on its ability to advise employers and workers on the most effective means of complying with the legal provisions within its remit, it also depends on the existence and implementation of a sufficiently dissuasive enforcement mechanism, the functions of enforcement and advice being inseparable in practice.

*The Committee requests the Government to take appropriate measures to ensure that legal provisions relating to the conditions of work and the protection of workers are effectively enforced through legal proceedings where necessary. It further requests the Government to provide information on the violations reported by labour inspectors and the fines imposed to employers in accordance with section 38 of the Labour Regulations adopted in 2007, during the reporting period, and to specify the value of a "penalty unit" and the manner in which such value may be revised to remain dissuasive in the event of monetary inflation. The Government is also requested to indicate the measures taken to ensure that such penalties were effectively enforced.*

*Articles 19, 20 and 21. Periodical reports and annual report on the work of the labour inspection services.* While noting the information on the number of inspections carried out in 2007 and during the first quarter of 2008, the Committee emphasizes that, by virtue of the ratification of the Convention, the Government undertook to ensure that practical measures would be taken to centralize information required under *Article 21*, with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. *The Committee requests the Government take measures rapidly to establish the conditions in which the central labour inspection authority can collect data on the activities of the services under its control with a view to publish an annual report on the work of the inspection system containing information on the following subjects:*

- (a) relevant laws and regulations;*
- (b) staff of the labour inspection services (including the number, geographical location and distribution of inspectors by gender and by category);*
- (c) statistics of workplaces liable to inspection (number and geographical distribution) and the number of workers employed therein (men, women, young persons);*
- (d) statistics of inspection visits (unannounced, scheduled and follow-up visits, visits following a complaint, etc.);*
- (e) statistics of violations and penalties imposed (number of violations reported, legal provisions concerned, types of sanctions imposed, etc.);*
- (f) statistics of industrial accidents (number of fatal and non-fatal accidents); and*
- (g) statistics of cases of occupational disease (number and causes by industry and occupation).*

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

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

## Greece

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

The Committee takes note of the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011 as well as the Government's reply dated 16 May 2011. It also takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE concerning the application of 12 Conventions ratified by Greece including the *Labour Inspection Convention, 1947 (No. 81)*. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the mission in its understanding of the situation (*Provisional Record No. 18, Part II, pages 68–72*).

The Committee takes note of the report of the high-level mission which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Committee on the Application of Standards.

*Article 3(1) and (2) of the Convention. Additional functions entrusted to the labour inspectorate.* The Committee takes note of the detailed information provided by the Government to the high-level mission on the reform of the labour inspectorate (SEPE) which has taken place in the framework of the structural reforms introduced since May 2010, notably through the adoption of Act No. 3996 of 5 August 2011. It notes from the report of the high-level mission the Government's indication that in order to avoid any abuse of workers' rights, the role of the SEPE is the necessary complement to the introduction of a wide range of measures to render the labour market more flexible and competitive.

The Committee notes that according to the comments made by the GSEE in July 2010, the measures implemented in the framework of the structural reforms have led to a significant increase in precarious work without any parallel measure to strengthen the SEPE so as to ensure effective protection for workers. The GSEE refers to statistical data released by the SEPE, which show a marked trend towards individualized contracts and the unilateral modification by the employer of working terms under the threat of dismissals, as well as a trend for the abolition of full-time work and the imposition of

reduced term rotation work. The GSEE also refers to the absence of sufficient numbers of qualified inspectors and the required infrastructure (e.g. office and transport facilities, adequate means of communication and record-keeping) and the consequent need for sufficient budgetary allocations to ensure the provision of effective inspection services.

The Committee notes from the high-level mission report that even though the mechanism to support the Greek economy provides for the strengthening of the SEPE and funds have been provided for that purpose, the reform of the labour inspection system appears to be primarily focused on detecting undeclared work (social security contribution collection) and migrant workers. It notes in this regard that in the framework of the reform introduced by Act No. 3996, the SEPE has been entrusted with additional functions some of which, the Committee understands, were previously carried out by social security inspectors, such as the control of undeclared work. The SEPE has also been entrusted with the control of the legality of the employment of foreign workers from third countries, as well as enhanced conciliation functions.

1. *Control of undeclared work.* The Committee notes that the high-level mission took note of a wide prevalence of undeclared work which raises questions as to the governance of the entire labour market. The high-level mission expressed the view that the SEPE's indication that undeclared work represented 29 per cent in targeted sectors (while studies from research institutes refer to 60 per cent) is indeed alarming and that this issue clearly needs to be addressed. It considered that priority should be placed on issues like ensuring wage payment and more generally the protection of wages, as well as non-discrimination and other labour rights especially in the informal economy.

The high-level mission identified in its report a potential problem of non-payment or delayed payment of wages in full, as well as a widespread tendency in the informal economy to replace terms of employment set through collective agreements (especially at sector level) by individual contracts (largely oral) providing for lower pay, even lower than the floor set by the national general collective agreement. It noted furthermore that women, especially working mothers after their return from maternity leave, were identified as the ones most often offered flexible forms of employment, notably part-time or rotation employment – which has been promoted by the structural reforms – with reduced wages and that the disproportionate impact of the crisis on women was reportedly exacerbated by the stance of the SEPE which seemed reluctant or unable to play a role in gender discrimination cases, e.g. by imposing fines. The Committee refers in this regard to its comments under the *Equal Remuneration Convention, 1951 (No. 100)*, the *Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*, and the *Workers with Family Responsibilities Convention, 1981 (No. 156)*.

The Committee notes that according to article 2(2)(a)(iii) of Act No. 3996, the functions of the SEPE include the supervision of the implementation of social security legislation concerning workers' social security coverage, undeclared work and illegal employment. The Committee notes with *interest* among the recent innovations introduced by Acts Nos 3996/2011 and 3863/2010 in this framework the labour stamp, to ensure that social security contributions are paid for occasional work, and the obligation to pay wages electronically via bank accounts to ensure the automatic deduction of social security contributions. The Committee considers that these measures can be an effective guarantee of the payment of wages and social security contributions and can be of great help in reducing the incidence of undeclared work and illegal employment. It notes, however, from the report of the high-level mission that these measures had not yet produced effects at the time of the mission. There was need for awareness raising on the labour stamp to promote its use, while the Ministerial Decision for the entry into force of the electronic payment of wages had not yet been issued.

*The Committee requests the Government to provide in its next report detailed information on the activities carried out by the SEPE in the framework of the implementation of Act No. 3996/2011 and their results (number of workplaces inspected, violations found, sanctions imposed) as well as the impact of these activities on reducing undeclared work.*

*Noting that article 24 of Act No. 3996/2011 introduces incentives (80 per cent reduction of fines imposed) to persuade employers to discharge their obligations for the payment of outstanding wages and benefits due to workers in a timely manner, the Committee requests the Government to indicate the impact of this provision on the level of compliance with the relevant legal provisions in general, as well as on the regularization of undeclared workers. The Committee also requests the Government to take the necessary awareness-raising measures to promote the use of the labour stamp, as well as the necessary legal and practical steps for the implementation of the electronic system for the payment of wages, and to keep the Office informed in this regard.*

Furthermore, the Committee notes that according to article 2(2)(g) of Act No. 3996, the SEPE is entrusted with the examination of the implementation of the principle of equal opportunity and treatment for men and women at work. The Committee notes in this regard from the report of the high-level mission that the Ombudsperson has made suggestions on ways to improve the cooperation between this authority and the SEPE in relation to gender discrimination cases. First, according to the Ombudsperson, even though Act No. 3488/2006 establishes an institutionalized cooperation scheme between the two bodies on gender discrimination matters, the practical aspects of this cooperation have not been standardized through circulars or instructions, which leads to confusion. There is therefore a need to clarify the relatively new competencies and roles of the SEPE and the Ombudsperson respectively. Second, according to the Ombudsperson, labour inspectors need training on gender discrimination issues notably in the form of seminars comprising a theoretical and a practical part, so as to become more aware of relatively new concepts concerning discrimination issues. *Noting that according to the high-level mission report, priority attention should be placed on non-discrimination in the framework of the activities of the SEPE, the Committee requests the Government to indicate any measures taken or envisaged in*

*order to strengthen the cooperation with the Ombudsperson in the area of non-discrimination, such as through the issuance of circulars delineating roles and responsibilities and training made available to labour inspectors.*

2. *Control of legality of employment of migrant workers.* The Committee notes that, according to article 2(2)(a)(iv) of Act No. 3996, the SEPE is entrusted with the control of the legality of the employment of third country nationals. Article 2(2)(b) of the Act authorizes the SEPE to investigate, discover, identify and prosecute, in parallel, and independently from other authorities and organizations, those who violate the provisions which are supervised by the SEPE.

The Committee would like to recall that, as indicated in paragraphs 76–78 of its 2006 General Survey on labour inspection with regard to the increasing tendency to link inspections to clandestine work and irregular migration, the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Efforts to control the use of migrant workers in an irregular situation require the mobilization of considerable resources in terms of staff, time and material resources, which inspectorates can only provide to the detriment of their primary duties. Moreover, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers if it is to be compatible with the objective of labour inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers and not immigration law. ***The Committee would be grateful if the Government would indicate the manner in which effect is given to article 2(2)(b) of Act No. 3996, which empowers the SEPE to investigate and prosecute those who violate the provisions which are enforceable by the SEPE including the provisions concerning the legality of employment of migrant workers.***

***The Committee also requests the Government to take the necessary measures to ensure that the functions of enforcing immigration law (legality of employment of third-country nationals) are dissociated from those of controlling the observance of workers' rights and are not entrusted to labour inspectors and to keep the Office informed of progress made in this regard.***

***Furthermore, the Committee requests the Government to indicate the measures taken by the SEPE to ensure the discharge by the employers of their obligations with regard to the statutory rights of foreign workers in an irregular situation, such as the payment of outstanding wages and other benefits due for the work accomplished during the employment relationship, particularly in cases where these workers are liable to expulsion.***

3. *Conciliation functions.* The Committee notes that according to article 2(12) of Act No. 3996, the SEPE is entrusted with providing advice, if requested by employers and workers, in the conduct of collective bargaining and in the resolution of individual and collective disputes. In addition, the Committee notes that article 3(1), (4), (5) and (6) of Act No. 3996/2011 gives to senior labour inspectors in the local offices of the SEPE throughout the country conciliation functions in relation to collective and individual labour disputes, and provides that the central authority exercises similar functions in case of national level labour disputes which may disturb industrial peace and deregulate labour relations and have a serious impact on the national economy. The Committee notes in this regard that, by virtue of Act No. 3899/2010, the scope of unilateral recourse to arbitration of collective disputes has been limited to the issue of wages which may probably lead to an increased need for conciliation of collective labour disputes on non-wage matters.

The Committee also notes that, according to article 3(7) and (9) of Act No. 3996/2011, the conciliator should aim on the one hand, at ensuring the strict implementation of the applicable legislation and, on the other hand, at bringing the views of the parties closer together, by proposing solutions for reaching an agreement which the parties can accept, so as to ensure a quick resolution of disputes and industrial peace in the best interest of employers and workers.

The Committee would like to underline that the two functions of inspection and conciliation are often incompatible in the sense of *Article 3(2)* of the Convention, according to which any further duties which are entrusted to labour inspectors should not be such as to interfere with the effective discharge of their primary duties (enforcement and advice) or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The Committee also draws the Government's attention to the guidance provided in Paragraph 8 of the *Labour Inspection Recommendation, 1947 (No. 81)*, according to which "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes". The Committee emphasizes in paragraphs 72–74 of its General Survey of 2006 on labour inspection the importance of avoiding overburdening inspectorates with tasks, which by their nature may be understood as incompatible with their primary function of enforcing legal provisions. It recalls that the time and energy that inspectors spend on seeking solutions to collective labour disputes is often at the expense of their primary duties and that carrying out supervisory functions more consistently would lead to better enforcement of the legislation and hence a lower incidence of labour disputes. ***The Committee therefore requests the Government to take the necessary measures to ensure that the functions of conciliation are separated from those of inspection. It would be grateful if the Government would provide information on any progress made to this end and in the meantime, to indicate the categories and number of labour inspectors who carry out the advisory and enforcement functions of the labour inspection provided for in Article 3(1)(a) and (b) of the Convention compared to those who carry out conciliation functions.***

4. *Potential ILO technical assistance.* The Committee would like to emphasize the crucial role of the labour inspection function in times of crisis in ensuring that workers' rights are respected so that the crisis does not serve as a

pretext for lowering labour standards and the need to strengthen the resources and means of action of the labour inspection system if it is to achieve the economic and social goal assigned to this public function.

The Committee notes that the need to strengthen the governance of the labour inspection system, build capacities and ensure probity of the labour inspectors emerged in discussions between the high-level mission and its interlocutors at the national and international levels and that the high-level mission identifies these areas as potential targets for ILO technical assistance. *Noting with interest the suggestion of the high-level mission for an objective needs assessment of the labour inspectorate to be followed by ILO support in mutually agreed areas, as well as the indication of the European Commission to the high-level mission that there is room for the assistance of the ILO in the areas within its mandate, including labour inspection, the Committee invites the Government to avail itself of ILO technical assistance in the area of labour inspection and to provide information to the Office on the steps taken in this regard.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1985)**

The Committee takes note of the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in communications dated 29 July 2010 and 28 July 2011, as well as the Government's reply dated 16 May 2011. It also takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE concerning the application of 12 Conventions ratified by Greece, including the present one. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the mission in its understanding of the situation (*Provisional Record* No. 18, Part II, pages 68–72).

The Committee takes note of the report of the high-level mission which visited the country from 19 to 23 September 2011 and held further meetings with the European Commission and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Committee on the Application of Standards.

*Article 3 of the Convention. Matters regulated through direct negotiations between employers' and workers' organizations.* The Committee notes that the Government replies to the comments made by the GSEE in relation to the scope of *Article 3* of the Convention according to which particular activities in the field of national labour policy may be regulated by having recourse to direct negotiations between employers' and workers' organizations. The Committee refers in this regard to its comments under Convention No. 98.

*Articles 4 and 9. Coordination and control within the system of labour administration.* The Committee notes that the high-level mission report raises questions as to the coordination of policies pursued in parallel in the framework of the structural reforms in the areas, for example, of collective bargaining, wages, social security and employment policies. *The Committee requests the Government to indicate in detail the steps taken to ensure the effective coordination of the functions and responsibilities of the system of labour administration in the context of the current reforms and the control of the activities carried out by any parastatal agencies as well as regional or local agencies to which particular labour administration activities may have been delegated.*

*Article 10. Status, material means and financial resources of the labour administration staff.* The Committee notes that, according to the high-level mission report, retrenchments and wage reductions have affected the public sector in the current context. It also notes that a particular area of concern raised by the European Commission was the inefficiency of the labour administration and the lack of capacity to run operational programmes under the European Social Fund in a results-based manner, taking into account that 50 per cent if these funds were devoted to human resource development and another major portion to education and life-long learning. *While being fully aware of the difficulties the country is currently facing, the Committee would be grateful if the Government would keep the Office informed of the impact of the public sector reform on the status, material means and resources of the staff of the labour administration with regard to the requirements established in Article 10 of the Convention.*

*The Committee also requests the Government to indicate the steps taken or envisaged to elaborate and run operational programmes under the European Social Fund in a results-based manner. It reminds the Government that it may avail itself of ILO technical assistance.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Guatemala**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

The Committee takes note of the comments made by the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) in a communication of 30 August 2010, transmitted to the Government on 15 September 2010.

*Articles 3, 10 and 16 of the Convention. Labour inspection system.* The Committee takes note of the report of the high-level mission which visited Guatemala in May 2011 with regard to the application of the Freedom of Association and

Protection of the Right to Organise Convention, 1948 (No. 87). In particular, it takes note with *interest* of the information provided by the General Labour Inspection according to which a special unit of the labour inspection has been set up in order to address issues related to the *maquila* sector. Inspections are taking place and the number of complaints has fallen even though there are still complaints in this sector. The economic benefits of enterprises (tax exoneration) can be revoked if violations of labour rights are observed. This has led to an improved supervision. Twenty-two investigations were carried out, benefits were withdrawn from four enterprises and 18 took measures to comply with labour laws following the indication by the Ministry of the Economy that they would no longer qualify for special benefits. ***The Committee requests the Government to continue to provide detailed information on the activities of the special unit of the Labour Inspectorate on the maquila sector and its results (number of visits, violations found with indications of the legal provisions concerned and action taken).***

The Committee notes that, according to the MSICG, the inspectors do not perform their tasks adequately and their actions are not persuasive, while the data show that the budget of the Ministry of Labour and Social Welfare (MTPS) with regard to the Labour Inspectorate has been significantly reduced and that between 2009 and 2010 the number of inspectors employed fell from 197 to 185. The MSICG also denounces the fact that the duty of supervision of the labour inspectors has been replaced by the duty of conciliation and that it is common for inspectors to impose conciliation, a practice which has fostered impunity and weakened the effectiveness of the legislation, the application of which pertains to labour inspectors. According to the MSICG, the establishment of conciliation as a priority of the inspectorate, rather than supervision and verification of the facts reported, allows employers the necessary time to hide or plant evidence and may lead to the workers being deprived of the evidence necessary to lodge claims with the labour courts given that, in most cases, such evidence is to be found in documents, registers and situations that can only be verified by a labour inspector and to which the individual affected by the violation has no access. The MSICG also alleges that the inspectors display bias towards employers when performing their duties.

The Committee notes Circular No. 02-2011 issued by the General Labour Inspectorate and addressed to those inspectors performing conciliation duties, in which it is stated that once the conciliation mechanisms have been exhausted, the labour inspector has to fulfil his/her inspection functions. The Committee highlights that under section 281(e) of the Labour Code, labour inspectors must intervene with regard to any labour-related difficulties or disputes arising between employers and workers, or purely between employers or purely between workers, in order to prevent such difficulties or disputes from developing or to bring about an out-of-court settlement should they arise. According to the information provided by the Government, in 2010 the labour inspectors intervened in a total of 942 conciliation procedures relating to enterprises covered by the Promotion and Development of Export and Maquila Activities Act, while over the same period they carried out a total of 412 inspections targeting the same type of enterprise. Apparently, of these 412 visits, only 81 were carried out on the initiative of the General Labour Inspectorate, with the remaining 331 being performed as the result of denunciations.

The Committee refers the Government to paragraph 69 of its 2006 General Survey concerning labour inspection and yet again states that the primary duties of labour inspectors are complex and require time, resources, training and considerable freedom of action and movement, and that any further duties which may be entrusted to labour inspectors should not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. Noting moreover that the functions of dispute resolution are often incompatible with the function of controlling the strict application of the law, the Committee calls the Government's attention also to Paragraph 8 of the *Labour Inspection Recommendation, 1947 (No. 81)*, according to which the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes.

***The Committee would be grateful if the Government would indicate the actual number of active labour inspectors and their geographical distribution, specifying how many of them perform duties within the scope of conciliation and the percentage of their working time that is devoted to this duty. The Committee would also be grateful if the Government would specify the criteria on the basis of which inspection visits are programmed.***

***The Committee requests the Government to indicate the measures adopted or envisaged both in law and in practice with the aim of dissociating the duty of supervision from that of conciliation and to relieve labour inspectors of duties other than those provided for in Article 3(1) of the Convention which could prejudice the authority and impartiality, including those relating to conciliation.***

Articles 5(a), 12(1)(a) and 18. *Free access of labour inspectors to workplaces liable to inspection, cooperation between the inspection services and the police, and penalties for obstructing labour inspectors in the performance of their duties.* The Committee also notes that according to Ministerial Agreement No. 106-2011 issued by the MTPS in application of section 281(e) of the Labour Code, inspectors can request the assistance of the police should they be refused entry to workplaces, or should their lives and safety be in danger in certain circumstances such as: (i) when cases of under-age labour in circumstances considered to be the worst forms of child labour are denounced; (ii) in cases where the closure or possible closure of enterprises must be verified, in particular, those instigated by enterprises which enjoy the benefits provided for by the Promotion and Development of Export and Maquila Activities Act; (iii) when situations arise that, in the opinion of the General Inspector of Labour, the General Sub-Inspectors of Labour or the departmental or municipal delegates of the Ministry, constitute emergencies; and (vi) more generally, when the circumstances require it.

The Committee notes, however, that the final paragraph of section 4 of the aforementioned Agreement states that should the agents of the National Civil Police Force refuse to accompany the inspector, the General Inspector of Labour must forward a certified true copy of the report referring to this event to the Ministry of the Interior within three days of its receipt, for the purposes of the relevant legal proceedings. **The Committee requests the Government to inform it of any measures adopted or envisaged with the aim of raising the awareness of the police concerning the importance of collaboration with the labour inspection services in the cases referred to with a view to guaranteeing access for labour inspectors to workplaces liable to inspection and to ensuring the protection of inspectors when their lives or safety are in danger within the framework of the exercise of their duties. The Committee would also be grateful if the Government would: (i) provide information on the impact of the cooperation of the police concerning compliance with labour legislation; (ii) transmit copies of inspection reports which refer to collaboration between police officers and labour inspectors in the exercise of their duties; (iii) specify the number of judgments handed down for obstructing labour inspectors in the performance of their duties and send copies of examples of such judgments.**

*Articles 5(a), 20 and 21. Inter-institutional cooperation for the exchange of information, the register of enterprises and the annual inspection report. General observations 2009 and 2010.* The Committee notes with **interest** that the Government signed the Inter-Institutional Framework Agreement on the exchange of information between the Ministry of the Economy and the Ministry of Labour and Social Welfare in the framework of Decree No. 29-89, the Promotion and Development of Export and Maquila Activities Act, allowing the exchange of information and thus facilitating supervision by the General Labour Inspectorate. The Committee also notes with **interest** that, according to the Government, thanks to the technical cooperation project “Cumple y Gana”, a registration system (SIL) was implemented at the General Labour Inspectorate involving the establishment as of 2010 of a register of commercial enterprises which enjoy the benefits granted by the Promotion and Development of Export and Maquila Activities Act which contains all the information required under *Articles 20 and 21* of the present Convention. The Committee notes however that, although the Government has provided documents concerning the register of the enterprises covered by Decree No. 29-89, it has not sent the annual report on the work of the inspection services, despite the undertaking it made to this effect in its 2010 report. **The Committee requests the Government to provide information on the impact of the creation of the register of enterprises on the efforts made by the central authority to fulfil its obligations under Articles 20 and 21 with a view to publishing and transmitting to the Office an annual report on the work of the inspection services under its control within the time period envisaged by Article 20 and containing information on each and every one of the points listed under Article 21.** The Committee draws the attention of the Government to the useful guidelines set out in the *Labour Inspection Recommendation, 1947 (No. 81)*, with regard to the details and presentation of the information that must be contained in the annual report on inspection. **Referring to its 2009 comments, the Committee requests the Government to send information on developments concerning the agreement on the exchange of data between the MTPS, the tax authorities and the Chamber of Commerce.**

*Articles 6 and 15(a). Conditions of service of labour inspectors, and professional code of ethics.* With regard to its 2009 comments, the Committee notes with **interest** that the MTPS requested the ILO to provide technical support with the aim of drawing up draft regulations both for the MTPS and the General Labour Inspectorate and a study on the reclassification of posts and salaries (with the intervention of the Civil Service Office). **The Committee would be grateful if the Government would provide information on developments concerning the elaboration of the draft regulations as well as the results and eventual recommendations made in the study on the reclassification of posts and salaries of the labour inspectorate.**

Furthermore, the Committee notes with **interest** Ministerial Agreement No. 118-2011 of the MTPS which contains the Code of Conduct of the General Labour Inspectorate. The Committee observes that this Code contains fundamental principles and duties which must be observed by labour inspectors in the exercise of their functions and the commitment made by the General Labour Inspectorate to: (i) establish employment conditions which recognize the value of its staff and encourage appropriate behaviour and an honest environment; (ii) organize and facilitate opportunities for vocational development and to improve the competences of its staff; (iii) foster a culture based on professional and ethical behaviour; and (iv) ensure that the actions of the inspectors are carried out on the basis of the ethical principles of honesty, neutrality, objectivity and fairness. The Committee also notes that this Code envisages the establishment or appointment by the MTPS of an administrative unit responsible for receiving and processing denunciations concerning failure to comply with the principles and values contained in the Code which must be decided upon by the General Labour Inspectorate. **The Committee requests the Government to provide information on any measures adopted with the aim of implementing the undertakings referred to in the Code of Conduct relating to the specific conditions of service of labour inspectors. The Committee also requests the Government to specify how the independence of labour inspectors is guaranteed in the framework of the said Code.**

*Article 7. Training of labour inspectors.* With reference to its comments under Convention No. 87, the Committee underlines that the technical assistance of the ILO is necessary, among other things, for the training of labour inspectors in the area of freedom of association and hopes that this assistance will be provided in the near future. **The Committee requests the Government to keep the ILO informed of all progress made in this regard. The Committee would also be grateful if the Government would specify whether the training programmes for labour inspectors have**

*been implemented, including the specific programme on occupational safety and health, which it had announced would be agreed on with the technical institutes and universities.*

*Articles 10, 11 and 16. Human resources, financial and material means of the labour inspectorate and coverage of supervision needs.* In its 2009 comments the Committee took note of the Government's announcement of a thorough review of the material needs of the inspectorate carried out to provide the competent authorities with objective information to be taken into account in determining an appropriate budget for its effective operation. ***The Committee requests the Government to send information on the results of the abovementioned review concerning the material needs of the labour inspectorate, as well as on the measures adopted or envisaged from a legal and practical point of view to meet those needs. Moreover, the Committee would be grateful if the Government would specify the impact of these measures on the strengthening of human resources (with regard to inspection staff numbers) and the means of action (mainly means of transport and office equipment).***

*Articles 17 and 18. Adequate penalties and their effective application.* In its 2009 comments the Committee noted that the action plan drawn up by the Government and the ILO included the recommendation, arising from the analysis of the labour inspection, to envisage the possibility of defining an administrative procedure allowing the General Labour Inspectorate to impose penalties subject to a right of appeal for employers and to supplement the legislation with a legal provision defining the specific offence of obstruction of labour inspectors in the performance of their duties and establishing the corresponding fine. ***The Committee requests the Government to send information on the measures adopted or envisaged so as to implement this recommendation of the abovementioned action plan and to supplement the legislation in the manner described and on any difficulties encountered concerning its implementation.***

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)**

The Committee notes the comments made by the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG), sent to the Government by the Office on 15 September 2010. The Committee asks the Government to refer to its comments under the Labour Inspection Convention, 1947 (No. 81), in so far as they also concern the application of this Convention. The MSICG asserts that the Ministry of Labour and Social Welfare has refused to supervise compliance with the legislation in more than 90 plantations about which there have been complaints, or to establish coordination with the organization for that purpose. The MSICG also alleges that the Ministry has refused to carry out visits to verify the violations of freedom of association and other labour rights, such as payment of minimum wages, that the organization has itself reported since 2008 in connection with 71 plantations. The MSICG further alleges that the Ministry published the whereabouts of the offending workplaces and some of the issues which were to be checked. According to the MSICG, in most cases the inspectors did not visit the plantations, and when they did, they met only with the employers.

*Articles 3, 4, 6(1)(a) and (b), 9(3), 15 and 21, 27(d) and (e). Supervision of working and living conditions in agricultural undertakings, training of labour inspectors in agriculture, financial resources and transport facilities available to inspectors in agriculture.* The Committee notes the tables pertaining to the operational plans for ex officio inspection visits conducted in plantations located in various jurisdictions in the period 2009–11. It notes with *interest* that owing to the food crisis prevailing in some departments in Guatemala, the labour inspectorate devised a programme for support to the national food security policy, which consisted of operations to verify compliance with the law in agricultural and agro-export undertakings, the aim being to secure their compliance with the requirement to pay the minimum wage and other statutory benefits so that workers and their families are able to afford the basic food basket. It also notes a number of operational plans showing schedules of inspection visits for the agricultural sector which appear to pertain to the period 2008–10. ***The Committee would be grateful if the Government would provide general information on inspections carried out for the purposes of supervision and provision of technical information and advice in agricultural undertakings including banana plantations, and the results of these visits, including supervision of compliance with the legal provisions pertaining to freedom of association, the penalties imposed and their execution. The Committee also once again asks the Government to indicate whether labour inspectors have verified the evolution in working conditions in the agricultural undertakings covered by the collective labour agreements sent to the Office, which expired in 2008 and 2009.***

***The Committee requests the Government to provide information on the results of the operations conducted in support of the national food security policy, specifying the contraventions reported and the penalties imposed. Lastly, the Committee would be grateful if the Government would specify the criteria taken into account in scheduling regular inspection visits to agricultural undertakings and would indicate the frequency with which scheduled regular visits are carried out in one and the same undertaking, and the scope of such visits.***

With regard to its comments of 2009 on special training for inspectors in agriculture, the Committee notes the Government's statement that the purpose of the training activities is to provide inspectors with varied training as part of a diploma course, the training being provided with the cooperation and support of a foundation and other institutions. The Government also mentions a masters course in the administration of human resources and labour legislation, which ended in 2009 and which was organized thanks to an agreement concluded with the Universidad Galileo de Guatemala. The Committee notes that according to the table included in the Government's report, the one-day training courses organized

for labour inspectors between August 2009 and January 2010 covered the following topics, in particular: the basics of administration; work ethics; service to users, mercantile law and notarial law.

With regard to the financial and material resources available to inspectors in agriculture, the Committee observes that the General Labour Inspectorate has to apply to the Ministry's financial authorities for the resources, official vehicles and fuel needed for each inspection campaign.

The Committee stresses that the specific nature of work in the agricultural sector involves specific risks for the workers (for example, risks related to the handling and use of chemicals and agricultural machinery), and requires special skills that labour inspectors must be able to acquire or perfect through appropriate training (*Article 9(3)*), transport facilities that take account of the distance and remote location of agricultural undertakings, and adequate equipment for measurement and analysis (*Article 15*). **The Committee requests the Government to adopt the necessary measurements without delay to ensure that labour inspectors in agriculture receive initial training and further training suited to the duties they perform and which covers the human, environmental and technical aspects of their work, and requests it to report to the Office any progress made in this regard. It would also be grateful if the Government would: (i) describe the transport facilities assigned specifically to labour inspectors in agriculture (indicating their geographical distribution); (ii) explain the procedure for refunding to labour inspectors in agriculture the travel costs incurred in the performance of their duties and to provide a copy of the relevant claim form. The Committee again asks the Government to send any documents illustrating the manner in which inspection visits are carried out in agricultural undertakings (standard form, records of inspections, etc.).**

*Articles 6(1)(a), 12(1), 15 and 16(1)(c)(iii).* *Inter-institutional cooperation in the area of preventive control.* The Committee notes that the Ministry of Labour and Social Welfare and the Guatemalan Social Security Institute (IGSS) have signed an inter-institutional agreement for joint inspections. The agreement provides that the schedule of joint inspection visits shall be set giving priority to areas which, according to a preliminary study, show a higher incidence of problems in worker–employer relations, social welfare, occupational safety and health and compliance with labour provisions in general, with an emphasis on the payment of IGSS contributions. **Noting that approval from the Board of the IGSS was required in order to execute the agreement, the Committee requests the Government to indicate whether such approval was obtained. Furthermore, the Committee would be grateful if the Government would provide specific quantitative information on the joint inspection visits eventually held in this context, particularly in agricultural undertakings, indicating the number of undertakings concerned, the number of workers they employ, and the contraventions reported (indicating the legal provisions concerned).**

**Noting that the Government has not replied to the request the Committee made in 2009 regarding inspectors' participation in preventive controls, the Committee again asks the Government to send with its next report copies of the relevant legal provisions together with any other document relating to this matter, including statistics, and of the recommendations made by the IGSS, the measures ordered and the court proceedings initiated in this context.**

*Article 19(1).* *Notification to labour inspectors of occupational accidents and cases of occupational disease.* The Committee notes with **interest** that since 2010 the General Labour Inspectorate has had an electronic labour information system (SIL), in which all the particulars of employers are recorded. According to the Government, this is to serve as a base for compiling data, including notifications of occupational accidents and cases of occupational disease in agriculture, and is to be supplemented in accordance with instructions issued by the General Directorate of Social Welfare, with technical advice from the ILO. **The Committee requests the Government to provide information on all progress made in setting up the register of occupational accidents and cases of occupational disease and in making it available to labour inspectors in the various regions of the country so that they may use it as a basis in performing their preventive duties.**

*Articles 26 and 27.* *Annual report on the work of the labour inspection services in agriculture.* The Committee notes that the annual labour inspection report has not been sent. **It requests the Government to provide information on the impact of the SIL and the register of enterprises on the efforts made by the central authority to comply with its obligation under Articles 26 and 27 to publish, as a separate report or as part of its general annual report, and to communicate to the Office, an annual report on the work of the labour inspection services in agriculture, within the time limit prescribed under Article 26, and which contains information on each and every one of the items listed at Article 27.** The Committee draws the Government's attention to the useful guidance contained in the *Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, as to the amount of detail and the presentation of the information to be included in the annual inspection report.

## Guinea

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)**

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

*Resources of the labour inspectorate.* The Committee notes with **concern** that the information provided by the Government in its report for the period ending June 2005 reveals that the labour inspectorate suffers from a persistent shortage of resources. It notes, in particular, that retired labour inspectors are no longer being replaced and that the inspection services as a whole suffer from a lack of computer equipment and transport facilities. It notes, moreover, that labour inspectors have not

received any training since 2000. *The Committee hopes that the Government will soon be in a position to furnish the labour inspectorate with the resources it needs to operate effectively, in particular in order to ensure that the number of labour inspectors is sufficient (Article 10 of the Convention), that they are furnished with the material means and transport facilities necessary for the performance of their duties (Article 11) and that they receive adequate training for the performance of their duties (Article 7(3)). The Government is requested to transmit information on any progress made in this regard in its next report.*

*Publication of an annual report.* The Committee notes that no annual inspection report has been transmitted since that covering the period of 15 October 1994 to 15 October 1995. *Referring to its previous requests, it once again requests the Government to take any appropriate measures with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the International Labour Office an annual report in accordance with Articles 20 and 21 of the Convention.*

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

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

## Guinea-Bissau

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)**

The Committee takes note of the comments on the application of the Convention by the National Union of Workers of Guinea (UNTG–CS), sent with the Government's report.

*Articles 3, 7, 10, 11 and 16 of the Convention. Comments by workers' organizations.* The UNTG–CS considers that it is necessary to build the financial, technical and material capacity of the inspection services so as to optimize the performance of their supervisory duties, and to reinforce the authority of the courts so that they in turn are in a position to ensure that the provisions are better applied.

The Government indicates that the General Labour Inspectorate (IGT) is having serious difficulty in carrying out its functions: (1) the numbers of inspectors are too low; (2) their facilities are cramped and are therefore an impediment to the confidentiality needed for the proper discharge of the inspectors' duties; and (3) only one vehicle is available, so inspectors lack the mobility they need to meet the demands of the labour market.

The Committee also notes that, according to the Government's report, the IGT consists of 16 inspectors and provides conciliation services for employers and workers for the settlement of disputes. The Committee is bound to stress in this connection that the main role of the labour inspectorate is to enforce the legal provisions on conditions of work and the protection of workers. It also points out that according to *Article 3(2)* of the Convention, if duties other than those set in this provision are entrusted to labour inspectors, they shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. Furthermore, the Committee draws the Government's attention to the obligations laid down in *Articles 7* and *11* of the Convention under which the competent authority shall make the necessary arrangements to furnish labour inspectors with adequate training for the performance of their duties, offices suitably equipped in accordance with the requirements of the service and accessible to all persons concerned, and the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist, and to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties. *The Committee therefore asks the Government to take measures to ensure that the primary duties of labour inspectors pertain to the supervisory functions set forth in Article 3(1) of the Convention; and to ensure that measures are promptly taken to provide labour inspectors with adequate financial and material resources to cover their needs, including training, so that they may discharge their functions effectively. The Committee would be grateful if the Government would inform the Office of any such measures to this end, including in the context of international cooperation, and to point out any difficulties encountered. The Committee reminds the Government that it may avail itself of the technical assistance of the Office should it so wish.*

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

## Guyana

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

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

*Obligation to report pursuant to article 22 of the ILO Constitution.* The Committee notes the communication by the Government, in reply to its previous request, of the circulars (notices) of 18 March 2005 designating the authorities which must be notified of occupational accidents and cases of occupational disease, in relation to *Article 19 of the Convention*. It also notes the communication of the annual report for 2004 from the Industrial Relations Department of the Ministry of Labour, containing brief information on labour inspection activities in the agricultural sector. However, the Committee notes that no detailed report on the application of the Convention has been sent for more than ten years. *The Committee therefore requests the Government*

*to supply, in its next report under article 22 of the ILO Constitution, all the information required by each part of the Convention report form.*

*Articles 26 and 27 of the Convention. Objectives and content of the annual report on the work of the labour inspectorate.* The Committee notes that, despite the high number of strikes in sugar plantations and agriculture in 2004 and their socio-economic impact (227 strikes resulting in the loss of 82,880 workdays and wages amounting to 129,061,000 dollars) the labour inspectorate only performed six inspections for the whole sector. The Committee considers that these figures testify both to poor conditions of work and lack of vigilance on the part of the inspection authorities responsible for monitoring conditions of work in agricultural undertakings. In any event, they call for the adoption of measures to curb the deterioration of the social climate, particularly by means of inspection activities and initiatives to provide employers and workers with information. However, the Committee notes that the Government has not supplied any information indicating that such measures have been taken or are envisaged. It also notes that the content of the report does not allow any assessment to be made of the level of coverage of the labour inspection system in relation to worker protection requirements in the sector, these needs not being defined, particularly with regard to occupational safety and health. The significant lack of statistics relating to inspection visits (*Article 27(d)*) and violations (*clause (e)*) and the total lack of information regarding the laws and regulations giving effect to the provisions of the Convention (*clause (a)*), the number of staff of the labour inspection service (*clause (b)*), the number of agricultural undertakings liable to inspection and the number of persons working therein (*clause (c)*), and also the lack of statistics with respect to penalties imposed (*clause (e)*), occupational accidents, including their causes (*clause (f)*) and occupational diseases, including their causes (*clause (g)*), make it impossible for the Committee to perform its role of monitoring the practical application of the Convention. The Committee reminds the Government that the requirement to publish an annual report on inspection activities and send it to the ILO serves an important purpose at both the national and international level. It is an essential tool for evaluating the operation of the labour inspection system and for making improvements to it, with the participation of employers and workers and their respective organizations (*Articles 26 and 27*). **The Committee invites the Government to refer to paragraphs 320–328 of its 2006 General Survey on labour inspection and requests it to take the necessary measures, if need be with technical assistance from the Office, to enable the central labour inspection authority to include all the information required by each of clauses (a) to (g) of Article 27 in the annual report on its work.**

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

## Honduras

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)**

The Committee notes the comments of the Honduran National Business Council (COHEP) 6 October 2010, as well as the Government's reply. It also notes the comments of the Honduran United Confederation of Workers (CUTH), dated 31 August and received by the Office on 19 September 2011 respectively, as well as the Government's reply dated 9 November 2011.

*Legislation.* In its comments of 2008, the Committee had noted that the draft revision of the Labour Code was being discussed by the Government and the social partners. **The Committee would be grateful if the Government would provide information on progress made in the aforementioned revision process.**

*Articles 3, 6, 7, 9, 10, 11 and 16 of the Convention. Functioning of the Labour inspection system.* The COHEP notes that: (i) the staff of the Labour Ministry is insufficient and does not have the qualifications necessary for the carrying out of labour inspection visits in workplaces; (ii) the budget allocated to the labour inspection is insufficient; (iii) the inspection services do not have access to vehicles or petty cash; (iv) according to the data provided by the General Labour Inspectorate, its activity has been focused on special inspections or on complaints received, which represent between 80 and 90 per cent of the inspections carried out in the last few years; (v) the inspection has salary limitations due to the low ranking of inspectors within the civil service and the fact that anyone who can read and write is hired; (vi) inspectors have a biased attitude towards the worker and the General Labour Inspectorate does not always respond to requests by employers to check worker wrongdoings; (vii) although section 629 of the Labour Code stipulates that labour inspectors will have the assistance of technical experts during inspections, in practice multi-purpose or multidisciplinary inspections are not carried out.

The Government states that: (i) the General Labour Inspection currently has 108 inspectors at the national level, 22 of which are lawyers, ten are interns and 76 have a title of secondary education; (ii) all the organs of the State, including the ministries, must comply with the provisions of the national budget and do not have the right to exceed the limits set in the budget; (iii) the central headquarters of the General Labour Inspectorate has sufficiently equipped units and four vehicles are distributed among the different regional units, even though there is no budgetary allocation to cover travel expenses for labour inspectors, and in the regional units in the rest of the country there is a lack of logistical support and budget to cover transportation costs; (iv) regular general inspections are carried out, at six-month intervals; (v) General Labour Inspection officials are governed by the Civil Service Act and its regulations and, although they do not have their own statute, they enjoy job security, as it is unusual for them to be dismissed when governments change; (vi) recruitment of labour inspectors is carried out once candidates have passed the examination provided for in the aforementioned legislation; (vii) the project aimed at strengthening public administration systems to ensure the inspection service is professional, unified and polyvalent, undertaken by the ILO with the financial cooperation of USDOL, conducted a study into posts and salaries and standardized the posts of inspectors I, II and III into two categories of inspectors and supervisors; (viii) the Ministry of Labour and Social Security has occupational doctors and safety and

health technical experts, who have responsibility for monitoring compliance with legal provisions in the area of occupational health and safety through visits to workplaces.

The Committee highlights that the issue of establishing the budget share allocation for the functioning of the labour inspection system, so as to take into account the clearly specified needs and requirements of the Convention, has been raised in its comments since 2006. ***The Committee requests the Government to provide information on the actions and measures taken, with ILO technical assistance, to carry out a needs assessment of the labour inspection services in the areas of human resources and training, and financial and material resources, and to ensure that the budget share allocation for labour inspection within the national budget is set in proportion to the priority that must be accorded to labour inspection. It also requests the Government once again to provide precise information on the arrangements for the use of the vehicles (four) allocated to the different regional units for labour inspectors while performing their professional duties.***

The Committee also points out that for a number of years it has been asking the Government to ensure that legal provisions are adopted rapidly to guarantee that the conditions of service of inspection staff are such as to ensure they have job security and that they are independent of any changes in government and of any improper external influences. ***The Committee requests the Government once again to provide information on the measures adopted or envisaged to complement national legislation with the inclusion of specific legal provisions to guarantee inspection staff job security and independence of any changes in government and of any improper external influences.***

*Articles 12(1)(a) and (2) and 18. Free access for labour inspectors to workplaces liable to inspection.* In its comments of 2006, the Committee had noted that, according to the Government, the Ministry of Labour and Social Security had taken firm measures to extend the right of health and safety inspectors to enter workplaces. In the Inspection Protocols and Labour Inspection Handbook of Procedures, attached to the Government's report form, the Committee finds, however, that the situation has failed to progress sufficiently in practice in that regard. It therefore draws the attention of the Government to the provisions of the Convention pursuant to which the labour inspectors who are provided with proper credentials must be empowered to enter freely and without previous notice, at any hour of day or night, any workplace liable to inspection (*Article 12(1)(a)*) and, on the occasion of an inspection visit, they must notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties (*Article 12(2)*). The Committee also highlights that pursuant to *Article 18*, national legislation must set forth appropriate penalties, which must be effectively applied in cases where labour inspectors are obstructed in the performance of their duties. ***The Committee requests the Government to provide information on the measures adopted or envisaged to ensure that both law and practice are brought into line with the requirements of the Convention in that regard.***

***Furthermore, noting that the Government has not responded to its previous comments on the number of joint visits carried out by the Ministry of Labour and Social Security, the Human Rights Commissioner, the Minister for Security and the Procurator General, the Committee would be grateful if the Government would specify the purpose of, and nature of, the participation of each of the above authorities in these inspections.***

*Article 14. Notification of occupational diseases to the labour inspectorate.* The Committee recalls that, the need to complement legislation through a provision stipulating the obligation to notify cases of occupational disease to the labour inspection services has been addressed since the 1990s, and draws the Government's attention to paragraph 118 of its Labour Inspectorate General Study of 2006, in which the importance of establishing a systematic information mechanism to enable the labour inspectorate to have access to the data necessary to determine which activities present a risk and the categories of workers most at risk, and to investigate the causes of occupational accidents and diseases in workplaces and companies under its control. ***The Committee therefore requests the Government to indicate the steps taken or envisaged to ensure that national legislation provides for the conditions and the manner in which cases of occupational disease should be notified to the labour inspectorate.***

*Article 15. Obligations and limits to be respected by labour inspectors.* The Committee notes with ***interest*** the ministerial decision attached to the Government's report which contained the Labour Inspectorate's Code of Ethics and was signed on 28 June 2011. It notes that the text includes the expression of values and commitments to which all members of the labour inspectorate must adhere and in particular those prohibiting them from accepting any gifts, presents, subscriptions, favours, gratuities, promises or special advantage and rejecting any kind of direct or indirect offering of bribery, sale or financial profit from workers or employers that might interfere with the fulfilment of their duties. The Committee notes, however, that this text does not take on board the comments that the Committee has been raising since the 1990s concerning the need to specifically prohibit labour inspectors from having any direct or indirect interest in undertakings under their supervision. ***The Committee therefore requests the Government once again to provide information on the measures adopted or envisaged to ensure that specific provisions are adopted without delay establishing the prohibition of labour inspectors from having any direct or indirect interest in undertakings under their supervision, pursuant to Article 15(a) of the Convention.***

*Articles 17 and 18. Appropriate penalties.* COHEP considers that the penalties provided for in article 625 of the Labour Code are obsolete, hence they have not been amended since its entry into force. According to the Government, the aforementioned article of the revised Code sanctions the offences listed below with fines varying between 50 and 5,000 lempiras, depending on the individual circumstances of each case, its recurrent character and the capacity of the offending

company to pay: (i) non-respect of the orders issued by labour inspectors, within the limit of their legal authority; (ii) obstructing the fulfilment of the duties that labour inspectors are legally entitled to carry out; (iii) physical and psychological aggression towards labour inspectors; (iv) violation by employers of the legal provisions that are not subject to any special penalty. **The Committee would be grateful if the Government would provide a copy of the revised text of article 625 of the Labour Code referred to by the Government in its report form.**

*Articles 19, 20 and 21. Periodical reports and drawing up and publication of an annual inspection report.* The Committee notes with **regret** that since the ratification of the Convention in 1983, no annual report on the activities of the inspection services has been communicated, as stipulated in *Articles 20 and 21* of the Convention. **The Committee therefore requests the Government to provide information on the measures adopted or envisaged to ensure that the local inspection units produce periodical reports on the results of their activities, as stipulated in Article 19, and that these reports enable the central inspection authority to produce an annual report in accordance with Articles 20 and 21.** In that regard, the Committee reminds the Government of the guidance provided in Part IV of *Labour Inspection Recommendation, 1947 (No. 81)*, on how the information required under Article 21 may be broken down.

*Labour inspection and child labour.* In its comments of 2006, the Committee had noted that inspectors specializing in child labour were operating in Tegucigalpa and San Pedro de Sula and had requested the Government to specify why it had decided to appoint child labour inspectors to carry out duties in these locations, and to provide information on the results of their activities. **As the Government has not made this information available, the Committee requests it once again to communicate it and to provide statistical information on the number of visits carried out by labour inspectors, in particular in these regions, the offences found and penalties imposed, and on the advice and information that may have been provided on the matter to employers and workers.**

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

## Hungary

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)**

The Committee notes the observations made by the workers' representatives of the Tripartite National ILO Council of the Ministry of Social Matters and Labour, which were attached to the Government's report, and the Government's reply to these observations.

*Article 3(1)(b) of the Convention. Labour inspection functions in the area of technical information and advice.* The Committee notes that, in reply to a request for further information by the workers' representatives of the Tripartite National ILO Council, the Government indicates that the advisory functions envisaged in *Article 3(1)(b)* of the Convention are exercised only by Occupational Safety and Health (OSH) inspectors, through the Labour Protection Information Service and the Labour Protection Consultancy Service in regional labour inspectorates, while inspectors entrusted with labour matters do not provide advice to employers and workers.

The Committee recalls that in conformity with *Article 3(1)(b)* of the Convention, the functions of labour inspectors should include the supply of technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions relating to conditions of work and the protection of workers while engaged in their work, in so far as such provisions are enforceable by labour inspectors. The Committee notes that since under section 3 of Act No. LXXV of 1996, labour inspectors are entrusted with the supervision of legal provisions in a number of areas beyond OSH (such as employment contracts, employers' records, equality of treatment, the employment of women, young persons and people with disabilities, working time, the protection of trade union rights etc.), labour inspectors should be able to provide technical information and advice to employers and workers concerning the most effective means of complying with these legal provisions. While taking due note of the information provided by the Government on the promotional campaigns carried out by the labour inspectorate in the area of OSH, the Committee also recalls that as indicated in paragraph 99 of its General Observation of 2006 on Labour Inspection, while it is very important to make a special effort to carry out promotional campaigns to promote compliance with legal provisions on OSH, this approach should also include other important aspects of conditions of work, such as hours of work, leave, protection of wages, prohibition of discrimination, equality of remuneration for men and women for work of equal value and equality of treatment and protection of vulnerable categories of workers.

**The Committee requests the Government to indicate the measures taken or envisaged so that inspectors in the area of labour matters are also entrusted with the function of providing technical information and advice to employers and workers in line with Article 3(1)(b) of the Convention, and to provide information on any progress made in this regard, including any promotional campaigns to promote compliance with legal provisions in areas other than OSH.**

**Please also indicate whether OSH inspectors can provide information and advice during inspection visits or only exercise these functions through the Labour Protection Information Service and the Labour Protection Consultancy Service.**

*Articles 7(3), 9, 10, 13 and 14. Association of duly qualified technical experts and specialists in the work of the labour inspectorate. Labour inspection activities aimed at the prevention of industrial accidents and cases of occupational disease.* The Committee notes the observations made by the workers' representatives of the Tripartite

National ILO Council with regard to OSH inspectors not having the requisite expertise to detect potential hazards that lead to occupational diseases, particularly in relation to chemicals, and order measures to eliminate them. They consider that labour inspection reports do not reflect potential hazards and do not allow for the investigation of the causes of occupational diseases. They also consider it alarming that, in this context, the labour inspectorate employs external experts only for the investigation of fatal work accidents.

The Government indicates that all OSH inspectors have the requisite technical and/or occupational health and hygiene qualifications and have taken part in courses related to chemicals. The Government provides information on the length of training and the number of participants in training courses for OSH inspectors in 2008 and 2009, without indicating the content of such training, except in one case (training on asbestos). Taking into account the qualifications and training of labour inspectors, the Government is of the view that it is only necessary to associate external experts (such as experts in forensic medicine) in the work of the labour inspectorate in specific cases. The Government particularly refutes the allegation that hazards potentially leading to occupational diseases are not appropriately prevented and investigated. In this regard, the Government refers to Decree No. 27/1996 (VIII.28) NM of the Ministry of Welfare on the reporting and investigation of occupational diseases and cases of increased or high exposure (DRIOD), which empowers the Hungarian Institute for Occupational Safety and Health (HIOSH) to order the communication of additional data through examination by the OSH Inspectorate, the conduct of further examinations under its own responsibility, or the employment of external experts if it comes to the conclusion that data provided in a report on a suspected case of an occupational disease is not complete or that there are inconsistencies (section 5(8) of DRIOD No.27/1996). The Government adds that the existence of an occupational disease is determined by the social security body in a final decision following the procedure described in the above Decree.

The Committee would like to draw the Government's attention to paragraphs 196–198 of its 2006 General Survey on labour inspection where it is indicated that, in order to be effective, the inspection of workplaces must permit the detection of potential hazards so that measures can be determined to eliminate or reduce them as far as possible. Such inspections often require a high level of expertise and are thus a matter for specialist technical advisers. Inspectors must collaborate with such technical advisers or experts in order to carry out technical inspections for which their own qualifications are not sufficient as provided for in Article 9 of Convention No. 81. The Committee also recalls that as indicated in paragraph 198 of its General Survey, national conditions permitting, it would be desirable that such technical advisers or specialists be integrated into the labour inspection teams.

***The Committee requests the Government to provide information and data on the application in practice of legislation on the investigation of industrial accidents and cases of occupational disease (number of industrial accidents and cases of occupational disease reported to the labour inspectorate, number of investigations of industrial accidents and cases of occupational disease, findings and follow-up measures including sanctions imposed).***

***The Committee requests the Government to provide information and data on the preventive action taken by the labour inspectorate with a view to remedying defects observed in plant, layout or working methods which labour inspectors may have reasonable cause to believe constitute a threat to the health or safety of the workers including measures with immediate executory force in the event of imminent danger to the health or safety of the workers as provided for in Article 13 of the Convention.***

***The Committee asks the Government to provide detailed information on the training provided to labour inspectors in the area of OSH during the next reporting period (content, duration, frequency and number of participants, etc.). Noting that according to the Government the highest number of occupational diseases had been caused by chemicals and biological agents in 2007 and 2008, the Committee asks the Government to provide in particular information on any related training provided to labour inspectors. If available, please send a copy of any legislative text (including any administrative decision or circular) on training arrangements for OSH inspectors.***

***Articles 10 and 16. Number of labour inspectors and effectiveness of the labour inspection system.*** The Committee notes that the workers' representatives of the Tripartite National ILO Council deplore the insufficient numbers of inspectors. In this regard, it notes the information in the Government's report showing a significant decrease in the total number of labour inspectors from 696 in 2008 to 538 in 2011, including a decrease in the number of inspectors entrusted with labour matters from 415 in 2008 to 338 in 2011 and a decrease in the number of OSH inspectors from 281 in 2008 to 200 in 2011. ***While noting the Government's indication that the number of labour inspectors satisfies efficiency requirements, the Committee asks the Government to provide information on the impact of the reduction in labour inspectors on the work of the labour inspectorate. It would be grateful if the Government would carry out an evaluation of the needs of the labour inspection system in terms of human resources, both in the areas of OSH and labour matters, in the light of the criteria set in Article 10 of the Convention, in particular the number of workplaces liable to inspection and the number of workers employed therein, as well as the material means at their disposal.***

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

## Israel

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)**

*Articles 20 and 21 of the Convention. Publication of an annual labour inspection report.* With reference to its previous comments, the Committee notes that according to the Government, the Labour Inspection Division communicates to the ILO every two years a report on its activities, and publishes this information at a later date in the form of a “summary report” in Hebrew, in the framework of the general publications of the Ministry of Industry, Trade and Labour as required by the Freedom of Information Act. The Committee takes note of the latest summary report published in 2009 with regard to the activities of the Labour Inspection Division in the year 2006 as well as the information provided by the Government on the activities of the Labour Inspection Division in 2009. The Committee notes that these reports consist of a list of the basic laws and regulations which apply in this area, as well as seven statistical tables on the total number of labour inspection staff, employed persons by sector of activity, inspection visits, tests made by the National Laboratory, fines imposed, injuries registered, and fatal accidents notified, broken down by sector of activity.

The Committee notes with *interest* the communication of an exhaustive and in-depth analysis of the evolution and causes of deadly accidents at work in the most hazardous sectors over a period of ten years. It also notes that despite the reduction in the number of labour inspectors and inspection visits, most of the 37 newly created posts have been earmarked for intensification of controls in the area of occupational safety and health.

The Committee emphasizes, as it did in its general observation of 2010, the essential importance it attaches to the publication and communication to the ILO within the prescribed time limits, of an annual labour inspection report as this tool offers an indispensable basis for the evaluation of the results of the activities of the labour inspection services and, subsequently, the determination of the budgetary and other means necessary to improve their effectiveness. It emphasizes that according to *Article 20* of the Convention, the report has to be published within a reasonable time after the end of the year to which it relates and in any case within 12 months and has to be communicated to the ILO within a reasonable period after their publication and in any case within three months. Moreover, according to *Article 21*, the annual report should contain, at the very least, up-to-date information on the following subjects: the field of the legal and material competence of the labour inspection services (legal provisions defining their organization and powers); the human resources and institutional logistical and material means available to the institution; its field of personal competence (enterprises, establishments and other workplaces liable to inspection, as well as the workers occupied therein); its means of operation (inspections, notifications of violations or non-compliance, technical advice and information, observations, warnings, the initiation or recommendation of prosecutions, the imposition of penalties); finally, occupational risks (through data on industrial accidents and cases of occupational diseases). The Committee recalls that extremely valuable guidance on the presentation and analysis of this information is provided in the *Labour Inspection Recommendation, 1947 (No. 81)*. **The Committee requests the Government to indicate the measures taken or envisaged to ensure that the labour inspection authority publishes an annual report within the time limits prescribed by Article 20 of the Convention and containing detailed and up-to-date information on the subjects reflected in Article 21. The Committee would also be grateful if the Government would communicate the provisions of the Freedom of Information Act which relate to the publication of an annual labour inspection report.**

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

## Italy

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)**

The Committee notes the Government’s report, which was received at the Office on 23 September 2010. It also notes the comments from the Italian General Confederation of Labour (CGIL) dated 25 May and 20 September 2010, which were sent to the Government on 27 July and 28 September 2010, respectively.

*Article 3(1) and (2) of the Convention. Impact of monitoring and sanctioning of illegal employment and undeclared work on inspection of conditions of work.* The Committee notes that the annual activity reports on inspections in the areas of labour and social security of the Ministry of Labour, Health and Social Policy for 2007, 2008, 2009 and 2010 show that labour inspection is essentially concerned with monitoring the legality of employment, including that of migrant workers.

The Government points out that, in view of the current economic and social structure of the national labour market, in which employment of foreign workers is constantly increasing, it is inevitable that inspection work also has to focus on the control of the establishment of appropriate and lawful employment relationships with citizens of non-EU countries and of new EU Member States.

The CGIL indicates that the role of the inspection unit of the *Carabinieri* attached to the Ministry constitutes an important and particularly pertinent component of the strategy to coordinate various inspection activities and that this unit has always focused on the strict observance of the rights of workers, particularly minors. However, it considers that the “Extraordinary Plan” for combating undeclared and illegal work in the four regions of the south of the country has major

defects and gaps in terms of the coordinated use of resources and, in particular, the allocation of additional resources, given that it is based on the transfer to southern Italy of labour inspectors working in other regions and is therefore detrimental to their inspection work in those areas.

The Committee recalls once again that the role assigned to labour inspectors as *Carabinieri* of the criminal police may severely jeopardize the performance of their primary duties as defined by the Convention, namely to ensure the protection of workers. It refers once again to paragraph 78 of the 2006 General Survey on Labour Inspection according to which the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Given the potentially large proportion of inspection activities spent on verifying the legality of immigration status, the Committee has emphasized that additional duties that are not aimed at securing the enforcement of the legal provisions relating to conditions of work and the protection of workers should be assigned to labour inspectors only insofar as they do not interfere with their primary duties and do not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The Committee has also emphasized that the attribution of police functions to the labour inspection is not conducive to the relationship of trust needed to create the climate of confidence that is essential to enlisting the cooperation of employers and workers with labour inspectors. It must be possible for inspectors to be respected for their authority to report offences, and at the same time to be approachable as preventers and advisers.

The Committee has therefore emphasized that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of the 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. The Committee observes in this regard that in the framework of the European Union, Directive 2009/52/EC also provides for minimum protective standards for third-country nationals in illegal employment situations such as the establishment of effective national mechanisms to recover outstanding wages and other benefits due as a result of their employment relationship.

***The Committee requests the Government to take the necessary measures in order 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 urges the Government to ensure in this regard respect for the rights and working methods attached to the function of the labour inspection which are radically different from those of other officials entrusted with the task of combating illegal employment and immigration. Please keep the Office informed of all progress made towards this end.***

***The Committee would also be grateful if the Government would indicate the manner in which the labour inspectorate ensures the discharge of employers' obligations with regard to foreign workers in an irregular situation, from the point of view of residence status (payment of wages and other benefits owed) for work done, in cases where such persons are liable to expulsion from the country by the authority responsible for controlling illegal immigration.***

***Article 4. Supervision and control by a central authority.*** The Committee notes that the CGIL criticizes a government initiative which seeks, firstly, to centralize choices with regard to inspections to be carried out and the evaluation of the results within the Ministry of Labour (which, in the opinion of the CGIL, deprives inspectors of their authority) and, secondly, to sign "protocols" with various associations representing enterprises and their consultants stating that any "abnormal conduct" by inspectors must be indicated. ***The Committee requests the Government to communicate to the Office any comments it considers appropriate with regard to the points raised by the CGIL. It would be grateful if the Government would indicate in particular the basic criteria used for the determination of inspection visits to be carried out and for the evaluation of their results and to send copies of models of the protocols mentioned by the CGIL.***

***Article 11. Labour inspection resources.*** The Committee notes that, according to the CGIL, cuts in public expenditure since 2008 have resulted in major restrictions on inspection work, to the extent of blocking the possibility for inspectors to use their own means of transport, as provided for in Act No. 122/10. ***The Committee requests the Government to give details on the evolution of the budgetary and other resources allocated to the labour inspectorate in the framework of the national budget and provide further information on transport facilities made available to labour inspectors for the performance of their duties and on procedures for the reimbursement of travel and other expenses.***

***Articles 5(a), 20 and 21. Publication and communication to the ILO of an annual inspection report. Statistics of industrial and commercial workplaces liable to inspection and the number of workers employed therein.*** The Committee notes that the annual inspection reports sent to the Office contain general information on the number of enterprises inspected, the number of labour inspectors and also on infringements and penalties imposed. However, they do not contain any information on workplaces liable to inspection or on industrial accidents and cases of occupational disease. The Committee notes that, according to the Government, the Ministry of Labour and Social Policy, in cooperation with the social security institutions, is preparing databases to assist with the rationalization and coordination of inspection work.

***With reference to its general observations of 2009 and 2010 concerning the establishment of a register of workplaces liable to inspection and the publication of an annual inspection report, the Committee requests the Government to clarify whether the annual labour inspection report is published by the central authority. It also requests the Government to keep the Office informed of any steps taken or contemplated, including by means of inter-***

*institutional cooperation, to ensure that the annual report contains detailed information on each of the points listed in Article 21.* The Committee draws the Government's attention to the indications contained in Part IV of the Labour Inspection Recommendation, 1947 (No. 81), regarding the appropriate level of detail for information required by *Article 21(a)–(g)* of the Convention.

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1981)**

With reference to its observation concerning the *Labour Inspection Convention, 1947 (No. 81)*, the Committee wishes to raise the following points.

*Article 6(1)(a) and (2) of the Convention. Detrimental impact of the monitoring and sanctioning of illegal and clandestine work on the discharge of the primary duty of monitoring conditions of work.* The Committee notes the Government's indication that inspection in the agricultural sector normally forms part of the ordinary inspection activities of the Provincial Labour Directorate or of special interventions by the Directorate-General of Inspection, particularly in the south, where most of the seasonal work requiring intensive labour for cultivation and harvesting work is concentrated. Such interventions are designed to put a stop to the use of illegal intermediaries, known as *caporali*, for the hiring of workers and the use of workers in an illegal or unauthorized situation and, at the same time, to protect workers and prevent them from being exploited. In this context, one of the objectives of inspection is to verify the payment of social security and insurance contributions and also to combat the widespread phenomenon of fictitious employment relationships in agriculture.

The Committee emphasizes once again that, even though there is no question that measures are necessary to put a stop to the phenomenon of unauthorized migration, the role given to labour inspectors at the workplace in this field runs the risk of seriously jeopardizing the achievement of the main goal of the Convention, namely the protection of workers with regard to conditions of work which are in breach of the applicable legal provisions. *The Committee requests the Government to take the necessary measures in order 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 urges the Government in this regard to ensure respect for the rights and working methods attached to the function of the labour inspection, which are radically different to those of other officials entrusted with the task of combating illegal employment and immigration.*

*The Committee would also be grateful if the Government would indicate the manner in which the labour inspectorate ensures the discharge of employers' obligations (payment of wages and other benefits owed for work done) with regard to foreign workers in an irregular situation from the point of view of residence status in cases where such persons are liable to expulsion from the country by the authority responsible for controlling illegal immigration. The Committee would be grateful if the Government would keep the Office informed of all progress towards this end and all difficulties encountered, if any.*

*Articles 26 and 27. Publication and communication to the ILO of an annual inspection report. The Committee requests the Government to refer to its comments on Articles 20 and 21 of Convention No. 81.*

## **Kenya**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)**

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

*Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspection services and the justice system.* The Committee notes that it is envisaged to promote effective cooperation between the labour inspection system and the justice system with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by the labour inspectorate. In this regard, the Government indicates the development of procedural rules and regulations for the industrial court which complete the recently reviewed and adapted labour legislation. *The Committee asks the Government to keep the ILO informed of any developments in terms of strengthening the above cooperation and, where applicable, to send a copy of any law or regulation adopted governing the legal procedure of the industrial court.*

*Article 2(1) and (23), and Article 3(1), of the Convention. Scope of labour inspectors.* The Committee notes that Legal Notice No. 227/1990, which exempted establishments located in export processing zones (EPZs) from the application of the health and safety legislation, is now null and void and that the provisions of the Occupational Safety and Health (OSH) Act apply to all workplaces, including those in EPZs.

It further notes that the services of the Department of Occupational Safety and Health carried out a total of 4,117 occupational safety and health inspections during the 2008–09 financial year. Although it indicates that the Department monitored the activities of the safety and health committees established under section 9 of the OSH Act and trained 5,150 labour inspectors, the Government explains that it cannot provide information on the number of occupational safety and health committees established in industrial and commercial establishments in EPZs due to the limited capacity of the data-capturing system which does not segregate different workplaces. *The Committee would be grateful if the Government would provide a copy of the court ruling which found Legal Notice No. 227/1990 to be null and void and if it would continue to keep the ILO informed of further inspection visits carried out by occupational safety and health officers. It requests the Government to make every effort to improve the data-capturing system with a view, among other objectives, to the disaggregation of data by industrial and commercial establishments, and to communicate the missing information in the near future.*

The Committee notes that the categories of workers to be exempted from the scope of the Labour Institutions Act on labour administration and inspection, as provided for by section 4(3) of the Act, are to be specified by relevant rules and regulations. **The Committee requests the Government to keep the ILO duly informed in this regard and to communicate a copy of any relevant rules and regulations.**

*Articles 10, 11 and 16. Adequate means of action and working conditions of labour inspection staff.* Having expressed its concern at the persistent lack of labour inspection staff, office equipment and means of available transport facilities, the Committee **regrets** that, according to the Government, no progress has yet been made in this regard. **Although fully aware of the difficulties that the country faces in the ongoing global recession and food crisis, the Committee nevertheless encourages the Government to do its utmost to seek international financial assistance to enable it to ensure sustainable resources for the effective functioning of the labour inspection services and to keep the ILO informed of any measures taken and the results achieved in this respect.**

*Article 14. Reporting and investigation of occupational accidents and cases of occupational disease.* The Committee notes the description by the Government of its investigation procedure with regard to occupational accidents and cases of occupational disease: after reporting to the Director of the Occupational Safety and Health Services (DOSHS) through the relevant accident reporting form (DOSHS 1), occupational safety and health inspectors are sent to visit the scene of the accident, where they interview witnesses as well as the victim of the accident and collect other necessary evidence. The relevant report drafted following accident investigations constitutes the basis for action such as, where appropriate, improvement or prohibition notices, training, advice or prosecution. While the possibility to set up a tribunal to investigate occupational accidents and cases of occupational disease is foreseen in section 128 of the OSH Act, the Government sees no need to constitute such a tribunal as the DOSHS has been entrusted with the investigation of these cases. **Noting the indication that, in the years 2008 and 2009, a total of 291 accidents were investigated, the Committee would be grateful if the Government would indicate the number of occupational accidents and cases of occupational disease reported in comparison with the number of investigations actually conducted, as well as the action taken following these investigations (improvement or prohibition notices, prosecutions and penalties imposed).**

The Committee notes that, according to the Government, the obligation set out in Article 22 of the OSH Act for medical practitioners to notify occupational diseases to the Director of the OSH Services is not functioning in a satisfactory manner in practice as medical practitioners, despite an existing list of 40 occupational diseases in the second schedule to the OSH Act, are not adequately sensitized, bearing in mind the complexity of diagnosing occupational diseases. **The Committee urges the Government to take measures to sensitize medical practitioners (e.g. through awareness campaigns, the distribution of brochures or the organization of training sessions). Drawing the Government's attention to the possibility of ILO technical assistance to this end, the Committee would be grateful if it would indicate any steps taken in this regard and the results achieved.**

*Articles 20 and 21. Annual report on labour inspection activities.* The Committee notes that no annual report has been received, although the Government mentions an annual ministerial report under these Articles. It had noted in its previous report the obligation under Article 42(1) of the Labour Institutions Act for the Commissioner for Labour to prepare and publish, not later than 30 April of each year, a report on the activities undertaken in his/her department. The content of the report, as set out in Article 42(2), includes the information required under *Article 21* of the Convention. It also noted that Article 25 of the OSH Act provides for the development and maintenance of an effective programme of the collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, as well as the existence of an accident database where information sent through the DOSHS 1 form is entered. **The Committee once again requests the Government to provide information on the progress made in establishing a system to give effect to the requirements of Article 25 of the OSH Act in practice and any difficulties that have been encountered.**

**It urges the Government to ensure that an annual report, containing all the information and statistics on labour inspection activities required by Article 21 of the Convention, is published and communicated to the ILO.**

*Labour inspection and child labour.* The Committee notes the Government's indication that it has not yet provided the child labour division with any budgetary allocation due to financial constraints. However, it notes that under the **Time-bound Programme** for the elimination of child labour implementation with ILO-IPEC, training sessions have been organized for the labour inspectorate in the area of project management, strategic management, capacity building on child labour issues and the training of trainers. **The Committee requests the Government to ensure, where applicable within the framework of international financial cooperation, that adequate resources are rapidly made available. It asks the Government to specify the content of the above training of labour inspectors, the number and function of the participants and the duration of the training, and to provide information on any further training in this regard, as well as on its impact on the level of observance of legal provisions relating to child labour.**

**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: 1979)**

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 6(1) of the Convention. Scope of labour inspection: Supervision of conditions of work in agricultural undertakings.* The Committee takes due note of the information provided by the Government pursuant to its previous requests. It notes that the scope of the 2007 Labour Institutions Act and the 2007 Occupational Safety and Health (OSH) Act also cover agricultural workers.

The Committee also notes that, according to the Government, Legal Notice No. 227/1990 which exempted establishments located in export processing zones (EPZs) from the application of the health and safety legislation, is now null and void and that the provisions of the OSH Act apply to all workplaces, including those in EPZs. **The Committee would be grateful if the Government could indicate in its next report the measures taken to ensure the enforcement of occupational safety and health provisions and the results achieved, including with regard to the prevention of occupational risks linked, inter alia, to the use of agricultural equipment, pesticides and other chemical substances.**

*Articles 14 and 15. Lack of adequate personnel and appropriate means of transport.* The Committee notes once again the indication by the Government that there is still no specific budgetary allocation for labour inspection in agriculture and the Department still suffers from serious staff shortage as no new staff has been engaged since 1994. The budgetary allocation has instead been reduced owing to the prevailing economic slowdown and food crisis being experienced in the country. The Committee notes meanwhile the Government's commitment to take the necessary measures to remedy the situation once the economic situation improves.

The Committee considers that it would be unfortunate if the current context of global economic crisis led to a further deterioration of the conditions of work and the protection of workers through inter alia, a weakening of the entity entrusted with securing the enforcement of legal provisions in a sector of vital importance such as agriculture. The Committee emphasizes that the Global Jobs Pact adopted by the International Labour Conference at its 98th Session (June 2009) makes specific reference to the ILO standards relevant to labour inspection as part of a strategy of exit from the global economic crisis, a strategy aimed at preventing a downward spiral in labour conditions and building the recovery.

The Committee recalls that, according to *Article 14* of the Convention, arrangements should be made to ensure that the number of labour inspectors in agriculture is sufficient to secure the effective discharge of their duties and that such numbers should be determined with due regard for, inter alia, the material means placed at the disposal of the inspectors. Moreover, *Article 15* provides that labour inspectors should be furnished with the transport facilities necessary for the performance of their duties. The Committee cannot emphasize enough the importance of ensuring adequate and appropriate means of action, in particular transport facilities, to labour inspectors, as the mobility of supervisory staff is a prerequisite for labour inspection, especially in agricultural undertakings which are by their nature far from urban centres and, in addition, often spread over large areas lacking public transport facilities.

Finally, with reference to its general observation of 2009, the Committee emphasizes that the absence of data on the number of agricultural undertakings liable to inspection and the number of workers employed therein represents an insurmountable obstacle for any assessment of the rate of coverage by labour inspection services in relation to their scope, as defined in national legislation, and makes it impossible to evaluate the budgetary resources to be allocated to this public function, either for the determination of the appropriate number of labour inspectors or the necessary material resources and transport facilities for the discharge of their functions (*Articles 14, 15 and 21*) or the provision of specific training (*Article 9*).

***Referring to its 2009 general observation, the Committee once again urges the Government to carry out an objective assessment of the situation by identifying the agricultural undertakings liable to inspection (number, activity, size and location) and the workers engaged therein (number and categories), with a view to enabling an adequate setting of priorities for action and provision of relevant financial resources, in the framework of the national budget and/or a request for international financial assistance to the same end. It requests the Government to indicate in its next report any measures adopted in relation to the above and the results achieved.***

*Articles 25, 26 and 27. Periodical and annual reports.* The Committee notes that no annual report has been received and that, for a number of years, it has been noting with concern the persistent lack of specific data on labour inspection activities in the agricultural sector. The Committee notes from the Government's report that disaggregated data on the activities of the labour inspectorate in agricultural undertakings, including in EPZs, are still not available, primarily due to lack of personnel, and that the Government envisages a formal request to the ILO for technical assistance with a view to improving data collection and management.

While regretting the persistent lack of progress in this area, the Committee notes that section 42 of the Labour Institutions Act, 2007, which applies to agriculture, provides that the Commissioner for Labour shall prepare and publish, not later than 30 April each year, an annual report on the activities undertaken in his/her department, the content of which largely corresponds to *Article 27* of the Convention. Furthermore, section 25 of the OSH Act, which also applies to agriculture, provides for the development and maintenance of an effective programme for the collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, as well as the existence of an accident database where information sent through the DOSHI form is entered.

The Committee emphasizes that disaggregated data on labour inspection activities in the agricultural sector, including in EPZs, can provide national authorities with a regular means of assessing the extent to which the available means match requirements, and constitute an invaluable and regular source of practical information and numerical data that is indispensable for the evaluation of the application of the Convention. The Committee also notes that such data can be reflected either in the general labour inspection annual report or in a separate report.

***The Committee therefore once again urges the Government to take the necessary steps to give effect in practice to sections 42 of the Labour Institutions Act, 2007, and section 25 of the OSH Act, with a view to improving data collection and management and publishing an annual report on the work of the inspection system in agriculture, including in EPZs, either as a separate report or as part of its general annual report. The Committee requests the Government to indicate in its next report the measures taken in this regard.*** It reminds the Government that it may avail itself of ILO technical assistance aimed at establishing the conditions in which the Department of Labour can collect data on the activities of the inspection services under its control.

*Labour inspection and child labour in agriculture.* In response to the Committee's previous comment concerning the measures taken to reduce child labour and the results of these measures, the Government mentions several measures, such as the establishment of a child labour division which acts as liaison between labour inspectors and the National Steering Committee which is the apex body; the development of a child labour policy and a national plan of action that seeks to progressively eliminate worst forms of child labour by 2015; capacity building workshops for inspectors on child labour issues; the development of a child labour monitoring system and data bank on child labour issues; the strengthening of institutional structures that deal with child labour especially in the district and local levels; and the building of partnerships and sharing of information with other government agencies at the district level.

Noting that there is no specific information as to labour inspection activities on child labour in agriculture, the Committee once again recalls, with reference to its general observation of 1999, that labour inspectors can play an important role in: (i) identifying and registering the child workforce in agricultural undertakings; (ii) establishing an educational framework for this population; (iii) identifying specific problems of children and young persons who are exposed to a high risk of accidents and occupational diseases due to the use of complex machines and chemical products; and (iv) finding appropriate solutions to the above. ***Also referring to its 2009 observations under the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), respectively, the Committee once again requests the Government to provide***

*detailed information on the activities of the labour inspectorate concerning child labour in agriculture as well as examples of enforcement activities and the progress achieved.*

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

## Republic of Korea

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1992)**

The Committee takes note of the comments by the Korea Employers' Federation (KEF) and the Federation of Korean Trade Unions (FKTU) received with the Government's report along with the Government's reply thereto, as well as the comments by the Korean Confederation of Trade Unions (KCTU) which were received at the ILO on 29 August 2011 and were communicated to the Government on 6 September 2011. ***The Committee requests the Government to make any observation it deems appropriate with regard to the comments made by the KCTU.***

*Article 3 of the Convention. Functions of the labour inspection system.* The Committee notes that according to the FKTU, the field labour inspectors focus on subjects which should be normally left to autonomous collective bargaining, like the implementation of the provisions of the Trade Union and Labour Relations Adjustment Act (TURLAA) concerning the maximum limits imposed on paid time off for full-time union officials and the establishment of a single bargaining channel among trade unions in a framework of trade union pluralism. According to the FKTU, labour inspectors misuse their administrative capacity on pursuing government policy and neglect to inspect employers' compliance with labour standards, occupational safety rules and collective agreements. The Government responds that labour inspectors can give guidance on collective bargaining and on preventing and settling labour disputes, as part of their duties; they thus provide guidance on the paid time-off system and the bargaining representative system for multiple unions which took effect on 1 July 2011, in order to prevent any violations.

The Committee recalls that according to paragraph 80 of its General Survey of 2006 on Labour Inspection, it is important to ensure – when the role assigned to labour inspectors in the field of industrial relations takes the form of close supervision of trade union activities so as to ensure that they do not exceed the limits laid down by legal provisions – that this supervision does not involve acts of interference in these organizations' legitimate activities. It also recalls that the primary role of the labour inspectorate, pursuant to *Article 3(1) and (2)*, is to monitor the conditions in which work is performed, and that any further duties which may be entrusted to labour inspectors should not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***The Committee therefore requests the Government to provide further information on the nature of the activities carried out by the labour inspectorate for the implementation of legal provisions concerning freedom of association and collective bargaining and to specify the proportion of these activities in relation to those focused on conditions of work and the protection of workers while engaged in their work.***

*Articles 10 and 16. Number of labour inspectors and inspection visits.* The Committee notes that in reply to its previous comments, the Government provides information according to which, the number of inspection visits has continued to increase in the period 2009–10 amounting to 19,881 visits on labour matters and 27,415 visits on occupational safety and health (OSH), while the total number of labour inspectors as of 31 May 2011 was 1,413. The Government adds that the total number of workplaces and workers in 2008 amounted to 1,422,261 workplaces and 12,448,992 workers. The Committee notes that the FKTU criticizes the scarcity of inspection personnel and indicates that on the basis of the above statistics, it would take approximately 50 years to inspect all workplaces.

The Committee recalls that according to *Article 10* of the Convention, the number of labour inspectors should be sufficient to secure the effective discharge of the duties of the inspectorate in light of the number of workplaces liable to inspection, the number of workers employed therein, the number and complexity of the legal provisions to be enforced as well as the material means placed at the disposal of the inspectors and the practical conditions under which visits of inspection must be carried out in order to be effective. Moreover, according to *Article 16*, workplaces should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. ***The Committee would be grateful if the Government would provide an evaluation of the needs of the labour inspectorate in human resources in light of the criteria provided in Article 10 of the Convention and indicate the proportion of the national budget allocated to labour inspection and the measures taken or envisaged to ensure that workplaces are inspected as often and as thoroughly as necessary. The Committee also requests the Government to provide information on the distribution of labour inspectors by region, category and level of qualification.***

*Article 5(a), 17, 18 and 21(e). Effective enforcement and cooperation between the labour inspection services and the justice system.* The Committee notes from the Government's report that only 127 violations of labour law and 1,782 violations of OSH legislation were brought to justice in 2010, while 16,905 and 21,298 cases respectively were treated through administrative action. It notes that the FKTU criticizes this practice as ineffective in preventing industrial accidents and states that most violations detected by the labour inspectorate are petty offences with extremely few cases of judicial treatment. The Government answers that the number of cases that go through judicial process may be low since most employers comply with the correction orders issued by labour inspectors. In cases of special inspection or when the

same violation is committed again in three years, more severe actions such as immediate judicial action or imposition of negligence fines are taken. The Government indicates that it plans to reorganize the electronic document system of labour inspection so as to systematically manage the history of labour law violations by employers and allow for closer cooperation with the public prosecutors and the courts. ***The Committee requests the Government to provide information on the nature of the violations detected by the labour inspectors with reference to the legal provisions concerned and the types of corrective measures ordered. It would also be grateful if the Government would provide further information on the nature of the cases brought to the justice system (specifying the legal provisions concerned and the number of workers affected), as well as the duration and outcome of the judicial proceedings (convictions pronounced, penalties imposed, etc.).***

***The Committee also requests the Government to keep the ILO informed of progress made in setting up the electronic document system and to provide an evaluation of its impact, once it is established, on the cooperation with the justice system and the observance of the legal provisions pertaining to conditions of work and the protection of workers.***

***Article 5(a) and (b). Cooperation between the labour inspection services and private institutions and collaboration with employers or their organizations.*** The KEF refers to an “E-self Evaluation System” allowing employers to check their practices and correct any violations of legal provisions by themselves, as well as the “Self-Improving Working Condition Program” carried out in alliance with private institutions in order to enhance the effectiveness of labour inspection and encourage voluntary compliance. According to the KEF, private institutions involved in this programme measure the compliance of companies with labour laws and present ways to improve their working conditions so that small and medium-sized enterprises (SMEs) with little information on labour law can observe the laws voluntarily. ***The Committee requests the Government to provide further information on the operation in practice of the “Self-Improving Working Condition Program”, in particular, the procedure for the authorization by the labour inspectorate of the private enterprises which carry out the programme, the manner in which they are supervised by the labour inspectorate, their functioning (scope of activity, safeguards of independence, the costs associated with their services, their availability to small and medium enterprises, etc.) as well as their impact on increasing compliance with legislation on conditions of work and the protection of workers in individual workplaces. Please also provide details on, and indicate any assessment of the impact of the “E-self Evaluation System”.***

***Articles 5(b), 13 and 14. Collaboration of the labour inspection with employers and workers and their organizations in the area of OSH.*** The Committee notes that according to the statistical information provided by the Government, the number of industrial accidents has increased between 2008 and 2009, while the number of occupational diseases has decreased. ***The Committee requests the Government to provide details on the preventive activities carried out by labour inspectors in the area of OSH in line with Article 13 of the Convention including measures with immediate executory force taken in the event of imminent danger to the health or safety of the workers, and to describe the procedure in force for the recording and notification of industrial accidents and occupational diseases.***

***Also, recalling the indications provided in Paragraphs 4–5 of the Labour Inspection Recommendation, 1947 (No. 81) with regard to safety committees or similar bodies, the Committee requests the Government to indicate any measures taken or envisaged to reinforce the prevention of industrial accidents in cooperation with employers and workers and their organizations.***

***Articles 12(1)(a) and (b) and 15(c). Right of inspectors to enter workplaces freely, confidentiality of complaints, and period of time when inspections are carried out.*** The Committee’s previous comments concerned the need to bring section 17 of the Work Manual for Labour Inspectors, which provided that inspections should be subject to a ten-day prior notice to the employer, in line with the provisions of *Article 12* of the Convention which provides that inspectors provided with proper credentials should be able to enter freely and without previous notice any workplace liable to inspection. The Committee notes that according to the FKTU, an inspection system allowing for unannounced inspections to take place without advance notice has still not been introduced in practice. It also notes that according to the Government, the Work Manual for Labour Inspectors was amended in April 2010 to allow for unannounced inspections of workplaces; as a result, currently, notice of inspection is given only for regular inspections while occasional and special inspections may be conducted without advance notice. According to the Government, in 2010, 6,294 unannounced inspections took place, on the basis of which 17,577 cases of violations were detected in 4,724 workplaces; of these workplaces, 48 were brought to justice and 4,676 received administrative action.

The Committee notes that if regular inspections are always carried out with advance notice, it is very difficult, in case of inspection visits carried out pursuant to complaints, to avoid giving any intimation to the employer of the fact that a visit takes place consequent to a complaint, as required by *Article 15(c)* of the Convention. ***The Committee therefore requests the Government to communicate the amendment to section 17 of the Work Manual for Labour Inspectors and to indicate the manner in which the confidentiality of complaints is maintained in case of inspection visits carried out pursuant to complaints. Furthermore, the Committee once again requests the Government to provide information on the percentage of unannounced inspections carried out pursuant to complaints.***

The Committee also observes from the Government’s report that labour inspections normally take place during the day, and that, while inspections may be conducted at night when necessary, there are no separate statistics on these

inspections. *The Committee would be grateful if the Government would collect the relevant statistics and provide an indication of the percentage of labour inspection visits carried out at night.*

*Articles 20 and 21. Publication and communication to the ILO of an annual inspection report.* The Committee notes with *interest* the information provided by the Government on the content of the 2009 White Paper on Employment and Labor (published in 2010) as well as its indication that an electronic register of workplaces has been set up and that it is examining the possibility of coordinating this system with the electronic document system of the Korean Worker's Compensation and Welfare Service. *The Committee would be grateful if the Government would continue to provide a summary of the information contained in the White Paper and keep the ILO informed of developments related to the creation of the electronic registry of workplaces and its impact on the work of the labour inspection.*

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1997)**

*Articles 4, 6 and 10 of the Convention. Organization and functions of the system of labour administration and material means allocated.* In its previous comments the Committee had welcomed the extension of the functions of the system of labour administration and the substantial increase in the share of the national budget allocated to the labour administration system during the 1999–2005 period. The Committee again notes with *satisfaction* the information sent by the Government to the effect that the Ministry of Labour was renamed the Ministry of Employment and Labour in July 2010 and extended its operations to include job creation and skills development; in addition, the Ministry's budget currently represents 4.2 per cent of the total Government budget and has shown a regular increase of 7 per cent per year since 2006. *The Committee requests the Government to provide information on the priorities established by the Ministry and their impact on, firstly, the national labour policy and the effective operation of the labour administration system. The Government is also requested to send an updated organization chart of the Ministry of Employment and Labour.*

*Article 7. Extension of the functions of the labour administration to workers who are not employees.* In its previous comments the Committee asked the Government to clarify which workers belonged to the “non-standard workforce” category and to indicate the reasons why the issue of the extension of the protection of the labour administration system to these workers, brought before the National Assembly in November 2004, was excluded from the Roadmap for Industrial Relations Reform. The Committee notes the Government's indication that workers engaged in non-traditional forms of work are not covered by the labour legislation because they are not considered as being in an employment relationship. The Government refers to the examples of golf caddies, private teachers, insurance agents and concrete truck owner-drivers, and adds that the protection of this category of workers is the subject of discussions between representatives of the Government and those of the employers and workers.

In this context, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2602 concerning subcontracted workers in the metallurgical industry who, because of their status, are deprived of the legal protection established by the Trade Union and Labour Relations Adjustment Act (TULRAA) [see 359th Report of the Committee, paragraphs 342–370]. This case is concerned with “illegal dispatch”, a form of false subcontracting which disguises the existence of an employment relationship. The Committee notes with *interest* in this regard, the decision of the Supreme Court of 22 July 2010, which considered that anyone who has worked for more than two consecutive years in a factory is not subcontracted but “illegally dispatched” and therefore must be considered as a worker directly employed by the enterprise. *The Committee would be grateful if the Government would provide details of the categories and number of workers engaged in non-traditional forms of work (“non-standard workforce”) and also on any measures taken or contemplated, to favour, in the light of the abovementioned Supreme Court decision, the progressive extension of the protection of the labour administration system to categories of workers who are not, in law, employed persons.*

*Part VI of the report form.* The Government indicates that it has not received any comments from the employers' and workers' organizations further to sending them its report. *The Committee again requests the Government to indicate any observations made by the employers' and workers' organizations within the tripartite labour administration bodies, or, if applicable, in other contexts, regarding the application in practice of the provisions of the Convention or the application of legislative or other measures giving effect to the provisions of the Convention, and also any remark on such observations that the Government considers relevant.*

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

## **Latvia**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)**

*Articles 3(1), (2) and 10 of the Convention. Principal labour inspection functions and inspection staff.* The Committee notes that according to the 2010 Annual Report of the State Labour Inspectorate (SLI), the main priorities of the SLI until 2013 are to combat unregistered employment and reduce the number of fatal accidents and accidents causing severe health problems at work.

In its report, the Government indicates that as a result of structural changes introduced in 2009 and 2010, the number of staff in the State Labour Inspectorate (SLI) was reduced to 211 in 2009, including 139 inspectors, and 163 in 2010,

including 112 inspectors. It is indicated that all inspectors deal with both labour law and labour protection issues except for 14 inspectors in the Sector for Reduction of Unregistered Employment of the Riga Regional SLI. The number of workplaces subject to inspection was 92,347.

The Committee notes that labour inspection visits aimed at combating unregistered employment amounted to 3,264 in 2010 out of 10,477 inspections in total. Even though this represents a 34.6 per cent decrease in inspections compared to 2009, the number of persons found to be involved in unregistered employment increased by 51 per cent compared to 2009. Moreover, it is reported that the SLI plans to inspect repeatedly and annually at least 5 per cent of the enterprises in risk of unregistered employment.

***The Committee requests the Government to specify the sanctions imposed if the labour inspectors discover cases of unregistered employment and the manner in which the labour inspectorate ensures the enforcement of employers' obligations with regard to the statutory rights of irregular workers for the period of their effective employment relationship.***

*Articles 3(1)(b) and 14. Notification of industrial accidents and cases of occupational disease.* The Committee notes from the 2011 Annual Inspection Report that the total number of accidents was reduced by 1.3 per cent in 2010 compared to 2009, and that serious accidents were reduced by 6.3 per cent (164 in 2010, 175 in 2009) while lethal accidents decreased by 28 per cent (23 in 2010, 32 in 2009). It notes in particular that occupational accidents decreased in the construction sector by 61 per cent within four years (256 accidents in 2007 and 99 in 2010) and that the SLI carried out national inspection campaigns in particular industries (e.g., wood-processing and construction) and organized the European Week (EW) information campaign related to the maintenance of healthy and safe workplaces.

The Committee also notes that according to the Government, Cabinet Regulation No. 950 on Procedures for investigation and registration of work accidents was adopted on 25 August 2009, substituting Regulation No. 585 of 9 August 2005, so as to simplify the procedure for the investigation and registration of work accidents, and facilitating the process of their investigation by the inspectorate and employers. The SLI, according to paragraphs 10 and 11 of the Regulation, shall control how an employer investigates and registers accidents and is entitled to conduct an additional investigation of the circumstances of an accident if new facts regarding the accident have come at the disposal of the Inspectorate. Paragraph 20 stipulates that medical treatment institutions shall provide detailed information to the SLI regarding the work accidents which took place in the previous month. ***The Committee would be grateful if the Government would describe the procedure for the notification, registration and investigation of work accidents under Regulation No. 950, particularly in relation to the role of the labour inspectorate in this framework.***

***Additionally, the Committee would be grateful if the Government would provide information on any preventive activities carried out by the SLI in the area of occupational safety and health including the adoption of measures with immediate effect in case of imminent danger to the health or safety of the workers (Article 13(2)(b) of the Convention).***

***The Government is also requested to provide details concerning the procedure for the recording and notification of cases of occupational disease, and furnish statistics of diseases and the measures taken to prevent them.***

*Article 6. Status of the labour inspection staff.* The Committee takes note of the Government's reply to its previous comments, to the effect that employees of the SLI do not perform control and supervision functions, but rather support functions.

The Government also reports that the Law on Remuneration of Officials and Employees of the State and Self-Government Authorities which was adopted on 1 December 2009 and came into force on 1 January 2010, aims to ensure equal remuneration for officials and employees of State and local government authorities, including of the SLI. The Committee also notes the high levels of staff turnover in the SLI indicated in the Government's report (37 per cent in 2009 and 23 per cent in 2010). ***The Committee requests the Government to specify the conditions of service of labour inspectors and in particular, their wages, including allowances, in relation to other types of officials performing similar duties, e.g., social security and tax inspectors, pursuant to the entry into force of the Law on Remuneration of Officials and Employees of the State and Self-Government Authorities.***

*Articles 18 and 21(d) and (e). Labour inspection enforcement activities and relevant statistics.* While taking due note of the statistical information provided by the Government on the number of inspection visits, violations found, cases brought to the courts and outcome of the judicial examination as well as penalties imposed, in reply to the Committee's previous comments, the Committee observes nevertheless, that the data provided only refers to aggregate numbers and does not allow for an analysis of the impact of the activities of the labour inspectorate on the application of legislation on conditions of work and the protection of workers. ***The Committee requests the Government to take the necessary measures so as to ensure that the annual labour inspection reports include detailed information on inspection visits (such as their regional distribution, purpose and frequency) and violations found (legal provisions to which they relate, nature of penalties imposed) as well as the outcome of judicial and administrative proceedings and its impact on the enforcement of the legal provisions relating to the conditions of work and protection of workers while engaged in their work.***

***Noting with interest, that according to the Government, the SLI is in the process of implementing, as of 2012, a project on "Improvement of the Information System of the State Labour Inspectorate and Introduction of E-services", in order to provide statistical information related to the survey of undertakings, fines imposed, accidents, occupational***

diseases, etc. the Committee requests the Government to keep the ILO informed of progress made in the introduction of the information system and its impact.

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)**

With reference to its comments under the *Labour Inspection Convention, 1947 (No. 81)*, the Committee would like to draw the Government's attention to the following points.

*Articles 6(1)(b) and 13 of the Convention and Paragraphs 2 and 14 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133). Preventive activities in the field of occupational safety and health in agriculture.* The Committee notes with *interest* the Government's reference to several preventive activities in the field of agriculture in 2011 with a view to reducing the number of fatal accidents, including preventive inspection visits in agriculture aimed at raising awareness (through training on labour protection, risk assessment, mandatory health examinations, safe working methods and the use of personal protective equipment, etc.); a seminar on occupational safety in agriculture aimed at the prevention and reduction of specific risks organized in cooperation with the European Agency for Safety and Health at Work (EU-OSHA); cooperation with the "Farmers' Parliament" (FI) which is according to the Government the most influential organization of agricultural producers; and the preparation of information materials on the most essential issues relating to labour protection in agriculture, which will be distributed to the members of the FI. ***The Committee asks the Government to report in further detail on the preventive activities in agriculture, for example, the number of training courses provided by labour inspectors during inspection visits and the number of workers covered; any seminars held in the field of occupational safety and health in agriculture and their duration and the number of participants; as well as information on any collaboration with organizations representing workers in the agricultural sector, and their impact on the number of fatal and serious work accidents.***

*Articles 9(3) and 15. Specific training in agriculture for labour inspectors.* The Committee notes the Government's indication that no specific training exists for labour inspectors in the area of agriculture, but that the training system of the State Labour Inspectorate ensures the competence of inspectors to perform inspections of undertakings in all sectors and that individual inspectors have relevant education and previous experience in the field of agriculture. The Committee recalls once again that the specific characteristics of work in the agricultural sector involve specific risks for workers, for example, risks related to the handling and use of dangerous chemicals and pesticides as well as agricultural machinery and therefore require that inspectors keep abreast of developments in this field through continuous and adequate training. ***The Committee therefore asks the Government to provide further information on how it is ensured that the training provided for labour inspectors enables them to acquire and maintain the technical knowledge necessary to perform their duties adequately in the agricultural sector (training provided in relation to agricultural subjects, and its proportion in the new training system referred to in the Government's report under Convention No. 81).*** The Committee would also like to draw the Government's attention to Paragraphs 4–7 of Recommendation No. 133 on the minimum qualifications needed by labour inspectors called upon to work in the agricultural sector.

*Articles 15(b) and 21. Transport facilities for labour inspectors in agriculture and inspection visits.* The Committee's previous comments concerned the need to enable labour inspectors to carry out inspections of agricultural undertakings in accordance with *Article 21* as often and as thoroughly as is necessary notably through sufficient transport facilities and the refunding of transport costs. The Committee notes in this regard that the number of inspection visits in agriculture seems to have increased (308 visits in 2006 against 384 visits in 2010), while the number of workers in agricultural undertakings seems to have decreased (88,400 in 2006 against 82,500 in 2010). ***The Committee would be grateful if the Government would provide information on the availability of transport and other facilities at the labour inspection services that take account of the distant and remote nature of agricultural undertakings, as well as any equipment for measurement and analysis at the disposal of labour inspectors.***

*Articles 26 and 27. Annual report on labour inspection in agriculture.* The Committee notes the Government's indication that, while it has not yet been technically possible to include separate information by sector in annual labour inspection reports, the information on labour inspection activities in agriculture required under *Article 27* of the Convention will be included separately in the labour inspection report for 2011. The Committee notes with *interest* the Government's indication that the implementation of an electronic database at the State Labour Inspectorate, as of 2012, also mentioned under Convention No. 81, will provide the technical possibility to acquire most of the data requested under the Convention. It also notes the indication that information on the number of workplaces in agriculture and the workers employed therein is currently available from the Central Statistics Bureau (CSB). ***The Committee requests the Government to keep the ILO informed of the progress made in the introduction of this system and its impact on the elaboration and publication of an annual report on labour inspection activities in agriculture.***

## Lebanon

### **Labour Inspection Convention, 1947 (No. 81) (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 3(2) of the Convention. Additional duties entrusted to labour inspectors in connection with union matters.* For many years the Committee has been asking the Government to take steps to limit intervention by labour inspectors in the internal affairs of trade unions and confederations solely to cases of complaints which might be addressed to them by a significant number of members. The issue was raised by the Committee with regard to section 2(c) of Decree No. 3273 of 26 June 2000, under the terms of which the labour inspectorate has the power to monitor vocational organizations and confederations at all levels in order to check whether the latter, in their operations, are exceeding the limits prescribed by law and by their rules of procedure and statutes. The Committee stated in a direct request of 2002 that such powers were tantamount to the right to interfere in the internal affairs of professional organizations. The Government then announced that an amendment to the Labour Code would settle the issue. However, Memorandum No. 35/2 of 12 April 2006 from the Director-General of the Ministry of Labour reproduced the criticized provision using identical wording.

Section 163(3) of the version of the draft Labour Code submitted to the ILO in 2007 for opinion stated that the Labour Inspection and Occupational Safety and Health Department of the Ministry of Labour would be responsible for monitoring the application of laws, decrees and regulations relating to terms and conditions of work and the protection of workers while engaged in their work, including the provisions of ratified international and Arab conventions and, more specifically ... "(3) to conduct inquiries further to complaints relating to trade unions and confederations at all levels".

In its 2009 report, the Government indicates that this provision is contained in section 161(3) of the current version of the draft Labour Code and will have the effect of removing any power from the labour inspectorate to monitor trade union affairs, as this power would be assigned to the trade union council. It explains that the powers of the labour inspectorate with regard to occupational organizations will therefore be limited to the examination of complaints submitted to it by the latter. Since the current wording of the text in no way lends itself to such an interpretation, it is essential, in order to avoid any ambiguity in this regard, for the drafting to be reviewed in the appropriate way. *Noting that the draft amendments to the Labour Code have been under discussion for more than ten years, the Committee requests the Government, pending the definitive adoption of the Code, to contemplate cancelling, in the forms provided for by law in such matters, the provision of Memorandum No. 35/02 of 12 April 2006 of the Director-General of the Ministry of Labour under the terms of which labour inspectors retain the power to monitor trade union activities. The Committee requests the Government to provide information in its next report on the progress made in this respect.*

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

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

## Luxembourg

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

The Committee notes the Government's report for the period ending 30 June 2010, and also the annual reports of the Labour and Mining Inspectorate (ITM) for 2007, 2008 and 2010 received at the ILO on 21 April 2011. It notes with *interest* the publication, on the website <http://www.itm.lu/itm-rapport-annuel>, of the annual reports starting with the report for 2004, which provides an overview of the changes in the operation of the labour inspectorate in each area.

The Committee also notes with *interest* the inclusion in the annual report of the Code of Ethics for the labour inspectorate, adopted on 11 June 2008 and presented as a document that seeks to enable the ITM, as an organization, and its staff to apply quality standards in the sphere of professional and ethical conduct.

The Committee also notes with *interest* the establishment of the ITM Help Centre in October 2009. This is an online service at national level providing advice and assistance designed to answer any questions that may arise for employees and employers regarding the national legislation. According to the information contained in the annual inspection report for 2010, the Help Centre, which is accessible on the website [www.guichet.lu](http://www.guichet.lu), has already enabled members of the labour inspectorate, who work on a decentralized basis in regional agencies, to provide a coordinated focus for users and to deal with investigations in enterprises.

*Articles 3(1)(a) and 5 of the Convention. Methods for controlling the conditions of work of posted workers.* The Committee notes that the Labour Code, adopted pursuant to the Act of 31 July 2006, was amended in particular by the inclusion of new provisions through the Act of 21 December 2007 concerning the reform of the Labour and Mining Inspectorate (ITM). The amended version of the Labour Code came into force on 13 June 2011.

The Committee notes with *interest* the amendment of section 142-3 of the Code, under which foreign enterprises operating in Luxembourg without being permanently established there and employing one or more workers are now required to send to the ITM, as soon as possible (and no longer at the request of the ITM, as was the case under the former provisions), the documents referred to in section 142-2 concerning the enterprise and the workers employed in it. The Committee understands that this legal amendment will give the ITM the possibility of inspecting the conditions of work of the employees concerned as soon as the enterprise commences operations in Luxembourg, and thereby prevent any attempted abuse to the detriment of workers employed for short periods.

However, the Committee notes in the annual report of the ITM for 2010 that 30 injunctions for non-compliance with the new section 142-3 were issued, including nine by officials of the Luxembourg Liaison Office for Posted Workers

(BLLD) (an entity resulting from the amalgamation of the Department for Posted Workers and Action against Illegal Work (SDTI) and the Luxembourg Liaison Office), and 21 by officials of the excise administration. The BLLD has a promotional and organizational role within the Inter-Administrative Task Force against Illegal Work (CIALTI), a variable and non-institutionalized structure capable of mobilizing officials from six to eight ministries or administrations and which thereby makes an active contribution, according to the annual report, to the “crackdowns” on worksites or in enterprises already referred to in the previous comments of the Committee. In 2010, a total of 17 interventions relating to “organized undeclared work” during weekends and three “after-work” interventions (i.e. between 17.00 hours and 21.00 hours) were implemented. The interventions related to undeclared work and also to overtime. The annual report also indicates that, in the context of the activities of the ASCAB division of the Customs and Excise Administration undertaken in cooperation with the ITM, a total of 792 inspections took place, during which 204 infringements were reported and penalized. A total of 48 penalties were imposed for undeclared work, and eight reports were drawn up for infringements of the legislation relating to posted workers. The Committee further notes that the cross-border cooperation in which the BLLD participates seeks to take effective action against the numerous and increasingly ingenious variations in illegal work, and to make a specific contribution to the prevention of occupational accidents and diseases among migrant workers.

***The Committee requests the Government to clarify the role of ITM inspection staff in the preparation and implementation of “crackdowns”.***

***Referring to its comments of 2007 which were repeated in 2010, and noting that the Government has not supplied the requested information regarding the situation of foreign workers found as a result of inspections to have irregular status, especially as regards the protection of rights deriving from their status as employees during their actual period of employment, the Committee requests the Government to provide this information.***

***The Committee requests the Government to state the manner in which cross-border cooperation on controlling the posting of workers contributes to the prevention of accidents and cases of occupational disease among migrant workers.***

*Articles 2 and 3. Scope of application of the Convention and duties of labour inspection staff.* Former section L.611-1 of the Labour Code stated that “without prejudice to other duties arising from the legal, regulatory or administrative provisions, the ITM shall be responsible in particular for: (i) enforcing the legal, regulatory, administrative and collective agreement-derived provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours of work, wages, safety, health and welfare, the employment of children and young persons, equality of treatment between women and men, protection against sexual harassment in the workplace, and other connected matters, in so far as such provisions are enforceable by the Labour and Mining Inspectorate [...]”. This provision was in full conformity with *Articles 2 and 3(1)* of the Convention as regards the scope of the Convention and the duties of the labour inspectorate (focusing on conditions of work and the protection of workers).

The Committee notes that, under the terms of the new provisions on this matter (section 612-1 of the Code), the ITM is responsible in particular for enforcing the legal provisions “including those” relating to conditions of work and the protection of workers, which, at least according to the letter of the provision, relegates the inspection tasks of the labour inspectorate as defined by *Article 3(1)* of the Convention to a secondary level of competence. It notes that labour inspection staff are responsible for a number of other duties unconnected with the duties defined by *Article 3*, such as surveillance and monitoring of the marketing and use of products in the country (lifts, pressure appliances in general, gas appliances, lifting appliances), which draw substantially on the human and logistical resources of the inspectorate.

In its General Survey of 2006 on labour inspection, the Committee emphasized that primary inspection duties (enforcement of the legal provisions as established in *Article 3(1)*; provision of technical information and advice to employers and workers and their organizations; contributing towards improving the relevant legislation) are complex and require time, resources, training and considerable freedom of action and movement (paragraph 69). It reminds the Government once again that, in accordance with *Article 3(2)* of the Convention, any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. ***The Committee therefore requests the Government to take the necessary measures to re-establish the labour inspectorate, on the basis of law, in its primary duties, as defined in Articles 2 and 3(1) of the Convention, and to provide information on the measures taken or contemplated towards this end.***

***It also requests the Government to indicate the proportion of time and resources devoted by labour inspection staff to the performance of other duties as compared with the time and resources devoted to the duties defined in Article 3(1).***

*Article 12(1) Scope of inspectors’ freedom to enter workplaces liable to inspection.* The Committee notes that, under the terms of section L.614-3(1), subsection 1 of the new Code, “If there are legitimate grounds or sufficient evidence to consider that it is necessary to enforce the legal provisions coming within the competence of the Labour and Mining Inspectorate in worksites, workplaces and buildings and also their respective outbuildings, members of the labour inspectorate must be able to enter freely and without previous notice at any hour of the day or night any such location that is liable to inspection.” The same provision also states that “Inspection or search activities undertaken on the spot must

respect the principle of proportionality with regard to the grounds for such activities.” The Committee notes that this provision signifies a regression with regard to the previous national legislation. In fact, Section 13(1) of the Act of 4 April 1974 concerning the reorganization of the Labour and Mining Inspectorate, which was in line with *Article 12(1)(a)* of the Convention, had been maintained by virtue of section 612-1(1) of the Act of 31 July 2006, which provided that “inspection personnel equipped with the relevant documents of authorization shall be empowered: (1) to enter freely and without previous notice [workplaces liable to inspection]”.

The Committee considers that the fact that the new Code makes inspections subject to the existence of sufficient evidence or legitimate grounds restricts, in a way which is contrary to the Convention, the scope of labour inspectors’ right to enter workplaces liable to inspection. The only condition that should be attached to this right, in accordance with *Article 12(1)*, is the obligation for labour inspectors to be equipped with proper credentials. The fact that a workplace is liable to inspection is sufficient reason in itself for the full exercise of this right in order to ensure moreover, an effective application of *Article 16*, according to which workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. The Committee also wishes to emphasize that recognition of inspectors’ right to enter workplaces freely as defined by the Convention also enables labour inspectors to ensure that they discharge their obligation of confidentiality with regard to the source of any complaint and also as regards preventing the establishment of any link between the inspection and a complaint (*Article 15(c)*).

***The Committee therefore requests the Government to take the necessary measures to restore in the legislation the right of labour inspectors to freely enter workplaces liable to inspection, as provided for in Article 12(1)(a) of the Convention, and to indicate the measures taken in this regard.***

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

## Madagascar

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)***

The Committee takes note of the comments made by the Autonomous Trade Union of Labour Inspectors (SAIT) in a communication dated 26 August 2011. ***The Committee requests the Government to communicate any observation it deems appropriate in relation to these comments.***

The Committee notes with *regret* that the Government has not replied to the Committee’s previous comments, merely reiterating the content of its reply to the observation under the Labour Inspection Convention, 1947 (No. 81). It acknowledges however that the application of the Convention is encountering difficulties and attributes these to the lack of specific training on labour inspection in agriculture in the training programme for labour inspectors at the National School of Administration (ENAM). The Committee refers in this respect to the Government’s report sent to the ILO in 2009, in which it stated its intention to include a course specialized in this area in the training programme of this school. The Government had added that contacts had been made with those responsible in the ministry concerned but that work had been suspended because of the country’s political crisis. The Committee notes once again the Government’s good intention to ensure respect for the provisions of the Convention, accompanied by a request for assistance from the Office for this purpose.

***The Committee therefore invites the Government to formalize its request for technical assistance by providing the Office with all the relevant information at its disposal concerning the actual situation of labour inspection in agricultural enterprises, its resources, structure, logistical means, and available transport means and facilities. The Committee also asks the Government to provide information on the number of inspectors assigned to duties in the agricultural enterprises and on the nature of these duties, on the capacities of the labour inspectorate to establish, in collaboration with other competent public administration bodies, a national register or local registers of agricultural enterprises, including free zone enterprises. Finally, the Government is asked to send the most recent available data on the number and geographical distribution of agricultural enterprises, as well as on the number of workers engaged in these enterprises.***

***Referring to the comment of the SAIT in which it indicates that it is fully prepared to assume its share of responsibility in efforts to attain the Decent Work Agenda, the Committee would be grateful if the Government would provide in its next report information on the measures taken to begin, with the support of the social partners, the necessary procedures for gradually establishing a labour inspection system in agriculture.***

***The Committee finally asks the Government to provide information on the steps taken with the Ministry responsible for ENAM to introduce a training module on labour inspection in agricultural enterprises in the training programmes for student-inspectors.***

## Malawi

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)**

The Committee notes that the Government's report contains vague information on the application of the Convention. The report indicates in particular that a total of 1,169 labour inspections have been carried out and 1,413 visits have also been made to various workplaces. It is also indicated that approximately 40 inspectors and 46 assistant labour inspectors are distributed in every one of the 28 districts of Malawi. While taking due note of this information, the Committee notes that the Government does not reply to the Committee's previous comments. It must therefore repeat its previous observation which read as follows:

*Article 4(1) of the Convention. Need to re-establish a central authority entrusted with control and supervisory powers in the labour inspection system.* According to the Government's vague indications in reply to the observation made by the Committee on the basis of the recommendations of an ILO technical mission which visited the country in May 2006: (1) the labour inspection system is in the process of being developed in consultation with social partners; (2) the Ministry has already started putting in place measures to come up with a labour inspection policy and set guidelines, and a meeting was held in 2009 to kick-start the process; (3) the Ministry has placed emphasis on the planning of inspections, and sweeping inspections have been carried out in the major cities, while some joint inspections with labour inspectors and safety and health inspectors have been undertaken, for example in the northern region of the country; (4) the functional review of the Ministry, under which the Inspection Services Unit is to be strengthened to enable it to set annual targets and conduct inspections in the field, is awaiting approval; and (5) the Ministry has undertaken supervisory visits to field offices and organized some training for inspectors, including those responsible for occupational safety and health with a view to developing an integrated inspection system.

In addition, the Committee notes from the Government's report under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that the budgeting and funding of labour inspection is decentralized in such a manner that each office is allocated funds directly by Treasury according to the latter's priorities. Consequently, offices with motorcycles or motor vehicles cover fuel and maintenance, while the Ministry only receives reports on the activities performed. Based on this information, the Committee observes that the very notion of a central labour inspection authority seems to have become devoid of all substance, as the Ministry's only residual role consists of receiving activity reports from labour inspection offices, without any power to determine the needs of the labour inspection services in terms of financial and material resources with a view to their proper operation. The objective of the ILO technical mission was to help the Government to anticipate the effects of globalization on working conditions and workers' rights, to secure the commitment of the social partners to the principle that an effective labour inspection service allows the twofold interests of social protection and improved productivity, and to raise the Government's awareness of the importance of the tripartite dimension of labour administration. Although it made no reference to a decentralized labour inspection system, the mission emphasized, on the contrary, that there were no inherent or structural barriers to the operation of an effective and efficient labour inspection service; and that there was considerable room for improvement, in particular in policy, planning, management procedures, communications, equipment and training, and that this could be done by rationalizing, streamlining and consolidating the inspection functions of the Labour Directorate in the field structure. The decentralized operation of the labour inspection system, as described by the Government in the report on the application of Convention No. 129, is not such as to meet the economic and social objectives of the labour inspection Conventions. The obligations deriving from the ratifications of a Convention in any event remain the responsibility of the State. Consequently, the Government is bound, among other obligations, to: (i) observe the principle of placing the labour inspection system under a central authority, pursuant to *Article 1*; (ii) ensure that the number of labour inspectors is determined on the basis of the criteria listed in *Article 10*; and (iii) make the necessary arrangements to equip labour inspectors with the material means and transport facilities, and to reimburse any travelling and incidental expenses necessary for the performance of their duties (*Article 11*). The Government is also bound under the Labour Administration Convention, 1978 (No. 150), which has also been ratified by Malawi, to ensure that the staff of the labour administration system have the status, the material means and the financial resources necessary for the effective performance of their duties. Consequently, the allocation to labour inspectorates of material means and financial resources should be left to the discretion of the decentralized authorities, but should be determined by the Government at the central level in accordance with the priorities of labour inspection and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government's commitments, as reaffirmed in its report, be fulfilled and an annual report on labour inspection activities, as provided for in *Articles 20 and 21*, be published and serve as a basis for the assessment by the central authority of the respective needs and priorities. The technical assistance mission recommended the strengthening of the Office of the Chief Labour Officer in order to allow it to play a more important role in the setting of annual targets, the monitoring of performance by both the field and headquarters and the evaluation of the quality of inspections themselves. It added that more work is required in Malawi if the goals of decent work are to be achieved and expressed the view that as the country has embarked on a process of attracting foreign investment in agriculture and manufacturing, especially textiles, there is a need to strengthen institutions that will promote a good and fair labour market.

***The Committee urges the Government, to provide details of the measures announced in its report as a follow-up to the recommendations of the ILO technical mission and to provide copies of all relevant texts or documents. It also urges it to adopt all the necessary measures to secure an inspection system operating under the supervision and control of a central authority (Article 4) that is provided with adequate human resources in terms of both numbers and skills (Articles 6, 7 and 10) and the material conditions necessary for the exercise of its functions in relation to labour inspections (Article 11), and to keep the ILO informed of any developments in law and in practice in this respect.***

*Articles 20 and 21. Annual report on labour inspection activities.* The Committee notes with **concern** that the statistics of inspections covering all the sectors of the economy, as published in the *Labour Statistics Yearbook*, show a significant decrease from 3,043 in 2006 to 1,088 in 2007. Recalling that an annual report on labour inspection activities, which has to be published and communicated to the ILO in accordance with *Article 20*, shall contain information on each of the topics listed in *Article 21*, the Committee observes that the above statistics do not allow any appraisal of the effect of this decrease in inspections on compliance with the legislation covered by this Convention. It draws the Government's attention to Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), which provides guidance on the manner in which such information could be presented. ***The Committee therefore asks the Government to provide the available statistics on the types of industrial and commercial workplaces and indications of the legal areas targeted by inspections and the results achieved during the period***

covered by the next report. It also asks the Government to indicate the measures taken to ensure the publication of an annual report, as provided for in Articles 20 and 21.

*Labour inspection activities targeting child labour.* According to the Government's report, 3,000 children were removed from employment in the framework of the ILO-IPEC programme, instead of the target of 1,500. *Noting that the project mostly targets child labour in agriculture, the Committee would be grateful if the Government would provide the ILO with the latest statistics on labour inspection activities pertaining to child labour, specifically in industrial and commercial workplaces, and the action taken as a result.*

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

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)**

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

The Committee draws the Government's attention to its observation under the Labour Inspection Convention, 1947 (No. 81), and asks it to provide the ILO with information relating to the points raised as far as they also concern the present Convention.

*Article 7 of the Convention. Need to re-establish a central authority entrusted with control and supervisory powers over the labour inspection system in agriculture.* With reference in particular to the indication by the Government that the budgeting and funding of labour inspection is decentralized in such manner that officers with motorcycles or motor vehicles take care of the fuel and maintenance, and the Ministry only receives reports on the activities performed, the Committee would like to emphasize the overall crucial importance for labour inspectors to have at their disposal appropriate transport facilities to be in a position to perform their duties in most undertakings liable to labour inspection. Taking into consideration that agriculture is the major economic sector of the country, the Committee notes with *concern*, according to the description by the Government of the way that decentralization operates, that it is not the obligation of the Government to provide for appropriate conditions of work for labour inspectors in agriculture, as this is left to the discretion of each district authority. As emphasized in the observation under Convention No. 81, the allocation to the labour inspectorates of material means and financial resources should not be determined by decentralized labour administration authorities, but by taking into account nationwide labour inspection priorities and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government fulfil its commitments, including the obligation to ensure the publication of an annual inspection report containing the information required by *Article 27* in order to give the central authority the necessary basis for the identification of the priority actions to be undertaken. The Committee also draws the Government's attention to the specific recommendation made by the ILO technical assistance mission which visited the country in 2006 concerning the need to strengthen the labour inspection system in agricultural undertakings with a view to securing decent work in the most attractive sector in the country for foreign investments.

*The Committee is bound to urge the Government, in the light of the above: to provide details of the progress achieved in the implementation of the measures announced in its report to follow up the recommendations of the ILO technical mission, in so far as they relate to labour inspection in agriculture; to provide copies of all relevant texts or documents and to adopt all measures that are essential to secure a labour inspection system in agriculture under the supervision and control of the central authority that is provided with human resources and material conditions of work adapted to the specific needs of the agricultural sector (Articles 8, 9, 14 and 15); and to keep the ILO informed of any developments in this regard. It also urges the Government to send a copy of any relevant legal texts and documents.*

The Committee notes with *concern* that the statistics of inspection visits covering all sectors of the economy published in the *Labour Statistics Yearbook* show a significant decrease (from 3,043 in 2006 to 1,088 in 2007). The Committee recalls in this respect the requirements for the publication and communication to the ILO of an annual report on labour inspection activities, as provided for in *Article 26*, containing information on each of the topics listed in *Article 27* relating to labour inspection in agricultural undertakings. The Committee observes that the above statistics do not allow any appraisal of the extent to which the decrease in inspection visits affects the application of the Convention. *The Committee therefore asks the Government to provide any available statistics on the types of agricultural undertakings and legal areas targeted by the inspections and the results achieved during the period covered by the next report.*

*Labour inspection activities targeting child labour.* The Committee notes the Government's indication that, instead of the target of 1,500, a total of 3,000 children were removed from employment in the framework of the ILO-IPEC programme. *The Committee would be grateful if the Government would indicate the role played by labour inspectors in this regard.*

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

## **Mali**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)**

The Committee notes that the only report sent by the Government is the 2010 annual report of the National Labour Directorate. *It requests the Government to send a report in accordance with article 22 of the Constitution of the ILO, containing in particular a full reply to the Committee's previous comments, which read as follows:*

*Article 5(a) of the Convention. Specific measures to encourage cooperation between the inspection services and the justice system.* The Committee notes that trial magistrates, public prosecutors and labour inspection officials participated in the subregional seminar on cooperation between inspection services and judicial bodies held in Dakar from 8 to 10 May 2008 as part of a project to modernize labour administration and inspection (ADMITRA). It notes that the Minister of Justice addressed a circular letter to general prosecutors asking them to urge regional prosecutors to provide for action to be taken on reports of infringements drawn up by labour inspectors and to maintain healthy cooperation with inspectors in the interests of better compliance with the labour legislation. *The Committee requests the Government to provide in its next report information on the practical action taken on this circular. It requests the Government to ensure that relevant statistics are published in future annual reports on the work of the labour inspection services.*

*Articles 6, 7 and 10. Status, conditions of service and composition of the labour inspection staff.* With reference to its previous comments, the Committee notes that, contrary to what the Government has been announcing for years, the draft decree on bonuses and indemnities for labour inspectors has still not been promulgated. It also notes that despite the Government's statement that 12 labour inspectors were to be recruited in 2008, the list of labour personnel for Mali includes no inspectors, and that the staff of the inspectorate are all, without exception, in the category "controllers" (31).

In an earlier report on the application of this Convention (2003), the Government indicated that it would be utopian to expect training in labour inspection, and that training for labour inspectors was limited to a grounding in labour law at the National School of Administration, an internship in the services and participation in a training course at the African Regional Labour Administration Centre (CRADAT). The Committee notes, however, a training plan sent in 2008 intended for all labour services personnel and covering, inter alia, occupational risk prevention in the construction and public works sector (BTP); inspection methodology; penal action; and the preparation of various forms of inspection visit reports. Furthermore, the National Labour Directorate's annual report for 2008 indicates that a training workshop on ethics in inspection work, work contracts and hours of work was held for controllers from 14 to 25 April 2008 and that a training session for labour inspection trainers on occupational risks was also organized, under the guidance of two experts from GIP INTER.

*The Committee would be grateful if the Government would provide information on any developments in the area of initial training for inspection staff, and on the number and distribution by category and level of qualification of the staff currently performing inspection duties as prescribed in Article 3(1) of the Convention, specifying the criteria used to differentiate between these categories. It would be grateful if the Government would also explain why the 12 inspectors who were supposed to be recruited in 2008 are not on the list of central and regional labour administration staff sent to the Office.*

*The Committee again asks the Government to adopt the measures that are essential to the improvement of the conditions of service of labour inspection staff (remuneration, career plan, merit bonuses, etc.) so as to attract to, and retain in the profession persons who are sufficiently qualified and motivated, and hopes that in its next report the Government will be in a position to provide information showing real progress in this area.*

*The Committee would be grateful if the Government would also continue to provide details of the training received by staff performing labour inspection duties and on the practical impact of such training.*

*Articles 11, 16 and 21(c). Additional functions entrusted to labour inspectors, transport facilities and frequency of inspection visits.* According to the abovementioned annual report for 2008, the duties of the inspection services consist not only of dispute settlement and conciliation, but also supervision of the application of the labour legislation, "which must ordinarily take up most of their time". The report even stresses that "they must make visits to workplaces their main occupation". The Committee notes from the same report that ten vehicles have been assigned to the National Labour Directorate and the regional directorates for labour, employment and vocational training. In the absence of any figures on the industrial and commercial workplaces subject to labour inspection, the statistics of inspections (306) and the workers they covered (16,613) in the course of 2008, are not sufficient for an assessment of the labour inspectorate's coverage rate in relation to the scope of its mandate. It nonetheless notes that in 2008, out of 1,482 individual complaints, 1,091 were settled through conciliation. The report also indicates that 11 collective labour disputes were recorded, 40 per cent of which were followed by work stoppages in which 2,935 workers took part, mostly in the mining (2,680 workers) and the hotel (208) sectors. The Committee would like to stress that conciliation is not among the duties of the labour inspectorate as defined in Article 3(1) of the Convention and that, furthermore, according to Paragraph 8 of Labour Inspection Recommendation, 1947 (No. 81), "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes".

*The Committee would be grateful if the Government would take measures to relieve labour inspection staff of conciliation duties so as to enable them to devote themselves more fully to supervising the legislation on working conditions and the protection of workers, making use, in particular, of the vehicles recently acquired by the labour administration. The Government is asked in its next report to provide information in this regard (number and distribution of vehicles made available to labour inspectors for travel to workplaces; measures taken to relieve labour inspectors from conciliation duties).*

*Furthermore, the Committee requests the Government to ensure that the labour inspectorate has access to reliable data such as the number, categories and geographical distribution of workplaces and establishments subject to inspection, and the number of workers employed in them, so that the central inspection authority can plan inspection activities (supervision, advice, information) that ensure protection of the most vulnerable categories, and to ensure that this information is included in the annual report required by Articles 20 and 21.*

*Articles 17 and 18. Follow-up action taken by the labour inspectorate in relation to breaches of the legislation covered by the Convention.* The Committee notes from the 2008 annual report the most frequent causes of the individual complaints submitted to the National Labour Directorate (claims for wages and accessories; notices of dismissal or resignation; overtime; paid leave; and dismissals), and the infringements noted in the course of inspections (concerning pay registers, employer registers and safety registers; labour contracts; wages; minimum wages; safety and hygiene; hours of work; staff representation; weekly rest; social contributions; and occupational medicine). It nonetheless notes that no information is provided as to the causes of the collective labour disputes, which affect the mining and hotel sectors in particular. According to information available at the ILO, the collective action affecting the mining sector is founded on an enterprise's violation of the provisions of a collective agreement on working conditions and the protection of certain rights at work. The miners' claims reportedly concern, in particular, the rate of output demanded of them, the length of the working day and the non-payment of overtime and other bonuses included in a collective agreement. It would appear that the enterprise dismissed en masse workers who were covered by this collective agreement only to re-employ them under new inferior contractual conditions. *The Committee requests the Government to send to the Office detailed information on the role of the labour inspectorate in collective labour disputes, particularly in the mining sector, where these conflicts have affected 2,680 workers and consequently their families. Please also indicate whether, in the enterprises concerned by these disputes, the inspection staff noted any infringements of the labour legislation covered by the Convention and whether they recommended remedial measures or the application of penalties. Pointing out that according to Article 27 of the Convention, legal provisions consist not only of laws and regulations but of arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by inspectors, the Committee requests the Government to supplement the required information with relevant statistics and documents.*

*Articles 14 and 21. Notification of occupational accidents and cases of occupational diseases.* The Committee notes that the annual reports for 2007 and 2008 contain information on reported industrial accidents and, in the case of the report for 2008, the inquiries conducted into these accidents. It observes, however, that no information at all is provided on cases of occupational disease, although information available at the ILO refers to pathologies linked to the handling and ingestion by

workers of certain toxic substances in the course of extraction work in gold mines. *The Committee would be grateful if the Government would indicate the preventive measures taken to reduce the number of accidents and mitigate their consequences in the mining and public works sectors, and to take measures to allow the diagnosis of cases of service-incurred diseases and the notification of such cases to the inspection services so that their most common causes can be identified and eliminated to the extent possible. The Committee requests the Government to keep the Office informed of the measures taken for these purposes.*

In addition, the Committee draws the Government's attention to the following point.

*Articles 20 and 21 of the Convention. Publication and communication to the ILO of an annual report on the activities of the labour inspection services.* The Committee stresses once again that the annual report of the General Directorate of Labour does not meet the objectives assigned to the annual report requested under *Articles 20 and 21*. The Committee notes however with *interest* the information provided by the Government in September 2010 in reply to its general observation of 2009, as concerns measures taken in order to establish and update a register of industrial and commercial workplaces by virtue of the cooperation of the regional offices of the social security agency, the regional chambers of industry and commerce, as well as the tax authorities. The Government adds that since such activity is carried out on a permanent basis, the labour services will endeavour to establish a statistical database which is necessary for the assessment of the application of the Convention. *The Committee asks the Government to take the necessary steps, with ILO assistance, in order to ensure the publication of an annual report on the work of the labour inspection services, separate from the annual report of the General Directorate of Labour, as provided for in Articles 20 and 21 of the Convention.*

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

## Mauritania

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)**

*Continuous failure to apply the Convention.* In observations it has been making for many years, the Committee has noted that there is no system of labour inspection within the meaning of the Convention (*Article 1*), and has asked the Government to take the necessary steps to establish such a system in order to give effect in law and in practice to the obligations deriving from ratification of this instrument. Further to its previous comments, the Committee notes that the Government merely repeats the non-statistical information it supplied in its 2009 report regarding improvements in the material resources available to the inspection services (*Article 11*) and the junior staff of these services, and the training courses attended by labour inspectors, in particular in the context of the ADMITRA project (*Article 7*). The Committee is bound to note that the Government repeats its statement of 2009 to the effect that 40 labour inspectors were to be recruited shortly (*Article 10*) and that measures were to be taken to end the unequal treatment suffered by labour inspectors. Labour inspectors are the only public employees not to have been granted the allowance awarded by Decree in 2007 to all other administrative departments. The Government states for the third time that it will rectify the matter and that allowances will be granted to labour inspectors with regard to the specific nature of their duties and in light of their particular status.

The Committee notes that, contrary to what the report indicates, the results of the regional labour inspectorates' work have not been received by the Office, nor has any information been sent that would enable the Committee to assess the impact of the improvements in the inspectorate's material resources referred to in the last two reports, or the progress the Government asserts has been made in combating child labour. Furthermore, the Committee observes that the Government has still not sent either the provisional table of the finalized implementing texts of the Labour Code, or a copy of the Act on penalties, as further updated, referred to in the report received in 2009.

*Referring to its observation of 2006, in which it took note of a proposal made by the ILO Fact-Finding Mission, that Mauritania call on other United Nations agencies and on interested donors, to mobilize the resources needed to reinforce the labour inspectorate, the Committee urges the Government to take steps, if necessary with financial assistance to be sought in the context of international cooperation and with technical support from the ILO, to establish a labour inspection service that operates on the basis of the provisions of the Convention as regards scope (Articles 1 and 2); duties (Article 3); organization under the supervision of a central authority (Article 4); cooperation with other bodies and with employers and workers or their organizations (Article 5); status and conditions of service of labour inspectors (Article 6); requisite qualifications for recruitment and training (Article 7); criteria for determining the strength of the inspectorate (Article 10); material and logistical resources needed for the performance of their duties (Article 11); inspectors' prerogatives (Article 12); their powers (Articles 13 and 17); and their obligations (Articles 15, 16 and 19); and also in terms of the central authority's obligation to publish and to communicate to the ILO an annual report on the work of the inspection services under its control (Article 21).*

*In order to establish a labour inspection system that meets the social and economic objectives pursued by the Convention, the Committee requests the Government also to ensure, as far as possible, the implementation of the measures described in the general observations the Committee made in 2007 (on the need for effective cooperation between the labour inspectorate and judicial bodies), in 2009 (on the availability of statistics concerning industrial and commercial establishments subject to labour inspection and the number of workers covered, as basic information for an evaluation of the application of the Convention in practice), and in 2010 (on the publication and content of an annual report on the operation of the labour inspection services).*

*Adoption and implementation of a labour inspection methodology guide.* The Committee notes with *interest* from information available at the Office that the labour inspection methodology guide prepared in the context of the ADMITRA–ILO programme in cooperation with the GIP–INTER international public interest group and adopted in 2010, contains information which is valuable not only for inspectors but for other potential stakeholders in labour inspection (employers, workers and their representative organizations, other Government or private bodies, etc.). The Committee is sure that this is a useful tool for developing a labour inspection system that meets the social and economic objectives pursued by the Convention. While pointing out that the guide extends the role of the inspection services to cover enterprises in the informal economy, the Committee wishes to stress that such development will require significant additional input in terms of human, logistical and material resources.

***The Committee would be grateful if the Government would provide information on the impact of the labour inspection methodology guide during the period covered by the next report.***

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

***[The Government is asked to provide full particulars to the Conference at its 101st Session and to report in detail to the present comments in 2012.]***

## Mauritius

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)***

The committee notes with *interest* the detailed information provided in the Government's report, as well as the abundant documentation attached to it.

*Articles 20 and 21 of the Convention. Content and publication of an annual report.* Referring to its General Observation of 2010 on this crucial issue, the Committee recalls that detailed and well prepared annual reports on the activities of the labour inspection system are of fundamental importance to assess its rate of coverage and to determine the resources that have to be allocated to this public function to achieve the objectives assigned to it. The Committee notes that the majority of information requested under *Articles 20 and 21* are made available to the ILO either through hard copies transmitted by the Government with its report or statistics published via the website [www.labour.gov.mu](http://www.labour.gov.mu), and that, according to the Government, it has not been possible to finalize the publication of the annual report because the statistical unit of the Ministry is not yet fully operational. ***Therefore, the Committee strongly encourages the Government to pursue its efforts with a view to the fulfilment by the central inspection authority of its obligation to publish an annual report in accordance with Articles 20 and 21 of the Convention, as well as the guidance given in Part IV of the Labour Inspection Convention, 1947 (No. 81). The Committee requests the Government to keep the ILO informed of all the progress made in this regard.***

The Committee is also raising other points in a request addressed directly to the Government.

### ***Labour Statistics Convention, 1985 (No. 160) (ratification: 1994)***

*Articles 9(2) and 10 of the Convention. Compilation of statistics of time rates of wages and normal hours of work, and statistics of wage structure and distribution.* With reference to its previous comments, the Committee notes with *satisfaction* that the Continuous Multi Purpose Household Survey (CMPHS), conducted on a continuous basis, has started to collect data disaggregated by sex. The Committee also notes with *satisfaction* that statistics on the distribution of the employed population by hours of work, industry and occupation and on earnings by industry, occupation and sex, were published in June 2010 in the annual Economic and Social Indicators on Labour Force, Employment and Unemployment based on the 2009 CMPHS data. Moreover, data on the percentage distribution of the employed population and self-employed workers by sex and by weekly hours of work are available in a summary report of the CMPHS disseminated through the website of the Mauritius Central Statistics office (CMO). ***The Committee would be grateful if the Government would continue to regularly provide information on the publication of these statistics.***

The Committee draws the Government's attention to Resolution I[1] concerning the measurement of working time adopted by the 18th International Conference of Labour Statisticians in November–December 2008, which defines new concepts and measures in this area of statistics.

## Mexico

### ***Labour Administration Convention, 1978 (No. 150) (ratification: 1982)***

The Committee takes note of the Government's report received on 14 September 2010. It also notes the comments from the National Union of Workers of "Caminos y Puentes Federales de Ingresos y Servicios Conexos" dated 20 May 2010 and the Government's reply thereto dated 10 October 2011, as well as the new comments by the same trade union dated 30 August 2011, received at the Office on 2 September 2011 and sent to the Government on 27 September. ***The Committee requests the Government to make any comment it considers appropriate in relation to the last comments made by the trade union organization.***

*Follow-up to the recommendations of the tripartite committee (representation under article 24 of the ILO Constitution).* With reference to its comments under the *Occupational Safety and Health Convention, 1981 (No. 155)*, the Committee notes that in the recommendations adopted on March 2009 by the Governing Body on the representation made under article 24 of the ILO Constitution concerning an industrial accident that occurred at the Pasta de Conchos mine in February 2006, the Government was invited, in consultation with the social partners, to continue to take the necessary measures inter alia to monitor closely the organization and effective operation of its system of labour inspection taking due account of the *Labour Administration Recommendation, 1978 (No. 158)*, including Paragraph 26(1) thereof, and to review the potential the *Labour Inspection Convention, 1947 (No. 81)*, affords in terms of support for the measures the Government is taking in order to improve the application of its laws and regulations in the area of occupational safety and health in mines (document GB.304/14/8 (Rev.), paragraph 99(6)(b)(iv) and (d)).

The Committee notes that the National Union of Workers of “Caminos y Puentes Federales de Ingresos y Servicios Conexos” alleges non-compliance by the Government of Mexico with the tripartite committee’s recommendations. It indicates that:

- (i) the Government has promoted through the National Advisory Committee on Occupational Safety and Health the transfer of its labour inspection responsibilities to enterprises through the Occupational Safety and Health Self-Management Programme, and the replacement of occupational safety and health inspection visits conducted by public servants, with external audits carried out by private enterprises;
- (ii) the Government has refused to include the organization of the families of the workers who died in the Pasta de Conchos mine in discussions on the measures to be implemented in order to comply with the tripartite committee’s recommendations;
- (iii) there is no reliable database to consult in order to ascertain the total number of legal, illegal and clandestine mines in the coalfield; this precludes the formulation of any suitable public policies and is a disincentive to proper application of the legislation on coalmining; although Mexican Official Standard NOM-032-STPS-2008 on safety in underground coalmines applies throughout the national territory to all underground mines carrying on activities relating to the extraction of coal, and hence to so-called *pocitos* (small mines), the oldest and most dangerous form of coalmine in the region, which operate in clandestinity, the Government makes no mention of them in the information supplied;
- (iv) the adoption of NOM-032-STPS-2008 has not secured any change in the region and the fines imposed are not sufficiently dissuasive. Furthermore, the measures taken by inspectors are frequently ignored (as examples the National Union cites the Ferber mine, where a miner died while the closure order was in force, and the Lulú mine, which was closed following the death of two miners but the workers were not so informed);
- (v) enterprises give false information to the STPS inspectors, who fail to verify it; the National Union advocates publishing inspectors’ reports, orders and verifications on the relevant official website;
- (vi) the workers receive no training for the work they perform and are unaware of the new NOM-032-STPS-2008.

The Government, for its part, states that:

- (i) the labour inspectorate has been strengthened through training, supervisory and control measures and dissemination of the inspectorate’s work; as well as the creation of a self-evaluation culture through the provision of advice and guidance to employers on the most effective means of complying with labour law especially the legislation on occupational safety and health, and the imposition of adequate penalties on offenders;
- (ii) the Directorate-General of the Federal Labour Inspectorate supervises the performance of inspection duties by the federal labour delegations as regards administrative and operational aspects of their work (running of databases, conduct of inspection visits, linkage with alternate inspection programmes, analysis and assessment of reports), through visits to labour delegations, subdelegations and federal officers for the purposes of technical assistance, supervision and monitoring and evaluation, to ensure that they perform their duties in accordance with the guidelines issued (between December 2006 and July 2010, 144 assistance visits were conducted);
- (iii) the Directorate-General of the Federal Labour Inspectorate and the federal labour delegations supervise the work of labour inspectors in order to reduce and avoid any corruption in the inspectorate (between December 2006 and July 2010, the Directorate-General of the Federal Labour Inspectorate carried out 164 such visits and the federal labour delegations, 4,242);
- (iv) the Federal Labour Inspectorate has implemented a strategy to ensure better monitoring of compliance with its recommendations, in order to secure compliance by all medium-sized and large mining enterprises engaged in the extraction of coal with the occupational safety and health regulations and thus avert risks; remedial measures are also applied. The strategy consists of two procedures, one of which applies if the federal labour inspector detects conditions hazardous to the health, physical integrity and life of the workers and the other, if the inspector detects shortcomings that involve no immediate risk but that must be remedied;
- (v) the Federal Government has held specific meetings with the Pasta de Conchos Family Organization and the families of the miners who were killed in the Pasta de Conchos mine during 2007 and 2011, in order to guarantee the respect of their rights and discuss and examine a possible recovery of the bodies of the victims;

- (vi) in agreement with the trade unions and organizations of employers, there have been efforts to strengthen the occupational safety and health committees in the workplaces covered by the Federal Inspectorate;
- (vii) in order to monitor and promote the application of Mexican Official Standard NOM-032-STPS-2008, awareness-raising action about safety in underground coalmines was carried out and a course organized for federal labour inspectors and coal producers.
- (viii) the differences in the number of mines recognized by various public institutions are due to the fact that each one of them has information depending on the functions it carries out. Thus, the information coming from the Secretariat of Labour and Social Security (STPS) refers to the number of workplaces and does not necessarily coincide with the information established by the Secretariat for the Economy which has at its disposal information mainly on the number of mining concessions. The database of the STPS contains data obtained through labour inspectors having carried out inspection visits, as well as information exchanged with institutions like the Secretariat for the Economy, the National Institute of Statistics and Geography (INEGI) and the Mexican Institute of Social Security (IMSS). The INEGI and the Secretariat of the Economy transmitted information to the Directorate-General for Inspection with regard to mining concessions in force in September 2010 in order to update the registries relevant to this economic sector;
- (ix) with regard to the registry of illegal mines, the labour authority has at its disposal, since March 2010, the so-called GeoInfoMex System of the Geological Service which through satellite images allows for the identification of any mine including the *pocitos* (small mines). This tool has allowed for the identification in May 2011 of the existence of 563 vertical drills, 297 of which were active and will be subsequently inspected;
- (x) the Consultative State Subcommittee for Occupational Safety and Health carried out important activities like the promotion of training of inspection staff on the basis of the NOM-032-STPS-2008, the elaboration of needs assessments in the area of occupational safety and health in the carbon producing region of Coahuila with a view to giving priority to implementation plans, programmes and actions, the promotion through the National Institution for Adult Education of basic education for miners in order to enable them to make the most of the training provided by employers and the support by the IMSS to mining enterprises in carrying out risk assessments including statistical analyses, etc.; and
- (xi) the issuance of the Mexican Official Standard NOM-032-STPS-2008 constitutes progress for the prevention of future accidents and the Government has taken measures in order to increase the amounts of pecuniary sanctions through the Bill on labour law reform of 18 March 2010, which is under examination by Congress.

*Taking note of the measures adopted for the development, in collaboration with other organizations and public institutions, of reliable databases which allow, among other things, to calculate the total number of mines, including the pocitos (small mines), the Committee requests the Government to continue providing information on the measures adopted or envisaged in order to strengthen the coordination of the labour inspection system as part of the labour administration system (Article 4 of the Convention) and ensure that the geographical distribution of the inspection services in relation to the needs of the various areas.*

*The Committee would be grateful, in particular, if the Government would provide statistical information (annual report) on the inspection activities conducted in the mining sector and especially in coalmines, for the purpose of monitoring application of the provisions set forth in NOM-032-STPS-2008, specifying the number of mines visited among the 297 identified as liable to inspection (indicating as far as possible the inspections carried out in the so-called "pocitos"), the number and nature of contraventions found and the penalties imposed as well as the preventive measures with immediate effect ordered by labour inspectors and finally, the number of industrial accidents and cases of occupational disease in the carbon mining sector (Paragraphs 20 and 25(2) of Recommendation No. 158).*

*The Committee also asks the Government to continue to take steps, in consultation with the social partners, including the organization of the families of the miners who lost their lives at the Pasta de Conchos mine, to monitor closely the organization and efficient running of the labour inspection system as part of the labour administration system (Article 5 of the Convention).*

*In particular, the Committee would also be grateful if the Government would send information on the measures adopted or envisaged to enhance the independence of inspectors as part of the staff of the labour administration system (Article 10) and to provide adequate human and material resources for the effective performance of inspectors' duties (Paragraph 26(1) and (2)(a) and (b) of Recommendation No. 158).*

*With regard to Article 5 of the Convention, the Committee would be grateful if the Government would give an account of how the consultations held in the National Advisory Committee on Occupational Safety and Health and the strengthening of the occupational safety and health committees in enterprises have affected the operation of the labour inspectorate, particularly in the coalmining sector. Taking note moreover of the carrying out by the Consultative State Subcommittee for Occupational Safety and Health of training activities for inspectors as well as needs assessments, the Committee requests the Government to communicate details on these activities and their effects as well as the annual report on the activities of this subcommittee, if available.*

*Lastly, observing that the Government provides no information at all on the possible ratification of Convention No. 81, in response to the request of the tripartite committee, the Committee urges the Government to examine, in*

*consultation with the employers' organizations and trade unions, the potential of Convention No. 81 to support the measures being adopted to reinforce application of its legislation on occupational safety and health in mines. It trusts that the Government will take the necessary steps to carry out such consultations and that it will be in a position to provide information promptly on the results.*

*The Committee expects that the labour law reform will take into account the need to strengthen the labour inspection system in line with the recommendation of the tripartite committee and reminds the Government that it may avail itself of technical assistance from the Office.*

*The Committee also refers the Government to its comments under Occupational Safety and Health Convention, 1981 (No. 155).*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Montenegro

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2006)**

*Article 5(b) of the Convention. Collaboration between labour inspectors and employers and workers.* The Committee notes the Government's reply to the comments previously made by the Union of Free Trade Unions of Montenegro (USSCG) in a communication dated 2 September 2009 concerning the lack of collaboration between the labour inspection and trade unions. The Government refers to the obligation of professional secrecy of labour inspectors under *Article 15(b)* of the Convention, as the reason for the non-association of trade union representatives in inspection visits and indicates that the labour inspectorate responds to all calls by trade unions to participate in round tables, if the workload and the limited number of labour inspectors allow for such participation.

The Committee recalls that, according to *Article 5(b)* of the Convention, appropriate arrangements should be made to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations. The Committee refers in this regard to the guidance provided in *Paragraphs 5–7 of the Labour Inspection Recommendation, 1947 (No. 81)* with regard to various arrangements, including direct collaboration between representatives of workers and management and officials of the labour inspectorate, in the course of investigations and, in particular, inquiries into industrial accidents or occupational diseases (*Paragraph 5*) as well as the organization of conferences or joint committees or similar bodies, in which representatives of the labour inspectorate discuss with organizations of employers and workers questions concerning the enforcement of labour legislation and the health and safety of the workers (*Paragraph 6*). *The Committee would be grateful if the Government would provide information on any measures taken or envisaged to promote such collaboration between the labour inspection services and the social partners, including through the tripartite Social Council (subcommittee on occupational safety and health and labour inspection), as well as awareness-raising campaigns on the role of the labour inspectorate and the development of leaflets and other media tools, as recommended in the 2009 labour inspection audit carried out by the ILO.*

The Committee is also raising other points in a request addressed directly to the Government.

## Mozambique

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1977)**

*Legislation and training of inspectors to monitor the new provisions.* *While noting the Government's indication of the adoption of Decree No. 45/2009 of 14 August 2009 regulating the general labour inspectorate, as well as the details provided on the content of its provisions in relation to those of the Convention, the Committee would be grateful if the Government would send the ILO a copy of this text, as well as any other statutory text adopted for its application.* The Committee will examine this together with the handbook for labour inspection activities in the area of hygiene, occupational safety and health, annexed to the Government's report.

*While also noting that, according to the Government, information on the impact of Act No. 12/2009 respecting the rights and duties of people living with the HIV/AIDS virus might be provided in its next reports, the Committee requests the Government to send this information accompanied by the implementing texts provided for under section 55 of this Act, as well as statistics on the labour inspectorate's activities in the area covered.*

*Article 7(3) of the Convention.* The Committee notes with *interest* that a training programme on HIV/AIDS legislation, funded by the ILO and organized in partnership with ECoSIDA (private sector initiative in the fight against HIV/AIDS) was dispensed to 140 inspectors in 2010. *The Government is requested to provide details on the professional qualifications of the trainers, as well as on the contents and duration of the training programme in question. The Committee would be grateful if the Government would also send information on the material resources and specific methodological tools provided to the labour inspectors for their particular needs in supervising this Act, accompanied by any relevant documents.*

*Article 10. Establishing a register of establishments liable to labour inspection.* According to the Government, the list of establishments liable for labour inspection is not computerized, but it undertakes to send the relevant data available in its next reports. **The Committee requests the Government to send in its next report the data available on the establishments liable to labour inspection and to take measures to ensure cooperation with the other Government bodies and entities possessing relevant data, with a view to elaborating and regularly updating a register of establishments liable to labour inspection. Drawing the Government's attention to its 2009 general observation under this Convention on the matter, the Committee asks the Government to keep the ILO informed of measures taken and results obtained.**

*Article 17. Role of labour inspectors in monitoring the working conditions of foreign workers found in an irregular situation.* In its previous comments, the Committee reminded the Government that, in accordance with the spirit and letter of the Convention, the labour inspectorate should control the application of the legal provisions respecting conditions of work and the protection of workers, without considering the legal nature of the employment relationship or the status of the worker. It invited the Government to refer to this matter under paragraphs 75 et seq. of its 2006 General Survey on labour inspection, and to make sure that the labour inspection services are responsible for ensuring that workers whose employment relationship is suspended on the grounds of the illegality of their employment, obtain the social entitlements they acquired during the period of their employment.

**The Committee would be grateful if the Government would indicate the measures taken or envisaged to guarantee that labour inspectors ensure that employers fulfil their obligations to foreign workers in an irregular situation, for the period of their actual employment, with regards to their wages and benefits, and their rights to leave and linked to seniority etc., before these persons are expelled by the authorities responsible for applying the provisions relative to irregular immigration.**

*Articles 13 and 14. Occupational safety and health. Statistics of industrial accidents.* According to the information provided by the Government in reply to the Committee's previous request, whenever an industrial accident occurs, an inquiry is immediately launched to ascertain the reasons in order to eliminate them and prevent the occurrence of similar accidents. **The Committee would be grateful if the Government would provide information on the measures taken or envisaged to facilitate cooperation between the inspection services, employers and workers (or their respective organizations) with a view to promoting an effective culture of prevention, particularly making use of the means advocated in Part II of the Labour Inspection Recommendation, 1947 (No. 81). The Committee also asks the Government to send information on the application in practice of section 12(m) of Decree No. 45/2009, which, according to the Government, provides the labour inspector with the authority to take measures with immediate effect – such as the suspension of all operations under way in the event of serious and imminent danger for life, safety and health. Statistical information on the issue would be particularly appreciated.**

*Articles 10(b), 11(1)(b) and (2), and 16.* The Committee notes that, according to the Government, transport facilities are available to labour inspectors. It points out that expenses incurred by labour inspectors when using their own vehicles are not reimbursed. **The Committee requests the Government to provide specific information on the material means and transport facilities made available to labour inspectors to enable them to carry out inspection visits (number of vehicles per service and, with respect to the number of inspectors, the size of the establishments liable to inspection and distances to be covered). The Committee requests the Government once again to describe the measures taken to ensure that visits of establishments take place frequently enough to ensure the effective monitoring of the provisions relating to the working conditions and protection of workers.**

**Recalling that under Article 11(2) of the Convention, the competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties, the Committee requests the Government to take measures to this effect in the very near future and to provide relevant information, as well as a copy of any bill or text adopted on the matter.**

*Articles 20 and 21. Publication and communication to the ILO of an annual inspection report.* The Committee notes that despite the Government's indication, the annual inspection report has not been received at the ILO. The Committee reminds the Government that the annual report must be published each year within the deadlines established under Article 20 and that a copy must be communicated to the Office with the same frequency. In its general observation of 2010, the Committee stressed the major importance it attached to the publication and communication to the ILO of the annual inspection report within the prescribed deadlines. When well prepared, the annual report offers an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection services and, subsequently, the determination of the means necessary to improve their effectiveness. In this respect, the Committee recalls that extremely valuable guidance on the presentation and analysis of this information is provided in the *Labour Inspection Recommendation, 1947 (No. 81)*. **The Committee requests the Government to ensure, in accordance with Article 20, that an annual report on labour inspection activities containing as much as possible information required for each of the clauses (a)–(g) of Article 21 will be published by the central labour inspectorate, and that a copy will be sent to the ILO within the time limits provided in Article 20.**

## Namibia

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1996)**

*Article 4 of the Convention and Parts III and IV of the report form. Organization and effective operation of a system of labour administration.* The Committee notes with **interest** the adoption of the Labour Act, 2007 which covers, under Chapter 9, the establishment and functioning of a number of labour institutions (Labour Advisory Council, Committee for Dispute Prevention and Resolution, Essential Services Committee, Wages Commission, Labour Commissioner, Labour Inspectorate). **The Committee would be grateful if the Government would furnish extracts of reports or other periodical information provided by these bodies and information on any practical difficulties encountered in the application of the Labour Act in practice. Noting, moreover, that the Labour Court is also established under Chapter 9 of the Labour Act, the Committee would be grateful if the Government would forward to the ILO any decisions involving questions of principle in relation to the application of the Convention.**

*Articles 6 and 7. Preparation, administration, coordination, checking and review of national labour policy and progressive extension of the functions of the labour administration system to workers who are not, in law, employed persons.* The Committee notes with **interest** the Labour Force Survey 2008, a copy of which was provided by the Government, and which provides a wealth of information on the state of the labour force in the country. The Committee notes that one of the policy findings of the Survey is that the country's economic and employment policies have not been sufficiently employment friendly to make a dent in the rate of unemployment which varies from 64.9 per cent in rural areas to 36.4 per cent in urban ones; the Survey therefore calls for more effective policies for job creation devised in collaboration with the social partners. The Committee also notes the other policy findings of the Survey which include the need for: (i) urgent government intervention to promote youth employment with special emphasis on entrepreneurial skills training; (ii) a concerted effort by all stakeholders to identify and/or introduce more developmental programmes in rural areas; (iii) special programmes like the establishment of regional development funds to provide support and facilitate entrepreneurial activities in disadvantaged regions; and (iv) the establishment of regional economic development planning services, which are intended to help communities develop the local economy and generate new employment and investment. **The Committee would be grateful if the Government would furnish further information, including any available statistical data, on the measures taken or contemplated in the light of the policy findings and recommendations of the Labour Force Survey 2008. It would also be grateful if the Government would communicate a copy of the next Labour Force Survey which is periodically published. Noting moreover that, according to the preface of the Labour Force Survey 2008, a report on the characteristics of the informal sector will be published separately, the Committee would be grateful if the Government would communicate a copy of this report as well as information on any measures taken or contemplated as a follow-up to its findings.**

*Article 10. Staff, material means and financial resources of the labour administration system.* The Committee notes with **interest** that, according to the Government, the Division of the Labour Inspectorate has been restructured by adding 32 administration staff to bring the total to 81. Moreover, the Occupational Health and Safety Division has been restructured by adding seven posts to bring them up to a total of 25. The Committee also notes, however, that according to section 124(3) of the Labour Act 2007, the Minister may suspend or withdraw the appointment of a labour inspector. **The Committee requests the Government to specify the grounds on which the Minister may suspend or withdraw the appointment of a labour inspector and to provide relevant examples. Moreover, noting that section 124 generally concerns the appointment of labour inspectors without specifying the relevant process and criteria, the Committee would be grateful if the Government would provide details on the process of appointment, the qualifications required for the selection of labour inspectors, as well as their status and conditions of service once appointed.**

**Finally, with reference to its previous comments, the Committee requests the Government to provide information on the revision of the structure of the Directorate for Labour Services and the number of administration staff (number, grade, field of specialization, geographical distribution, etc.) and to indicate, if possible, the proportion of the national budget allocated to the labour administration system.**

The Committee is raising other points in a request addressed directly to the Government.

## Netherlands

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)**

The Committee takes note of the observations made by the Netherlands Trade Union Confederation (FNV), the National Federation of Christian Trade Unions (CNV) and the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP) in a communication dated 31 August 2011 which was communicated to the Government on 19 September 2011. It notes that in their comments, the three trade union organizations reiterate to a large extent observations already made in their communications of September and August 2007 with regard to the impact of the revised Working Conditions Act, 2007 (and the related Working Conditions Decree and Working Conditions Regulations) on the functioning of the labour inspection system. **The Committee requests the Government to make any observation it deems appropriate in relation to these comments.**

Articles 3, 5, 7, 9, 10, 13 and 16 of the Convention. Functioning of the labour inspection system in the area of occupational safety and health (OSH). The Committee notes the information contained in the annual report on the work of the labour inspectorate to the effect that between 2008 and 2010, the number of labour inspectors was further reduced from 465 to 431 and that the number of inspection visits decreased from 35,000 to 31,849. It notes that according to the previous and current comments of the FNV, CNV and MHP, the chance for a company to be visited by an inspector is only once in every 30 years on average and that one inspector corresponds to about 30,000 workers.

The Committee notes that, in the view of the Government, this reduction has to be seen in the context of the new national occupational safety and health policy, introduced after the entry into force of the revised Working Conditions Act in 2007; this policy has resulted in efficiency gains in the deployment of inspectors and in very good conditions for workers (corroborated, according to the Government, by surveys affirming the high level of worker satisfaction, as well as a risk level of occupational accidents that is below the European average).

In the opinion of the Government, the differentiation made by the new OSH policy between the “public and private domains” allows for “self-activation”, meaning that the social partners have the opportunity to find appropriate ways of complying with targets in the various sectors, thus enabling labour inspectors to focus on sectors with substantial working environment problems. General rules and targets for the protection of workers are laid down by the Government in the “public domain”, while in the “private domain” the social partners agree on ways and methods to achieve and implement these public targets by means of “catalogues (or *Arbocatalogues*)” which, once approved by the labour inspectorate, are legally binding and taken into account by labour inspectors during inspections. Over 150 “catalogues” have been concluded between employers and workers, in the framework of a Government subsidy scheme covering over half of the workers in the country, and the social partners are taking measures to implement the “catalogues” in individual workplaces.

The Government adds that the function of providing technical information and advice to employers and workers on means of complying with legal provisions, in the context of the new national occupational health and safety (OSH) policy, is largely assumed by private occupational safety and health services (the so-called *Arbodiensten*), which provide advice on working conditions and occupational safety and health policy to companies in a way which is adapted to their specific situation. The Government further indicates that *Arbodienst* enterprises cover about 92 per cent of the workforce, are independent and required to comply with certain legal obligations, including sufficient expertise in industrial medicine, safety and hygiene and organizational science and, according to the Government, they help companies to convert legal commitments and scientific views into specific measures.

The Committee also notes the Government’s indication that measures are to be adopted in 2011 to help employers cope with the new requirements of the so-called “ARIE” Regulations on working with dangerous substances, which the Confederation of Netherlands Industry and Employers (VNO–NCW) had described in the past as too complex and creating a heavy administrative burden. These measures encompass the design and dissemination of relevant education as well as information measures taken following the feasibility studies carried out by the National Institute for Public Health and the Environment (RIVM) as well as tailor-made consultation and advice in individual workplaces, by means of: (i) the system of *Arbodiensten*; and (ii) several private institutions which provide information on OSH, training for employees, certification and monitoring of workplaces and machinery.

The Committee recalls that according to *Article 10* of the Convention, the number of labour inspectors should be sufficient to secure the effective discharge of the duties of the inspectorate in the light of the number of the workplaces liable to inspection, the number of workers employed therein, the number and complexity of the legal provisions to be enforced as well as the material means placed at the disposal of the inspectors and the practical conditions under which visits of inspection must be carried out in order to be effective. Moreover, according to *Article 16*, workplaces should be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

*The Committee would be grateful if the Government would provide information on:*

- (i) *the impact of the new OSH policy on levels of compliance with labour law and the prevention of industrial accidents and cases of occupational disease including psychosocial aspects, which constitute one of the priorities mentioned in the Government’s previous report (Articles 3(1)(a) and (b));*
- (ii) *the evaluation of the needs of the labour inspection system in terms of human resources in the light of the number of workplaces liable to inspection and the number of workers employed therein in the context of the new OSH policy (Article 10);*
- (iii) *the powers given to the labour inspectors with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health and safety of the workers, including measures with immediate executory force in the event of imminent danger to the health and safety of the workers (Article 13);*
- (iv) *the impact of the collaboration with the social partners in the implementation of the “catalogues” on labour law compliance in workplaces in various sectors and branches (Article 5(b));*
- (v) *the operation in practice of the system of “Arbodiensten”, in particular, the procedure for the authorization of these enterprises, the manner in which they are supervised by the labour inspectorate, their functioning (scope of activity, safeguards of independence, whether the use of their services is voluntary or statutorily mandated, the*

*costs associated with their services, their availability to small- and medium-enterprises, etc.) as well as their impact on compliance with labour legislation in individual workplaces (Articles 5(a) and 9);*

- (vi) the measures adopted to facilitate compliance with the so-called “ARIE” Regulations and their impact (Articles 3(1)(b) and 5(b));*
- (vii) the implementation of a pilot project mentioned in the Government’s report which includes training to inspectors with respect to nanotechnology risks (Articles 3(1)(b) and 7(3)).*

*Articles 3(1) and (2). Additional functions entrusted to labour inspectors.* The Committee notes from the annual report on the work of the labour inspectorate that among 31,849 inspection visits in 2010, 10,500 related to the control of illegal employment (i.e. the Act on Employment of Foreigners Workers (WAV) and the Minimum Wage and Holiday Allowance Act (WML)). It understands that among the current inspectors, 171 have been charged with the control of illegal employment and wages in collaboration with the Social Security Investigation and Information Service (SIOD), a special department working together with the police and tax authorities. The Committee further notes that inspections were targeted at sectors where the risk of illegal employment was suspected to be very high. Such inspections were facilitated through research and joint actions with the Immigration and Naturalization Service (IND), the Employee Insurance Agency (UWV), the Tax Department, the Social Insurance Bank (SVB), the municipalities, the SIOD and the police, as well as through data exchange between the IND and the UWV.

The Committee would like to recall that the primary role of the labour inspectorate, pursuant to *Article 3(1)*, is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers and to supply technical information and advice; any further duties which may be entrusted to labour inspectors should not be such as to interfere with the effective discharge of the primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers (paragraph 2 of the same Article). The Committee notes that, in view of the diminishing human resources available to the inspection services, calling upon inspectors to monitor the legality of the employment relationship will necessarily entail a proportionate reduction in inspection of conditions of work. With regard to workers from third countries (non-EU) in particular, the Committee recalls that according to paragraph 78 of its 2006 General Survey on labour inspection, the primary duty of labour inspectors should be to protect workers and not to enforce immigration law. The function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection.

*The Committee requests the Government to specify the impact of the activities carried out by the labour inspectorate in the area of illegal employment on the enforcement of legal provisions relating to conditions of work and the protection of workers including the outcomes of administrative decisions, court rulings, etc.*

*The Committee also asks the Government to specify the role of the labour inspectors in the framework of joint actions with the IND and the police and to indicate the manner in which the enforcement of employers’ obligations with regard to the rights of undocumented foreign workers is ensured for the period of their effective employment relationship, especially in cases where such workers are expelled from the country.*

The Committee is raising other points in a request addressed directly to the Government.

## New Zealand

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)**

The Committee notes the Government’s report and the comments of Business New Zealand annexed to the report.

*Articles 3(1) and (2) and 5(a) of the Convention. Additional duties entrusted to labour inspectors.* The Committee notes that, in reply to its previous comments, the Government indicates that the role and functions of occupational safety and health (OSH) inspectors and labour inspectors are limited to the enforcement of legislation on OSH and employment and do not extend to the combating of illegal immigration. The Government adds that labour inspectors do sometimes work with immigration officials but the focus of this work for labour inspectors relates to OSH or employment breaches – not immigration status.

The Government adds that the Recognized Seasonal Employer (RSE) scheme is a programme aimed at ensuring legal migrant employment with approved and audited employers. The RSE labour inspectors work very closely with immigration officials in ensuring that the high employment standards of the programme are maintained. The Committee also notes that, according to Business New Zealand, section 351 of the Immigration Act 2009 makes it an offence for an employer to exploit an undocumented migrant worker.

*The Committee requests the Government to provide more information on the activities carried out by the labour inspectorate in the framework of the RSE in cooperation with immigration officials and to provide data on the impact of these activities in ensuring compliance with legal provisions concerning conditions of work and the protection of workers. The Committee would also be grateful if the Government would specify any action taken by labour inspectors if undocumented migrant workers are detected in the framework of the RSE, for instance, in order to sanction the employer and ensure the discharge of his/her obligations with regard to the statutory rights of these workers, such as*

***the payment of wages and any other benefits owed for work accomplished in the framework of the employment relationship.***

*Articles 10, 16, 17, 18 and 21. Number of labour inspectors, inspection visits and effective enforcement.* The Committee notes that the number of OSH inspectors has decreased (from 156 in 2008 to 145 in 2010), while the number of labour inspectors in employment matters has remained the same since 2008 (33 inspectors). It further notes that, over the last two years, the number of regular OSH inspections has decreased, while the number of labour inspections in employment matters has increased.

In reply to the Committee's previous comments in this regard, the Government indicates that, as the number of labour inspectors in employment matters was only 18 in 2004, it has increased significantly since then. The Government also indicates that it does not envisage an increase in the number of OSH or labour inspectors at present, due in part to constraints on Government spending. The Government indicates that to improve outcomes within the limits of current resources, labour inspectors are developing more sophisticated approaches to filtering and targeting of work so that current resources can be wielded to more effect.

The Committee also notes that, according to the statements made by the Government delegates to the 100th International Labour Conference (June 2011), a system-based model is being introduced in order to allow greater flexibility for inspectors, empower them to assist workplaces to improve their systems, while addressing individual concerns and provide proactive services targeted at clearly identified patterns of non-compliance in a more strategic manner. The objective is to promote increased voluntary compliance, and shift workplaces towards best practice. The Department of Labour has recently launched a Harm Reduction Programme in OSH which, rather than simply responding to incidents and notifications, focuses on trying to eliminate the harm or risk by working to change the underlying behaviour. According to the Government, targeting inspection services on areas or issues of highest risk is crucial, since, it could take up to five years for the Department of Labour to visit all workplaces.

The Committee also notes the information provided in the Government's report on the amendments introduced to the Employment Relations Act (ERA) in 2010, so as to ensure sustainable compliance and greater deterrence in cases where there is ongoing or severe non-compliance. In this regard, the Committee notes the introduction of two new instruments, the so-called "enforceable undertaking" and "improvement notice" which labour inspectors can apply in the cases of non-compliance and eventually enforce, if breaches persist. The Committee also notes the doubling of the maximum penalties (from 5,000 New Zealand dollars (\$NZ) to \$NZ10,000 for individual employers and from \$NZ10,000 to \$NZ20,000 for companies) in case of non-compliance, and the possibility to impose penalty interest rates in certain cases of long-standing and repeated non-compliance involving the recovery of money. It notes with *interest* that, according to the Government, a more structured approach to determining penalties by the district courts and a significant increase in the level of fines and reparations awarded in OSH prosecutions has resulted from the action of the Department of Labour which has repeatedly sought increased fines from judgments on OSH cases. It also notes with *interest* that by virtue of article 134A of the ERA as amended in 2010, the Employment Relations Authority is empowered to award a penalty against a person for obstructing or delaying an authority investigation.

***The Committee requests the Government to provide further information on the functioning of the new enforcement system in practice and to provide an assessment of its impact on levels of compliance with legal provisions on conditions of work and the protection of workers as well as on the number of industrial accidents and cases of occupational disease. It also requests the Government to indicate the impact of this system on staffing levels at the labour inspectorate given that the new system seems to require inspection visits by labour inspectors in order not only to provide information and advice but also to verify compliance with "enforceable undertakings" and "improvement notices" so as to ensure effective enforcement.***

***The Committee also requests the Government to indicate the manner in which labour inspectors exercise in practice the discretion provided for in Article 17 of the Convention to give warning and advice instead of instituting or recommending proceedings.***

***The Committee would be grateful if the Government would indicate the manner in which it is ensured, through the implementation of the so-called "improvement notices" and "enforceable undertakings" that labour inspectors apply the appropriate measures to achieve compliance with labour legislation and strike a reasonable balance between their educational and enforcement functions. Please provide a copy of any relevant internal instructions, including the operational guidelines and business rules referred to in the Government's report.***

*Articles 20 and 21. Publication and content of the annual report on the work of the labour inspectorate.* The Committee notes that the Government, in reply to its previous comment, acknowledges that the annual reports on the work of the labour inspectorate which are published on the website of the Department of Labour do not compile all the information listed under *Article 21(a)–(g)*, but indicates that information not contained in the annual reports, such as information on prosecutions, industrial accidents and relevant legislation, can be found in other parts of the website. The Committee reminds the Government that annual reports on the work of the labour inspection services are an invaluable source of practical information and data not only for the other public bodies and the ILO supervisory bodies, but also the employers' or workers' organizations who may make, on this basis, comments on ways to improve the functioning of the

labour inspection system. *Noting the Government's intention to take action to address this issue in the future, the Committee requests the Government to keep the ILO informed of any progress in this regard.*

### **Labour Statistics Convention, 1985 (No. 160) (ratification: 2001)**

*Article 14 of the Convention. Statistics of occupational injuries and diseases.* The Committee notes with **satisfaction** that in reply to its previous comments, the Government indicates that statistics on work-related claims for injuries are now published on an annual basis on the website of Statistics New Zealand in summary form. *Serious Injury Outcome Indicators* have also been published annually by the New Zealand Industry Prevention Strategy Secretariat. The Government states that in 2011, Statistics New Zealand will publish and further develop these indicators that include work-related injury indicators. ***The Committee would be grateful if the Government would keep the Office informed of further developments in this regard.***

*Article 9(2). Statistics of time rates of wages and normal hours of work.* Taking note of the information provided by the Government, the Committee draws its attention to Resolution I[1] concerning the measurement of working time adopted by the International Conference of Labour Statisticians in November–December 2008, which defines new concepts and measures in this area of statistics.

## **Niger**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)**

The Committee notes that the Government's report provides information on the provisions of the national legislation vis-à-vis the provisions of the Convention. It notes in particular that, under *Article 11 of the Convention* concerning working conditions as well as logistical and material resources of labour inspectors, the Government indicates that, in the event of labour inspectors incurring expenses as part of their displacement or the performance of their duties, the costs are reimbursed through the national budget. However, it states that some inspectors do not even have a vehicle to carry out visits and usually perform requisitions. In addition, under *Part IV of the report form* for the Convention, the Government states that the general difficulties related to the implementation of the Convention lie within the limited human, material and logistical resources available to labour inspectors and to the National Labour Directorate resulting in the impairment to effectively fulfil their mission.

In its previous comments, the Committee had referred on several occasions to the findings of the high-level investigation mission carried out by the Office from 10 to 20 January 2006 (in the context of controlling the implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182)), which highlighted the fact that the Labour Inspectorate was “severely deprived of material and humane means necessary to accomplish its various missions”, and recommended an audit of that institution to determine the exact nature and extent of needs in this area and considered that, once that was done, the Government would work with support from the ILO and that of other UN agencies and interested donors in order to mobilize resources.

In its report received in 2009, the Government committed itself to trying to make every effort to ensure that the audit would take place as soon as possible and to inform the Office of any developments in this regard. The Committee notes that the Government has not taken the measures in question but that, in response to the observation of 2010 on the need for an audit, while referring to the poor conditions within the labour inspection services, it has formally requested support and assistance from the ILO in order to strengthen the operational capabilities of its inspection services and address particular mining prospects.

The Committee must draw the Government's attention to the fact that the establishment of a labour inspection system meeting the socio-economic objectives covered by the Convention should take in due account the measures recommended by the Commission particularly in its General Survey of 2006 on labour inspection and in its general observations of 2007 (the need for effective cooperation between the labour inspection services and the judiciary), of 2009 (the availability of statistics on industrial and commercial establishments liable to labour inspection and the number of workers covered as baseline information for assessing the implementation of the Convention in practice) and of 2010 (the publication and content of an annual report on the functioning of the labour inspection). In the absence of basic information on the functioning of the labour inspection (statistics on labour inspection activities and their results, geographical distribution of industrial and commercial undertakings covered by the Convention and workers occupied therein), the Committee is not in a position to assess the effect given in practice to the Convention or to the relevant national legislation.

***Consequently, the Committee hopes that the Government's request for ILO support in order to establish, in law and in practice, a labour inspection system as prescribed by the Convention will be satisfied rapidly and requests the Government to take, in consultation with organizations of employers and workers and in cooperation with the ILO Office in the region, the necessary measures for this purpose. The Committee requests the Government to keep the Office informed of the progress achieved and any difficulties encountered.***

***[The Government is asked to reply in detail to the present comments in 2012.]***

## Norway

### **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:

*Article 19 of the Convention. Notification of industrial accidents and cases of occupational disease.* As in its observation on the Labour Inspection Convention, 1947 (No. 81), the Committee notes the establishment of a hospital accident register with a view to the registration in an electronic database of all accidents treated in Norwegian hospitals. The labour inspectorate participated in this process with a view to the establishment of a special module for the recording of industrial accidents. The Committee particularly appreciates the organization of such collaboration with a view to improving the notification and prevention of industrial accidents. The Committee also notes that, according to the Government, cases of occupational disease are still under-declared despite the obligation for medical practitioners to notify them to the labour inspectorate. The Government explains this situation by the current notification procedure which involves a paper version, which is time-consuming for medical practitioners. The Committee notes a project carried out in collaboration with the Norwegian Medical Association for the establishment of an electronic notification procedure based on the electronic patient journal and the secure electronic portal known as "Health Net". **The Committee requests the Government to keep the ILO informed of any progress achieved in terms of the provision to the labour inspectorate of data on industrial accidents and cases of occupational disease, the impact of this progress on activities for the prevention of occupational risks in workplaces and their results.**

The Committee is raising other points in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Pakistan

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)**

The Committee takes note of the comments made by the Pakistan Workers' Confederation in a communication dated 21 November 2011. **The Committee requests the Government to make any comment it deems appropriate in this regard.**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Labour inspection policy and revision of labour law legislation.* According to the report sent by the Government in 2008, a new occupational safety and health bill, based on the approach in the 2006 document on labour inspection policy (LIP 2006) by the Ministry of Labour, Manpower and Overseas Pakistanis (MLMOP), was in the course of being drafted and was expected to be adopted by the end of 2010.

The LIP 2006 document foresees various measures such as the establishment of a central labour inspection authority; the establishment of a computerized register of enterprises; the improvement of material means allocated to labour inspectorates; the establishment of integrative inspections also referred to as "one inspector, one enterprise"; the strengthening of training of labour inspectors; the increase of preventive measures; the recruitment of qualified technical experts and specialists; the increase of protection for workers in the informal economy which constitute 80 per cent of the workforce of the country and which are not covered by labour legislation; the risk assessment of enterprises and workplaces among other things through self-declaration or self-reporting by enterprises and the involvement of private actors in inspection.

According to a 2010 document on labour policy (LP 2010) published on the website of the MLMOP, it is envisaged to revise and consolidate labour legislation, to establish a tripartite council on occupational safety and health (OSH) and tripartite monitoring committees at district, province and federal levels to monitor implementation of labour laws, particularly in the area of payment of wages, working environment and working time.

In relation to labour inspection policy, the Committee notes that, according to the APFTU, "The previous Government has imposed a ban on the inspection of industries by the Labour Department, Social Security Department and Old Age benefits officers, not allowing them to inspect any industrial workplaces or departments." The trade union adds that: "Accordingly, the Government has given open hand to employers to do whatever they want. Due to this, the previous Government has also given permission to employers to get labour from children and child labour has therefore increased in Pakistan."

**The Committee would be grateful if the Government would communicate any up-to-date documentation on national labour inspection policy and report on any steps taken to implement it.**

**Please provide information on any developments as regards the adoption of new labour law legislation and, if applicable, communicate a copy of any text thereof. Please also provide information on the intended establishment of the tripartite OSH council and the tripartite monitoring committees mentioned in the LP 2010 document and, if applicable, provide information on their activities and their impact on the operation and outcomes of labour inspection and provide a copy of any relevant document.**

**The Committee also requests the Government to make any comment deemed relevant on the issue raised by the APFTU.**

*Article 4 of the Convention. Supervision and control within the labour inspection system.* The Government referred in its 2008 report to a review of inspection procedures at the provincial level, focusing particularly on the provincial government of Punjab. It further indicated that inspection visits continue to be under the control of provincial authorities. It indicates in its last report that it is envisaged to establish a national labour inspectorate as the central inspection authority to serve as the focal point for the nation's inspection activities. The Committee also notes in this regard that the PWF, like other trade unions in the past, regrets once more the persisting absence of a system for supervising application of the legislation in the provinces of Sindh and Punjab. **The Committee would be grateful if the Government would provide the ILO with information on any steps taken following the abovementioned review of the inspection procedures in the provinces of the country.**

**Please provide detailed information on the structure and organization of the labour inspection system in Punjab and Sindh and on its functioning in practice and, if applicable, a copy of any relevant legal provisions.**

*Please also provide information as regards the establishment of a national inspection authority and, if applicable, a copy of any relevant legal provisions.*

*The Committee would be grateful if the Government would also make any comment deemed relevant on the points raised by the PWF.*

*Articles 20 and 21. Publication of annual inspection reports.* The Committee recalls that the last annual report has been communicated to the ILO in 1995. It would like to come back to the information contained in the 2006 LIP document which indicates the intention to eventually establish a computerized register of enterprises, by various means such as the conduct of awareness-raising campaigns concerning the registration of workplaces and enterprises, the adoption of penalties for the non-registration with the provincial labour inspectorates, the use of existing data (e.g. information available by tax authorities) and the intended collaboration with trade unions and employers' organizations to this end. The Committee has underlined, in its 2009 general observation, the essential character of the availability of statistics on industrial and commercial workplaces liable to inspection and the number of workers employed therein (*Article 10(a)(i) and (ii) and Article 21(c)*) and the usefulness of the availability of this data for the determination of the budgetary needs for the determination of the appropriate number of labour inspectors, the necessary material resources for the discharge of their functions (*Articles 10, 11 and 16*) or the provision of training (*Article 7*). **The Committee asks the Government to endeavour to implement the abovementioned measures and, if applicable, additional measures with a view to establish a register of enterprises. It further asks the Government to take the necessary steps to ensure that an annual report on the matters set out in Article 21 of the Convention is published and sent to the ILO.** The Committee would like to draw the Government's attention to the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), which may serve as a basis for the disaggregation of the information required as well as to the possibility of ILO technical assistance for the establishment of annual inspection reports.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Panama

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)**

The Committee notes with *regret* that the Government's report has not been received and that the Government has not provided any response in reply to its Direct Requests of 2008 and 2009.

The Committee notes the comments made by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) on the application of the Convention, dated 25 August 2011, as well as the Government's reply dated 8 November 2011.

*Articles 3(1), 6, 7, 10, 15(a), 16, 17 and 18 of the Convention. Comments of trade union organizations.* According to the FENASEP, labour inspectors do not enjoy the stability or independence, which they should be assured of under the Convention in accordance with *Article 6* of the Convention, as they are employees which are subject to free appointment and removal from office. The trade union indicates that, in view of their status, the Labour Ministry has dismissed more than 90 per cent of the labour inspectors appointed by the previous Government without providing any reasons, while the previous Government had in turn dismissed the labour inspectors appointed by the former Government. The FENASEP also alleges that the new labour inspectors were appointed on the basis of political affiliation and not for their competency or merit and that they do not have the required knowledge for the performance of their duties, but that they nevertheless receive higher wages than their predecessors. Furthermore, according to the FENASEP, labour inspectors do not receive adequate training and, although their number has been recently increased, they are not sufficient, in view of the number of complaints received and the number of enterprises registered. The trade union also reports the absence of manuals on inspection procedures and protocols and alleges that labour inspectors engage in practices that are not in line with ethical standards. In addition, the FENASEP indicates that higher authorities in the Ministry have the discretion to decide in each case on who will be inspected, warned or punished.

The Government, in reply to these allegations, indicates that the 134 inspectors currently working at the Ministry of Labour and Employment Development (MITRADEL) are all civil servants and that 25 per cent of them were appointed under past administrations. The grounds for termination of the staff is that 70 per cent of them did not meet expectations set for the performance of their functions, 5 per cent were dismissed for breach of internal rules or misconduct, whereas 20 per cent resigned and 5 per cent left office without justification. The Government adds that the selection of inspectors is carried out in conformity with the requirements prescribed in the handbook of procedures of the Ministry, denies that the new inspectors have higher wages than the previous ones and explains that the new appointments were made to fill vacant posts with the same wages. It also states that the Institutional Human Resources Office and the National Directorate of the Labour Inspectorate have carried out jointly national training days for their staff on topics such as drawing up of technical reports, the discharge of their duties, the organization of the public sector, alternative means of conflict resolution, reports intended for inspectors and security officers, among others. In addition, the National Directorate of the Labour Inspectorate, received technical assistance from specialists of the Spanish Labour Ministry with the support of the Programme for the Strengthening of Labour Institutions (FOIL) and the Spanish Cooperation Agency. According to the Government, the National Directorate of the Labour Inspectorate developed, in coordination with the Institutional Planning Office of the MITRADEL, a handbook on procedures, which describes the functions of the departments of the labour inspection services and the different steps to be followed for routine and scheduled inspections. In addition, labour inspectors, prior to taking up their functions, receive training on questions relating to ethical conduct in the public sector and the sanctions applicable for serious misconduct.

The Committee recalls that, in conformity with *Article 6* of the Convention, the inspection staff shall be composed of civil servants whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. It draws the Government's attention to paragraphs 202 to 204 of its 2006 General Survey on labour inspection, where it emphasized that labour inspectors cannot act in full independence, as required by their functions, if their service or their career prospects depend on political considerations and that it is vital that the levels of remuneration and career prospects of inspectors are such that high-quality staff are attracted, retained and protected from any improper influence. It has emphasized, that as public servants, labour inspectors are generally appointed on a permanent basis and can only be dismissed for serious professional misconduct, which should be defined in terms that are as precise as possible to avoid arbitrary or improper interpretations. Therefore, a decision to dismiss an inspector, like any other decision to apply a sanction with serious consequences, should be taken, or confirmed, by a body offering the necessary guarantees of independence or autonomy with respect to the hierarchical authority and in accordance with a procedure guaranteeing the right of defence and appeal.

The Committee further draws the Government's attention to the fact that, in conformity with the requirements of *Article 7* of the Convention, labour inspectors should be recruited with sole regard to their qualifications and should be adequately trained for the performance of their duties and that *Article 15(a)* of the Convention provides that labour inspectors are prohibited from having any direct or indirect interest in the enterprises under their supervision.

*The Committee therefore requests the Government to provide clarifications on the reasons for the removal of 70 per cent of the civil servants, who were considered not to meet the performance expectations, and those 5 per cent, who were dismissed for breach of internal rules or misconduct, and to indicate the relevant legal provisions, whether any appeals have been lodged in this framework and their outcome.*

*The Committee would also be grateful if the Government would provide clarifications on the possible reasons for the resignation or departure of 25 per cent of labour inspection staff as well as on the measures taken or envisaged to retain qualified and experienced staff, (improvement of career prospects and their wage scales, notably in relation to other comparable categories of public officials) and on the safeguards of independence of labour inspectors.*

*The Committee also requests the Government to transmit the Code of conduct to be observed by inspectors in the discharge of their functions and the texts applicable in the event of non-compliance with this Code, and to indicate the relevant sanctions.*

*The Committee would also be grateful if the Government would provide information on the conditions and procedures for the recruitment of labour inspectors as well as the measures taken or envisaged in order to ensure that they are adequately trained on a regular basis, both when they enter the service as well as in the course of their employment, to enable them to perform their duties effectively (Article 7).*

*The Committee further requests the Government to communicate the text of the handbook on procedures developed by the National Directorate of the Labour Inspectorate in coordination with the Institutional Planning Office of the MITRADEL as well as to provide data on inspections (routine inspections and inspections as a result of a complaint, frequency of inspections performed in the same undertaking, scope of inspections), the violations detected by inspectors (and the legal provisions to which they relate) and the sanctions imposed, as well as the number of workplaces liable to inspection and the number of workers employed therein.*

The Committee is raising other points in a request addressed directly to the Government.

## Peru

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes the Government's report in response to its previous comments.

The Committee notes the comments made by the Union of Labour Inspectors of the Ministry of Labour and Employment Promotion (SI Peru) dated 30 May 2011, and the Government's response thereto, dated 15 September 2011. It also notes the comments made by the Autonomous Workers' Confederation of Peru (CATP), dated 9 September 2011. ***The Committee requests the Government to provide any comments or information it deems appropriate in this respect.***

The Committee notes that a representation under article 24 of the Constitution of the International Labour Organisation was presented to the Governing Body by the CATP (document GB.312/INS/16/4). In the course of its 312th Session (November 2011), the Governing Body decided that the representation was receivable, and appointed a tripartite committee to examine it.

In accordance with its usual practice, the Committee decided to postpone its examination of the application of this Convention pending the decision of the Governing Body in respect of the representation. The Committee will therefore examine the information supplied by the Government in its report relating to the period 2009–11 as well as the comments of the trade unions and the Government's reply thereto, in the light of the decisions adopted in due course by the Governing Body in the framework of said representation.

## Poland

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)***

The Committee notes the comments made by the Independent and Self-Governing Trade Union “Solidarnosc”, in a communication dated 25 August 2011. ***The Committee requests the Government to make any observation it deems appropriate in relation to these comments.***

*Article 2 of the Convention. Scope of labour inspection.* The Committee notes that Solidarnosc refers to the absence of effective inspection of workers who are not considered to be employees (civil law contracts or self-employed). In its previous comments, the Committee had noted that, under article 13 of the Act on the National Labour Inspectorate, the scope of labour inspection has been extended to cover workers conducting economic activities on their own account, particularly with regard to safety and health. ***The Committee once again asks the Government to provide information on the inspection activities carried out in industrial and commercial workplaces in relation to these workers (e.g. number of inspections, types of violations detected and penalties imposed), as well as the methods used to this end.***

*Article 3(2). Additional functions entrusted to labour inspectors.* The Committee notes that according to the Government, since 1 July 2007 the National Labour Inspectorate has been entrusted with controlling the legality of employment of Polish citizens as well as foreigners (article 13 of the Act on the National Labour Inspectorate of 13 April 2007). The National Labour Inspectorate has taken over these functions from the employment legality services of the individual administrative regions (*voivodes*) and specialized divisions on the legality of employment have been set up in all District Labour Inspectorates.

According to the Government, the activities of the specialized divisions include the control of foreign nationals, from the point of view of both the legality of employment (legality of residence, holding of the required work permit, registration with the social security services etc.) and the observance of worker’s rights (such as wages, working time, leave, occupational safety and health, etc.). The Committee recalls from its previous comments that, in this framework, cooperation is envisaged between the labour inspection and the police and border guards (article 14 of the Act) and that labour inspectors are required to notify the police and border guards of infringements of relevant regulations (article 37 of the Act). In 2007, 49 decisions to expel foreign nationals or oblige them to leave the territory had been pronounced by the Governor as a result of this cooperation.

The Committee recalls from paragraph 78 of the 2006 General Survey on Labour Inspection that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Given the potentially large proportion of inspection activities spent on verifying the legality of immigration status, the Committee has emphasized that additional duties that are not aimed at securing the enforcement of the legal provisions relating to conditions of work and the protection of workers should be assigned to labour inspectors only in so far as they do not interfere with their primary duties and do not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The Committee has also emphasized that the association of the police and border guards in labour inspection is not conducive to the relationship of trust needed to create the climate of confidence that is essential to enlisting the cooperation of employers and workers with labour inspectors. It must be possible for inspectors to be respected for their authority to report offences, and at the same time to be approachable as preventers and advisers.

The Committee has therefore emphasized that the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour 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.

In this regard, the Committee also notes with ***interest*** that the Government is in the process of transposing into national law the European Union Directive 2009/52/EC. Article 6(1), of the Directive provides that employers, who employ illegally staying third-country nationals shall be liable to pay: (a) any outstanding remuneration which shall be presumed to be at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches (unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages); (b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines; (c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned. Furthermore, in conformity with article 6(2) of the Directive, effective procedures should be ensured for the implementation of the abovementioned provisions and mechanisms should be enacted to ensure that illegally employed third-country nationals can claim and recover any outstanding remuneration. Pursuant to the same paragraph, illegally employed third-country nationals shall also be systematically and objectively informed about their rights under this paragraph and under article 13 (establishment of effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers) before the enforcement of any return decision.

***The Committee therefore requests the Government to indicate the measures taken or envisaged, including the amendment of articles 14(1) and 37(2)(3) of the Act on the National Labour Inspectorate, so as to ensure that the functions of enforcing immigration law are dissociated from those of controlling the observance of workers’ rights.***

*Please also specify the nature of the cooperation between the specialized divisions on the legality of employment and the border guards and police.*

*Noting that the annual labour inspection report for 2009 and 2010 has not been received by the Office, the Committee also asks the Government to indicate the proportion of inspectors and resources allocated to the specialized units for legality of employment, the numbers, scope and nature of controls carried out by these units, violations found, legal proceedings instituted, remedies and sanctions imposed for undeclared work, and the impact of these activities on the enforcement of legal provisions relating to conditions of work and the protection of workers.*

*The Committee once again asks the Government to indicate the manner in which the labour inspection ensures the enforcement of employers' obligations with regard to the statutory rights of undocumented foreign workers for the period of their effective employment relationship, especially in cases where such workers are expelled from the country. The Committee asks the Government to provide information on the manner in which effect will be given to EU Directive 2009/52/EC in national law and practice and to provide the ILO with a copy of any relevant legislative text once adopted.*

*Articles 5(a), 17 and 18. Sanctions and effective enforcement. Cooperation between the inspection services and the judiciary.* The Committee notes the Government's reference to training provided to labour inspectors and public prosecutors including the discussion of practical problems of cooperation and investigation as well as meetings held between the National Labour Inspectorate and the offices of public prosecutors of all instances to resolve problems of cooperation. *The Committee once again asks the Government to provide information on the impact of the above cooperation activities, such as the number of cases reported to the office of the public prosecutor and the initiation of the respective criminal proceedings, as well as their outcome (fines, prison sentences or acquittals).*

*Noting the comments made by Solidarnosc in relation to the question of sanctions and effective enforcement, the Committee requests the Government to indicate the measures taken or envisaged to ensure the inclusion of statistics of violations and penalties imposed (Articles 17, 18 and 21(e) of the Convention) in the annual labour inspection reports.*

*Article 5(b). Collaboration between labour inspection officials and the social partners.* The Solidarnosc refers to the lack of collaboration between the labour inspection services and representatives of trade unions in the course of inspections. *Noting that section 29 of the Act of 2007 on the National Labour Inspectorate provides for collaboration between the labour inspection services and trade unions during inspection activities, the Committee would be grateful if the Government would provide information on the application of this provision in practice.* The Committee draws the Government's attention in this regard to the guidance provided in Part II of Recommendation No. 81.

*Article 12(1). Right of inspectors to enter workplaces freely.* The Committee notes that the Act on Freedom of Economic Activity (AFEA), which has not been submitted to the Office in its current version, appears to still require prior authorization for labour inspectors to carry out inspections. The Committee nevertheless notes that administrative courts have issued contradictory decisions on whether labour inspection has to be considered as a body of control of economic activities falling within the scope of the AFEA. *The Committee once again requests the Government to provide the Office with a copy of the Act of 19 December 2008 amending the Act on freedom of economic activity. It once again asks the Government to indicate the measures taken or envisaged in order to ensure clarity both in law and in practice on this important question and to remove any requirement for labour inspectors to seek authorization from their hierarchical superiors in order to exercise their right of entry into workplaces liable to inspection.*

*Articles 5(a), 20 and 21 of the Convention. Data collection for the improvement of registers of workplaces in district labour inspectorates. Data exchange between the National Labour Inspectorate (NLI) and the Social Insurance Institution (ZUS).* The Committee notes that no national register of undertakings exists and that while the registers of district labour inspectorates contain information on the location, type and scope of activity of undertakings, they do not indicate the size of undertakings, nor the number and category of workers employed therein, as there is no obligation in law to communicate this information to the labour inspectorate. However, the Committee notes with *interest* the cooperation between the NLI and the ZUS since 2010 so as to make data available to the NLI by electronic mail (e.g. individual data on those responsible for paying social security contributions, as well as on insured persons) and to enable the labour inspection services to have access the ZUS database for their everyday activities. *The Committee asks the Government to keep the ILO informed of progress made in relation to data exchange between the NLI and the ZUS and, where applicable, to provide information on the impact of such cooperation on the improvement of the registers of workplaces in district labour inspectorates.*

*Noting finally that annual reports for 2009 and 2010 on the work of the labour inspection services were not received at the ILO, the Committee asks the Government to communicate the annual labour inspection reports on a regular basis to the ILO.*

## Portugal

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

*Articles 3(1)(a) and (b), 13, 17, 18, 20 and 21 of the Convention. Distribution of inspection activities between the objectives of prevention and punishment of violations.* The Committee notes the comments of the General Workers'

Union (UGT) annexed to the Government's report. The Committee notes that these comments repeat, in large part, the questions raised in 2006 and 2009. The UGT believes that special attention should be placed on the violations related to the registration of temporary labour contracts, to false self- and temporary employment, to illegal overtime hours and to abusive layoffs. The UGT highlights the need to intensify all inspection activities and not merely those aimed at prevention, to increase the human and material resources of the inspection service and to strengthen the capacity of inspectors to interpret legislation. Although the Union acknowledges the efforts made to increase both the number of inspectors and the technical support staff through various competitions, it is concerned that the Authority for Conditions of Work (ACT) has not, for several years, satisfied its pledge to provide the social partners with periodic information on labour inspection activities related to child labour, security, hygiene and health at work, back wages, etc.

The Government indicates that, in 2009, it gave particular attention to the function of the ACT in the context of providing information and advice to workers, employers and their representatives by way of a permanent update on its website, which contains: clarifications on some important aspects of the law; the forms related to the obligations of communication of information to the ACT; the list of self-verifications to facilitate internal monitoring relating to security and health at work, in particular in small and medium-sized industries; information on the displacement of workers in the European Union countries; frequently asked questions; and, statistical figures regarding lethal work accidents that had been the subject of ACT investigations. The Government further highlights the publication of pamphlets and books and that, in regard to the activities of information and advice, 8,355 issues were treated through email. The Committee notes, however, that the Office last received the annual report on the activities of the labour inspection services back in 2008. ***The Committee asks the Government to ensure that the annual report is communicated to the Office without delay and becomes available to the social partners, and that it contain information on all of the questions listed in Article 21 of the Convention and, in particular, on the violations found by the labour inspectors, specifying the legal provisions concerned. The Committee would also be grateful if the Government would submit information on the impact of the activities of information, advice and enforcement carried out by the labour inspection services on the application of the provisions concerning the conditions of work and the protection of workers while engaged in their work in the establishments covered by the Convention.***

*Article 7. Capacity building of labour inspectors.* The Committee notes the detailed information provided by the Government relating to the capacity building provided to labour inspectors. It notes that, in 2008, the ACT carried out 46 continuous vocational trainings directed at labour inspectors, lasting 627 hours, and that, in 2009, there were 66 activities, lasting 2,586 hours. In 2008, these activities included topics like the information system for registering inspection activities, as well as the inspection of road transportation, the participation of minors in shows and other cultural and artistic activities, temporary work, occupational safety and health in the agro-forestry sector, the manual handling of cargo, working machinery and equipment, undeclared work and other forms of irregular work and finally, the exposure to asbestos, physical risks and chemicals. In 2009, the activities directed at trainee inspectors included, in particular, modules on industrial relations, occupational safety and health, professional ethics, the legal framework and information systems. The training also continues to include general conditions of work and occupational safety and health, as well as modules on information systems. ***The Committee would be grateful if the Government would continue to provide information on the measures adopted to ensure the training of labour inspectors in the course of their employment and, where possible, specify by district or region the precise number of inspectors who participated in training activities. Furthermore, the Committee asks the Government once again to provide information specifying how the training activities have impacted on the methods of work of the labour inspectors and their capacity to detect labour law violations.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1983)***

The Committee notes the Government's report and the comments of the General Union of Workers (UGT), annexed to that report.

The Committee refers the Government to the comments made under the Labour Inspection Convention, 1947 (No. 81), in regard to those matters which apply equally to the Articles of the present Convention.

*Articles 6(1)(a) and (b), 22, 23 and 24 of the Convention. Prevention, prosecution and penalties for infringements in labour.* The Committee notes that, according to the UGT, there has been no significant modification in the agricultural sector, which continues to be characterized by a multitude of small enterprises, with many having a familial character and a seasonal market. According to the UGT, during the period covered by the report, an intensive inspection was advanced in the agricultural sector inasmuch as, in accordance with the data laid out in the annual inspection report for 2009, this sector held the third position for recorded lethal accidents in the workplace. Preventative actions and supervision were advanced with priority given to businesses that, in the past three years, had had grave or lethal work accidents, in conformity with a measure envisaged in the National Strategy for Security and Health at Work, 2008–12. The UGT further highlights the recent ratification of the *Safety and Health in Agriculture Convention, 2001 (No. 184)*.

The Committee notes that according to the Government, during the implementation of Stage I of the Inspection Action Plan for security and health at work 2008–10, 130 visits were undertaken in agriculture, the agricultural farming

and forestry industries in 2009, leading to 64 statements of infringements and the imposition of pecuniary sanctions. A further 323 irregular situations were noted, which led to preventative measures and the immediate suspension of labour was ordered in one case threatening the life, integrity or health of the workers.

The Committee notes, in addition, the data provided in the Government's report relating to the supervisory activities of the labour inspectorate in agriculture between 2009 and 2010. ***The Committee requests the Government to provide information on the impact of the implementation of the National Inspection Plan for security and health at work in the agricultural sector as regards the set objective and, in particular, on the number of work accidents and cases of professional disease.***

***Articles 9(3) and 14. Strengthening the inspection staff numbers and training in agriculture. The Committee refers the Government to its comments in connection with Articles 9 and 10 of the Labour Inspection Convention, 1947 (No. 81), and once more requests the Government to provide information on any further measures adopted to strengthen the capacities of the inspection services in agriculture, as well as information on the impact of the training courses that were referenced in the Government's previous report regarding the inspectors' working methods and their capacity for detecting violations and the prevention of accidents.***

***Articles 26 and 27. Content and communication of the annual inspection report.*** The Committee notes that the annual report on the work of the inspection services in the continent for 2009 and 2010 has not been received at the ILO. It notes the succinct figures provided on the activities of the Labour Inspection in agriculture in the Autonomous Region of the Azores and the absence of corresponding information relating to the Autonomous Region of Madeira. ***The Committee requests the Government to transmit to the Office copies of the annual inspection report in agriculture for the continent. The Committee would be grateful, once more, if the Government would take measures to ensure that annual reports on inspection activities in agriculture in the Autonomous Regions of the Azores and of Madeira, containing information on the questions contemplated in clauses (a) to (g) of Article 27, are published and transmitted to the Office in line with Article 26.***

## Qatar

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)***

***Articles 4, 8, 10, 20 and 21 of the Convention. Reinforcement of the labour inspection system and publication of an annual labour inspection report.*** The Committee notes with *interest* that according to the Government's report, in view of the importance of the labour inspection system and its significant role, the previous labour inspection body has been upgraded into a Labour Inspection Department by virtue of the Emir's Order No. 35 of 2009 on the organizational structure of the Ministry of Labour. In accordance with section 10 of the abovementioned Order, the Labour Inspection Department is competent to: monitor the implementation of labour laws and the general plan for labour inspection; undertake periodic and surprise inspections to workplaces so as to verify the application of the Labour Code and its implementing orders; provide advice and guidance to employers on the manner of removing violations; address warnings and draft reports of violations and submit them to the competent bodies; carry out preventive supervision of private companies and undertakings in accordance with the Labour Code and its implementing orders; undertake an evaluation of the hazards resulting from the use of dangerous products at work in coordination with relevant public bodies; verify the observance of employers' obligations regarding the payment of wages; and verify and follow up on the adoption of occupational safety and health measures. The Committee also notes from the Government's report that the labour inspection department has, in addition to the main branch in Doha, four branches distributed in the various regions so as to cover the entire territory of the country and achieve a balance in the inspection staff across undertakings.

The Committee also notes, however, once again, that an annual labour inspection report has not been received at the ILO. While taking due note of the brief statistical data provided by the Government in the annex to its report, the Committee once again recalls the importance that it attaches to compliance with the obligation of the publication and communication by the central inspection authority, within the time limits set out in *Article 20*, of an annual report containing useful information on each of the items covered by *Article 21*. Indeed, assessment of the level of application of the Convention is only possible where, in addition to legislative information, the Committee also has access to precise information on the application of the legislation in practice. Presented as suggested in Paragraph 9 of the *Labour Inspection Recommendation, 1947 (No. 81)*, (inspection staff, workplaces liable to inspection, persons employed therein, statistics of inspection visits, violations, penalties imposed, industrial accidents and occupational diseases), such information would shed light on the operation of the labour inspection system in relation to the requirements of the Convention and would enable the central authority to determine priorities for action and the corresponding resources. The Committee also emphasized in its general observation of 2010 that when well prepared, the annual report offers an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection services and, subsequently, the determination of the means necessary to improve their effectiveness.

***The Committee would be grateful if the Government would provide an organizational chart of the new Labour Inspection Department and specify the number of labour inspectors and their geographical distribution as well as their technical area of competence. Please also indicate whether the labour inspectorate includes women inspectors, and if so, provide information as to any specific duties entrusted to them.***

*The Committee once again requests the Government to indicate the measures taken or envisaged so that the central labour inspection authority publishes and communicates to the ILO, within the time limits set out in Article 20, a report on the activities undertaken by the services placed under its control and supervision, containing the information required by Article 21, and presented in so far as possible in the manner indicated in Paragraph 9 of Recommendation No. 81. As long as such a report is not published, the Committee requests the Government to indicate the obstacles in this regard and measures taken to address them and to provide detailed information and statistical data necessary in order to enable the Committee to appraise the activities carried out by the Labour Inspection Department in practice.*

*With reference to its general observation of 2009 concerning the importance of establishing and updating a register of workplaces liable to labour inspection, containing information on the number and categories of workers employed therein (Article 21(c)), the Committee particularly requests the Government to ensure that measures are taken to ensure that such a register is set up through inter-institutional cooperation and that relevant information is published in the annual labour inspection report to allow for the assessment of effective coverage of the inspection system in relation to the industrial and commercial workplaces liable to inspection. It would be grateful if the Government would provide information on any progress achieved in this respect.*

*Articles 5(a) and 21(e). Effective cooperation between the labour inspectorate and the justice system.* With reference to its general observation of 2007 in which it emphasized the value of effective cooperation between the labour inspectorate and the justice system, the Committee recalls from the previous report of the Government that such cooperation is carried out through an exchange of information, statistics and other data between the inspectorate and the High Judicial Council. In its latest report, the Government provides statistical information on the number of cases referred to the judicial authorities, which amounted to 333 in 2010 and 100 during the first trimester of 2011, and concerned primarily delays in the payment of wages and benefits. *The Committee requests the Government to indicate the results of these judicial proceedings and to indicate any further measures taken or envisaged to reinforce the cooperation between the labour inspection and the justice system, for instance, through the creation of a system for the recording of judicial decisions that is accessible to the labour inspectorate to enable the central authority to make use of this information in pursuance of its objectives and to include it in the annual report in accordance with Article 21(e).*

*Articles 5(a) and (b), 14 and 21(f) and (g). Cooperation and collaboration with other public entities and employers and workers in the area of OSH. Notification and statistics of industrial accidents and cases of occupational disease and prevention of their recurrence.* The Committee notes with *interest* section 1 of the Order of 2011 adopted by the Council of Ministers which establishes the National Committee for Occupational Safety and Health (OSH). It notes that this Committee is composed of representatives from the Ministry of Labour, the Ministry of the Interior (Public Department for Civil Defence), the Ministry of the Municipality and Urban Planning, the Ministry of the Environment, the General Secretariat of the Council of Ministers, the Supreme Council for Health, the Qatar Petroleum (Department for Health, Safety and Environment), the Public Authority for Public Works, representatives acting on behalf of employers selected by the Chamber of Industry and Trade and one or more representatives acting on behalf of workers. Pursuant to section 3 of the Order, the Committee is competent to: propose a national policy as well as a national programme and system for OSH; examine the reasons for industrial accidents and cases of occupational disease and propose the means which could stop their occurrence in the future; propose and revise OSH regulations and rules; propose mechanisms for the implementation of laws and regulations related to OSH; provide advisory services in the field of OSH; review the requirements for insuring against industrial accidents and cases of occupational disease; undertake studies and research related to OSH; and examine the conventions and recommendations related to OSH and make recommendations in this regard.

*The Committee requests the Government to keep the ILO informed of the work of the National Committee on OSH and its impact on the implementation of the objectives of the Convention. Please also indicate the way in which the labour inspectorate cooperates with the National Committee.*

*Recalling from the previous report of the Government that statistics of industrial accidents were presented under various criteria including the nationality of the victims, the age group, cause of the accident, part of the body injured and the resulting incapacity rate, the Committee would be grateful if the Government would indicate the conclusions drawn and follow-up action taken in relation to these criteria.*

*The Committee also once again requests the Government to provide any available statistics of cases of occupational diseases and to ensure that such statistics are included in the annual labour inspection report and are used with a view to developing a relevant prevention policy. It would be grateful if the Government would provide information in its next report on any progress achieved in this respect and on any measures adopted or envisaged to ensure the follow up, through cooperation with other receiving countries in the region, of cases of occupational diseases among migrant workers, who make up the majority of the workforce engaged in workplaces liable to inspection.*

*Article 12(1). Extent of the right of labour inspectors to enter freely premises and workplaces liable to inspection.* In its previous comment, the Committee requested the Government to amend section 7 of Ministerial Order No. 13 of 2005 in order to bring the legislation into conformity with the spirit and letter of *Article 12(1)(a)* of the Convention. The Government indicates that section 7 of Ministerial Order No. 13 of 2005 provides that no prior notice of an inspection

visit shall be authorized under any circumstances and that upon entering the undertaking to carry out inspection duties, a labour inspector is required to notify the employer or his representative unless the inspector is of the view that the notification may harm his duties. According to the Government, this provision is in full conformity with *Article 12(1) and (2)*.

The Committee once again recalls that as indicated in paragraph 267 of its 2006 General Survey on labour inspection, the fact that the instruments provide that inspectors should be authorized to enter workplaces without previous notice does not mean that, where deemed useful or necessary by the inspector, the employer or his or her representative cannot be informed of the time and purpose of the inspection (i.e., in advance). ***The Committee requests the Government to take all necessary measures to amend section 7 of Ministerial Order No. 13 of 2005 in order to bring the legislation into conformity with the spirit and letter of the Convention on this point so that, while being authorized to carry out inspections freely and without notice, labour inspectors may also be able to inform the employer in advance of their inspection or its purpose where they consider that such notification is useful or necessary, for instance, in order to ensure his or her presence or have access to particular documents. Please keep the ILO informed of any progress made in this regard.***

*Article 15(c). Obligation to treat as confidential the existence of a complaint.* The Committee notes once again the information provided by the Government on the legal provisions which require labour inspectors to maintain confidentiality in relation to the author of a complaint giving rise to an inspection. ***The Committee once again requests the Government to indicate the measures taken or envisaged to ensure that where an inspection is carried out in response to a complaint, the inspector is required not to give any intimation of the existence of such complaint and may proceed to carry out an investigation in full discretion.*** Such a provision would have the effect of ensuring the protection of those lodging complaints from any reprisals by the employer or his representative.

## Romania

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)***

The Committee notes the comments of the Confederation of Democratic Trade Unions of Romania (CSDR), received on 23 August 2010; the Block of National Trade Unions (BNS), received on 18 January 2011 and 1 September 2011; and the National Confederation of Free Trade Unions of Romania (CNSLR Frățja), received on 25 August 2010. The Committee notes the Government's reply to these comments, as well as to the comments made by the National Trade Union Confederation (CNS Cartel Alfa) in June 2009. ***The Committee requests the Government to make any comment it deems appropriate in relation to the latest observations by CNSLR Frățja received on 2 September 2011 along with the Government's report.***

*Labour law reform.* The Committee notes that the Government has embarked on a reform of labour legislation, including provisions relating to the structure and the functioning of the labour inspection system, in the context of an economic program supported by the International Monetary Fund (IMF), the European Union (EU), and the World Bank. ***The Committee requests the Government to transmit to the ILO copies of Act No. 108/1999 on the establishment and organization of the labour inspection, as amended, Act No. 188/1999 issuing the civil service regulations, and Government Decision (GD) No. 1377/2009 regulating the organization and functioning of the labour inspection (replacing GD No. 767/1999).***

*Article 3(2) of the Convention. Additional functions entrusted to labour inspectors.* The Committee notes the comments of the CNSLR Frățja and the CSDR according to which, following the amendment of the Regulations on the organization and functioning of the labour inspection (GD No. 1377/2009), labour inspectors have been entrusted, among other things, with the functions of conciliation and arbitration in cases of conflicts of interest. The Committee refers in this regard to paragraphs 72–74 of the General Survey of 2006 on labour inspection, in which it emphasizes that conciliation should not be among the duties of the labour inspectorate, and to Paragraph 8 of the *Labour Inspection Recommendation, 1947 (No. 81)*, according to which “the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes”. ***Drawing the Government's attention to the provisions of Article 3(2) of the Convention, the Committee requests the Government to take the necessary legislative and practical measures to relieve labour inspectors of conciliation duties so that they can devote themselves fully to ensuring the application of legal provisions relating to conditions of work and the protection of workers, thereby contributing to the prevention of situations giving rise to labour disputes.***

The Committee also notes that the Government's report refers to the adoption of GD No. 1024/2010 approving the national strategy to reduce the incidence of undeclared work in 2010–12 and the National Action Plan for its implementation. ***The Committee would be grateful if the Government would provide copies of these documents as well as information on the activities carried out by the labour inspectorate in the area of controlling undeclared work and in particular data on the number of inspections, the violations found, legal proceedings instituted and remedies and sanctions imposed for undeclared work. It also requests the Government to indicate the impact of these activities on the implementation of the objectives of the Convention with regard to the effective enforcement of legal provisions on the conditions of work and the protection of workers.***

The Committee notes that the Government refers to Protocol No. 1107/803073/2827283/2009 concluded between the labour inspection, the National Agency for Fiscal Administration and the Romanian Office for Immigration in the framework of the strategy to reduce undeclared work. The Committee also notes from the annual labour inspection report for 2009, that both in 2008 and 2009, the labour inspectorate and the Immigration Office established a cooperation plan in order to combat illegal immigration and illegal work of foreign workers. In this regard, the Committee would like to recall that as indicated in paragraphs 76–78 of its 2006 General Survey on Labour Inspection with regard to the increasing tendency to link inspections of clandestine work and irregular migration and the practice of collaboration with other Government agencies in this regard, that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. Efforts to control the use of migrant workers in an irregular situation require the mobilization of considerable resources in terms of staff, time and material resources, which inspectorates can only provide to the detriment of their primary duties. Moreover, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers if it is to be compatible with the objective of labour inspection. This objective can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers and not immigration law. ***The Committee therefore requests the Government to indicate the measures taken or envisaged so as to ensure that the functions of enforcing immigration law are dissociated from those of controlling the observance of workers' rights. Please also specify the scope and procedures of cooperation between the labour inspectorate and the Immigration Office.***

***Furthermore, the Committee would be grateful if the Government would indicate the manner in which the labour inspectorate ensures the discharge of the employers' obligations with regard to the statutory rights of foreign workers in an irregular situation, such as the payment of wages and other benefits due for work accomplished in the framework of the employment relationship, particularly in cases where these workers are expelled from the country.***

*Articles 4, 6 and 7. Supervision and control by a central authority. Qualifications and conditions of service of labour inspectors.* The Committee notes that, according to the BNS, the principle of the independence of labour inspectors of any change of government and any undue external influence is seriously affected by the politicization of the labour inspectorate, which results in practice in frequent staff movements, as well as inspections in enterprises that are sometimes targeted on the basis of criteria relating to the political affiliation of employers. The CNSLR Frătja and the CSDR also refer to staff instability at central and local levels in 2009 and 2010.

The Government refutes these allegations and refers to the existence of a uniform and coherent labour inspection strategy, independent of any change of government and of any external influence, guaranteed by the permanence of the position of General State Inspector. With regard to the changes in staff positions in 2009 and 2010, the Government indicates that they were decided upon in accordance with Act No.188 of 1999 as sanctions against officials who had been guilty of violations of the obligation of confidentiality and discretion, or who had failed to comply strictly with legal provisions during inspections.

In response to the point raised by the CNS Cartel Alfa in June 2009 concerning staff changes and replacements in relation to the executive staff of various regional inspection offices, the Government adds that Emergency Ordinances Nos 37 of 22 April 2009 and 105 of 2009, under which these measures were adopted, have been declared unconstitutional and their effects void. Consequently, the appointments of the Directors and Deputy Directors of regional offices were suspended and officials have been appointed on a temporary basis to the previous posts of Chief Inspector and Deputy Chief Inspector while awaiting for the organization of a competition to fill these posts.

The Committee understands from the above that competitions have still not taken place with a view to ending the uncertainty as to the key positions of the heads of the labour inspectorates at the regional level and ensuring that the qualifications and competence of the persons who currently hold these posts are established in a transparent manner in accordance with *Article 7* of the Convention. It emphasizes that the existence of a stable central authority at the highest level of the labour inspectorate is not in itself sufficient to ensure in practice the implementation of a unified and coherent strategy in all regions. The stability of inspection personnel and conditions of service which guarantee them independence from any change of Government and any external influence are a prerequisite for the operation of an inspection system that can help to achieve the eminently important socio-economic objective assigned to this public service. ***The Committee urges the Government to take the necessary measures so that competitions for executive positions in local inspectorates take place without delay and to keep the Office informed of the results. It also requests the Government to describe the criteria and procedures followed for the recruitment of labour inspection staff including executive staff (Article 7(1) of the Convention). It would be grateful if the Government would provide further information on the reasons for the changes in personnel referred to by the trade unions (number of cases where misconduct was ascertained, indication of relevant provisions in Act No. 188/1999 and decisions taken, etc.).***

The CSDR also raises the question of appropriate and continuous training of inspectors and calls for the development of an appropriate strategy in this respect, which the Committee considers to be a key issue for the development of labour inspection services adapted to developments in the world of work. ***The Committee would be grateful if the Government would indicate the steps taken or envisaged for the elaboration of a training strategy and the frequency, content and duration of training available to labour inspectors, as well as the number of participants and the practical impact of such training (Article 7(3) of the Convention).***

With regard to the policy on the remuneration of labour inspectors, the CNSLR Frăția considers that it is totally inadequate in relation to their functions and responsibilities. Furthermore, according to the CSDR, the application of recent legal provisions has resulted in a reduction in their salaries by 25 per cent. In this regard, the Committee notes the Government's reply to the comments made by the BNS under the *Protection of Wages Convention, 1949 (No. 95)*, to the effect that these reductions were found to be constitutional. Referring also to paragraph 209 of its 2006 General Survey on Labour Inspection, the Committee recalls that although it is aware of the severe budgetary restrictions governments often face, it is bound to emphasize the importance it places on the treatment of labour inspectors in a way that reflects the importance and specificities of their duties and that takes account of personal merit. ***The Committee requests the Government to provide information on the impact of the recent reforms on the budget allocated to the labour inspection and to indicate any measures taken or envisaged in order to improve the conditions of service of labour inspectors.***

*Article 5(b) of the Convention. Collaboration with employers and workers and their organizations.* According to the CNSLR Frăția, it was impossible to conclude a cooperation protocol with the labour inspectorate in 2009 and 2010 due to the many changes in senior inspection personnel. Furthermore, the standard inspection procedure requires labour inspectors to invite only employers' representatives to assist on the occasion of inspections, but not workers' representatives. The Government indicates in this regard that the labour inspectorate, irrespective of the authority in charge, has always been open to the social partners for the conclusion of cooperation protocols. The Government refers in this respect to the protocols concluded in recent years with the CNSLR Frăția, the CSDR and the BSN, namely Protocols Nos 1808/669/04.10.2010 and 1886/1420/18.10.2010. In this respect, the Committee notes the CSDR's view that the Labour Inspection Board should include, at the central and regional levels, representatives of both employers and trade unions in order to achieve effective collaboration. ***The Committee asks the Government to provide copies of the cooperation protocols concluded between the labour inspectorate and employers' and workers' representatives and to describe in greater detail the arrangements for collaboration between the labour inspectorate and the social partners. It also requests the Government to indicate the composition of the Labour Inspection Board and its activities during the period covered by the next report.***

*Articles 10, 11 and 16. Human resources and material means available to the labour inspection.* According to the CNSLR Frăția and the CSDR, the total labour inspection staff (including public employees and contractual staff) now amounts to 3,236 persons, due to personnel reductions which took place in 2010 and the closure of the social inspection and social inclusion department within the labour inspectorate. The Committee notes that both trade unions deplore the inadequacy of the number of labour inspectors which, according to the CSDR, prevents them from carrying out their functions.

The Committee notes the tables provided by the Government on the general structure of the personnel and the distribution of labour inspectors by rank at central and local levels, including those engaged in supervision in the field of safety and health, disaggregated by economic sector. It also notes that with regard to the material means available to labour inspectors for the performance of their duties, the Government indicates that it spent a considerable amount in 2009 on equipment and transport facilities for the central and regional offices, but acknowledges that no additional resources were allocated for that purpose in 2010. ***Drawing attention to the socio-economic importance of the objectives assigned to the labour inspection services, the Committee urges the Government to endeavour to the fullest possible extent to ensure that the human resources allocated to the labour inspectorate are sufficient for the effective exercise of its functions (Article 10). The Committee requests the Government to keep the ILO informed of any measure taken or envisaged in this regard.***

*Article 15(c). Confidentiality of the source of complaints.* The Committee notes the observation made by the CNSLR Frăția that labour inspectors carrying out inspections frequently reveal the authors of complaints, leading to dramatic consequences for the latter. The trade union ascribes this to the lack of a provision in the law sanctioning breaches of confidentiality by labour inspectors. ***Recalling that the issue of breaches of confidentiality was raised previously by the BNS in comments sent to the ILO in January 2004, the Government is requested to provide detailed information on the measures taken or envisaged, in order to ensure that labour inspectors comply with the confidentiality requirement set out in the law with respect to the existence and source of any complaint.***

*Articles 13, 17 and 18. Prevention and enforcement measures.* The Committee notes that, according to the statistics on inspection activities provided by the Government in its report, the number of inspections, the number of enterprises inspected and the number of sanctions applied by the labour inspectorate continued to increase in 2009 and 2010. The Government indicates that the number of penalties applied increased because of the failure of employers to give effect to the measures ordered by labour inspectors. The Committee also notes an increase in the number of occasions on which work was stopped in cases of failure to comply with the measures ordered to protect the health and safety of workers. The Committee refers in this regard to the comment of the CSDR concerning the lack of preventive activities targeting safety and health at work before employment accidents actually occur. It also notes the acknowledgement by the Government that it has still not given full effect to *Article 13(2)* of the Convention, under the terms of which labour inspectors shall have the right to apply to the competent authority for the issuance of orders or for the initiation of measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

The Committee understands that stoppages of work and the shutting down of activities generally occur in situations where an accident has already occurred. It wishes to emphasize that the intention of *Article 13* of the Convention is to empower labour inspectors to take steps with a view to remedying defects observed in plant, lay-out or working methods which they have reasonable cause to believe constitute a threat to the health and safety of the workers. The provisions of this Article are not intended to punish employers responsible for violations, but to ensure the elimination of the causes of risks with a view to preventing accidents.

The Committee also recalls that where an employer fails to comply with measures ordered on the occasion of an inspection, in accordance with *Article 13*, the labour inspector should be empowered to make use of *Article 17*, which is also applicable in areas other than occupational safety and health, and involves such measures as prompt legal proceedings without previous warning or, where appropriate, warnings and advice. The Committee emphasizes in this regard that routine inspections are indispensable to give full effect to *Article 13*, which would avoid or reduce the need to make use of the powers provided for in *Article 17*. ***The Committee requests the Government to take the opportunity of the ongoing legislative reforms in order to adopt all necessary measures giving full effect to Article 13 and to keep the ILO informed of the progress made to this end. In the light of the above explanations, the Committee would also be grateful if the Government would provide statistics of routine inspections and verification inspections in industrial and commercial workplaces, as well as clarifications on the inspection actions falling under both Articles 13 and 17 of the Convention. With reference to its previous observation, the Committee also once again requests the Government to supply information on court decisions issued during the next reporting period following prosecutions instituted at the initiative of the labour inspectorate, with an indication of the branches of activity and the legal provisions concerned.***

## Rwanda

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1980)**

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, 4, 6, 7, 10, 11, 16, 19, 20 and 21 of the Convention. Application of the Convention in the framework of the decentralization of labour inspection.* The Committee takes note of Act No. 13/2009 of 27 May 2009 on regulating labour in Rwanda which contains provisions on the functions and powers of labour inspectors.

In its previous comments, the Committee expressed concern at the risk of weakening the labour inspection system following the decentralization of its functions and responsibilities as long as the decentralization was not accompanied by the transfer of corresponding resources, as well as by measures ensuring equal protection for the workers concerned throughout the territory.

The Committee notes that according to the Government's report: (i) the state budget for labour inspectors has been decentralized at district level and is now determined at that level; (ii) labour inspectors at district level, currently in the number of one inspector per district, are placed under the supervision of the prefect or the mayor; (iii) the labour inspectorate is to remain "dependent" on the Labour Directorate at national level (section 157 of Act No. 13/2009) which is in fact composed of a single National Labour Inspector and has an obligation to assist labour inspectors through capacity building, technical supervision, training, transport, logistical facilities and communication; and (iv) the recruitment of labour inspectors is to take place at district level.

The Committee observes once again with **concern** that such a reform contravenes seriously the requirements of the Convention, in particular with regard to important provisions such as *Articles 1, 4, 19, 20 and 21*, since in each district a single labour inspector is placed under a local authority which does not have the specific competence necessary to supervise technically or ethically the performance of labour inspection activities.

With regard to *Articles 10 and 11* of the Convention relating to human resources and material means to allow an efficient functioning of the labour inspection system, the Committee once again recalls that according to paragraph 140 of the 2006 General Survey, the decentralization of the labour inspection system (in the form of the designation of a central authority in each constituent unit of a federal State) may be acceptable under *Article 4* only if these units have the budgetary resources necessary for implementing the functions of the labour inspectorate within their respective jurisdictions. In this case, the decentralization of labour inspection means its dismantlement as it happens in the framework of a situation characterized by a general and chronic inadequacy of resources, with the risk that available resources differ substantially from one province to another, thus influencing not only the volume and quality of inspection activities, but also the ability of inspectors and local inspection offices to fulfil their obligations to report to the Minister, as envisaged in *Article 19*, so as to allow for the exercise of his/her prerogatives in respect of supervision for the purposes of a general assessment through the annual report requested by *Articles 20 and 21*. Finally, any instruction of a policy or technical nature addressed by the Minister of Labour to the provincial labour inspectors with a view, among other things, to ensuring consistency among provinces, strongly risks remaining a dead letter in case the budget allocated to labour inspection depends on the decision of the local prefect or mayor.

The Committee also emphasizes that the provision of adequate budgetary resources is essential to ensuring that 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 (*Article 6*).

***The Committee requests the Government to take all necessary measures without delay for the establishment of a functioning system of labour inspection placed under the control of a central authority and endowed with resources determined on the basis of a needs assessment (number and geographical distribution of workplaces liable to labour inspection, numbers of the workforce occupied therein, major branches of activities, etc.) in the framework of the national budget and, where needed, by recourse to external cooperation. The Committee requests the Government to report in detail to the ILO on the measures taken or envisaged in this regard.***

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Saint Vincent and the Grenadines**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)**

*Articles 20 and 21 of the Convention. Reporting obligations on the activities of the labour inspection services.* The Committee notes that, according to the Government's report, the Saint Vincent and the Grenadines Labour Market Information System has been established with technical assistance provided by the ILO Office in Port of Spain and contains statistics on labour inspection, such as the number and causes of complaints, the number of inspection visits per sector, employment injuries and decisions of the Hearing Officer and tribunal decisions.

*The Committee requests the Government to indicate the measures taken or envisaged to ensure that the new system will allow the labour inspection central authority to publish and communicate to the ILO in the very near future and on an annual basis a report on the work of the services placed under its supervision and control, containing the information indicated in items (a)–(g) of Article 21. The Committee would be grateful if the Government would indicate any progress made and any difficulties encountered in this regard.* The Committee draws once again the Government's attention to the guidance provided in Paragraph 9 of the *Labour Inspection Recommendation, 1947 (No. 81)*, as to the type of information that should be included in annual labour inspection reports.

The Committee is raising other points in a request addressed directly to the Government.

## **Sao Tome and Principe**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 14 of the Convention. Information on industrial accidents and cases of occupational disease.* The Committee notes the Government's commitment, in response to its previous comments, to making every possible effort to ensure that the labour inspectorate is informed of industrial accidents and occupational diseases. *It asks the Government to provide in its next report information on the procedures introduced and the specific measures taken to this effect.*

*Articles 19, 20 and 21. Inspection activity reports.* Further to its previous comments, the Committee notes that the Government has not provided any information on measures taken to ensure the publication and communication to the ILO of an annual report on the work of the labour inspectorate. *It therefore asks the Government to take, in the very near future and with ILO technical assistance if necessary, measures to ensure that the central inspection authority fulfils its obligations under Articles 20 and 21, on the basis of regular inspection reports submitted to it, in accordance with Article 19, by the services under its control. The Committee asks the Government to keep the Office informed of any progress made in this respect and to provide in its next report any available information on inspection visits carried out during the period covered and on the results of these visits (including, in particular, details of the number and categories of inspected establishments, the contraventions reported, the measures prescribed, and the penalties imposed and effectively enforced).*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## **Saudi Arabia**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1978)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

*Articles 2, 3, 10 and 21 of the Convention. Functioning of the labour inspection system.* The Committee takes note of the discussion held in the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011), on the application of the Convention by Saudi Arabia. It notes that in its conclusions, the Conference Committee emphasized the importance of the statistical information requested under *Article 21* of the Convention to enable an objective evaluation to be made of the extent to which the legal provisions relating to conditions of work and the protection of workers are respected (*Articles 2 and 3* of the Convention). The Committee further stressed the importance of statistical information on the conditions of work of migrant workers, in view of the predominance of migrant workers in the labour market. Drawing the Government's attention to the vulnerability of migrant workers, the Conference Committee finally called on the Government to redouble its efforts to ensure that the labour inspectorate was able to guarantee, through both promotional and enforcement action, that the rights of migrant workers were being effectively protected.

The Committee notes that, according to the Government, and in accordance with what the Government representative stated before the Conference Committee, measures have been taken and others are envisaged to strengthen the efficiency, efficacy and coverage of the labour inspection system. It notes in particular with *interest* the information concerning: (i) the recent recruitment of 1,000 inspectors, now undergoing training; (ii) the establishment of a

standardized electronic database making available detailed statistics on labour inspection matters; (iii) the strengthening of the labour inspectorate's power; and (iv) the 20 per cent wage increase of labour inspectors. Furthermore, pursuant to the recommendations of the Committee on the Application of Standards, the Government submitted a request of technical assistance to the ILO for the organization of a tripartite seminar on international labour standards, particularly Convention No. 81, in which the labour inspectors will participate.

The Committee also takes note of the annual report on labour inspection activities for 2009–10, provided at the request of the Conference Committee. It notes that the infringements reported and the penalties imposed by the labour inspectorate seem mainly to concern provisions of the Labour Code dealing with the promotion of the employment of Saudi workers (the “Saoudization” of employment) and the validity of migrant workers’ work permits. Referring to paragraph 78 of its 2006 General Survey on labour inspection, the Committee recalls that the primary duty of the labour inspectors is to protect workers and not to enforce immigration law. The fact that labour inspection in general has the power to enter establishments without prior authorization allows it more easily than other institutions to put an end to abusive working conditions of which foreign workers in an irregular situation are often the victim, and to ensure that workers benefit from recognized rights. The function of verifying the legality of employment should therefore have as its corollary the reinstatement of the statutory rights of all the workers if it is to be compatible with the objective of labour inspection.

*The Committee would be grateful if the Government would keep the ILO informed of progress made during the period covered by the next report, thanks to the action undertaken to strengthen the labour inspectorate, including with the technical assistance of the ILO, in terms of the effective application of the statutory provisions relating to conditions of work and the protection of all workers without distinction.*

*The Committee would be grateful if the Government would provide in its next report detailed data, especially on the workplaces liable to labour inspection and the number of workers employed there, the number of visits, as well as the number of infringements and penalties imposed, while specifying the subject of the statutory provisions to which they refer. Finally, it asks the Government to provide information on the activities jointly carried out by the labour inspection services and other public authorities if applicable.*

The Committee is raising other points in a request addressed directly to the Government.

## Senegal

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)**

The Committee notes with *regret* that the Government’s report does not reflect any tangible progress in the application of the Convention, and provides no precise information in response to the Committee’s previous comments on the measures requested with a view to:

- (i) bringing labour legislation into conformity with *Article 12(1)(a) and (2) of the Convention*, as regards the investigation powers of labour inspectors, and with *Article 13(2)(b)* concerning powers (direct or indirect) to adopt measures with immediate executory force in the event of imminent danger to the health or safety of workers;
- (ii) revising the fines applicable for contraventions of the law under the Convention (*Articles 3(1)(a) and 18*);
- (iii) effective cooperation between the labour inspection services and the justice system in order to enhance the credibility of inspections (*Article 5(b)*);
- (iv) improving the status of labour inspectors, their staffing levels, qualifications and the means of action available to them (*Articles 6, 7, 10 and 11*);
- (v) establishing and updating a register of industrial and commercial workplaces subject to labour inspection (*Articles 2, 10 and 21(c)*);
- (vi) gradually creating the conditions for publication by the central inspection authority of an annual report on the activities of the services under its authority (*Articles 19 and 20*).

In addition, five years after the promulgation of Decree No. 2006-1253 of 15 November 2006 establishing an occupational medical inspection service, no such service has been set up and the necessary consultations between the public authorities concerned have not taken place.

The Committee also notes with *concern* the blatant discrepancy between the insignificant number of labour inspections carried out by labour inspectors and controllers and the multitude of other tasks which they have carried out in areas such as conciliation, employment or administrative services. According to data provided by the Directorate of Labour Statistics and Social Security and cited by the Government, during 2009, only 329 inspections were carried out at workplaces by the 57 inspectors and 63 controllers, or on average three inspections per official per year, which included inspection visits made in response to the 199 recorded workplace accidents and visits that may have been made at agricultural enterprises.

Over the same period, the inspectors and controllers conducted 866 conciliation proceedings, examined 48 collective disputes, and intervened to support the conclusion of 435 voluntary departure agreements, registered 2,833 applications

for employment, carried out 362 placements of job seekers, and carried out other tasks unconnected with the function of inspection. As the subject of the 136 written consultations and 8,132 oral consultations was not indicated, it is not possible to state how many of those concerned issues pertaining to the scope of this Convention.

According to paragraph 69 of the Committee's 2006 General Survey on labour inspection, the labour inspection instruments do not rule out the possibility of labour inspectors being assigned other promotional tasks by legislation or national practice, in addition to those inherent in their primary duties, but any further duties which may be entrusted to labour inspectors must not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers (*Article 3(2)*). That is because the primary duties as defined in paragraph 1 of the same Article are complex and require training, time, resources and a wide freedom of action and movement. Those functions all share the same objective: enforcement and improvement of the legislation relating to conditions of work and the protection of workers while engaged in their work (paragraph 70). The Committee has specifically expressed the view that "assigning conciliation and mediation in collective labour disputes to a specialized body or officials enables labour inspectors to carry out their supervisory function more consistently" and that this "should result in better enforcement of the legislation and hence a lower incidence of labour disputes" (paragraph 74).

Returning to the insignificant number of inspection activities carried out by inspectors in workplaces covered by the Convention, the Committee would like to draw the Government's attention to the fact that frequent and thorough inspection visits are the primary means of effectively enforcing the relevant legal provisions on working conditions and protection of workers (*Article 16*). Consequently, the staff and resources at the disposal of the inspection service should be devoted mainly to that activity, which also enables inspectors to supply technical information and advice to employers and workers and to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions (*Article 3(1)(b)* and *(c)*).

The Committee notes the Government's expression of willingness to fulfil its obligations under the Convention and hopes that it will be in a position soon to adopt specific measures to that end. The information contained in its report, because of its lack of precision, does not reflect any significant evolution in law or in practice as regards the labour inspection system.

For example, as regards a question as crucial as the staffing of the labour inspection service, the Government indicates that this has not changed since 2009, as there has been no new recruitment without providing any information on the measures envisaged in order to fill vacancies due to retirement. As regards the conditions of service of inspection staff, the Government indicates that their subsistence allowances have been increased but does not indicate by how much, and does not provide any relevant text so as to enable the Committee to assess the impact of the increase in relation to inflation. While noting that, according to the Government, all the labour inspection services are now provided with official vehicles, fuel and working computers, the Committee recalls that the Government provides no details that might shed light on the possible benefits accruing from those measures, in particular in terms of more frequent inspection visits and the use of computers to record the outcome of such visits.

The Committee therefore once again draws the Government's attention to the following points:

*Article 13(2)(b). Measures with immediate executory force in the event of imminent danger to the health or safety of the workers. The Committee requests the Government to take steps to amend the legislation so that it is in full conformity with this provision, according to which labour inspectors should be able to order or apply for the issue of orders on measures with immediate executory force in the event of imminent danger to the health or safety of the workers.*

*Articles 18 and 21(e). Adequate nature and effective enforcement of penalties for violations. The Committee requests the Government to refer to paragraphs 291–306 of the abovementioned General Survey and to take measures as a matter of urgency to ensure the establishment of an effective system of penalties taking into account the nature and seriousness of the violation committed, as well as, according to the circumstances, the employer's general attitude towards its legal obligations, so as to ensure that the penalties are sufficiently dissuasive and help to ensure more effective enforcement.*

*The Committee once again requests the Government to describe the measures taken and to provide the most detailed numerical data possible on any contraventions noted, penalties applied and their impact in terms of the implementation of legislation and of safety and health requirements.*

*Articles 6, 7, 9 and 10. Labour inspectorate staff, status and qualifications; cooperation with technical experts and specialists. Referring to the statement contained in the Government's report received in March 2010, to the effect that the question of remuneration and career prospects of labour inspectors was under study, the Committee once again requests the Government to keep the ILO informed of the process of adopting the status and conditions of service of labour inspectors, as well as of any measures taken in this regard. It also requests the Government to ensure that the provisions regarding the conditions of service of inspection staff (pay, subsistence allowances, and protection of staff) are at least equivalent to those applicable to other categories of public officials with comparable duties and responsibilities, that is, sufficiently appealing to attract and retain qualified and motivated persons. The Committee would be grateful if the Government would communicate any relevant text or report.*

*The Government is also requested to provide more detailed information on the subject areas, type and duration of training given to inspectors and controllers in order to adapt their competences to the new labour market conditions, and to indicate the number of participants in such training. If no measures have been adopted in that regard, the Committee requests the Government to initiate a process for that purpose and to keep the ILO informed.*

*The Committee also requests the Government to communicate in its next report detailed replies including precise figures on the manner in which effect is given in practice to Articles 10 (as requested by the report form), 11, 16 and 19, and to indicate the measures adopted to set up the medical inspection service established by Decree No. 2006-1253 of 15 November 2006.*

The Committee wishes to draw the Government's attention to the possibility and benefits of obtaining technical assistance from the ILO in seeking solutions, including in the framework of international financial cooperation, with a view to establishing a labour inspection system that meets the social and economic objectives which come under its remit and the functioning of which would be reflected in the annual activity report required under *Articles 20 and 21*.

## Serbia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2000)**

The Committee notes the observations made by the Trade Union Confederation "NEZAVISNOST", which were annexed to the Government's report as well as by the International Trade Union Confederation (ITUC) in a communication dated 31 August 2011. *It requests the Government to communicate any comment it deems relevant in this regard.*

The Committee notes that the Government's report contains no reply to its previous comments and that the annual reports of the labour inspectorate for the years 2008, 2009 and 2010, communicated by the Government, contain general information on some of the questions raised but do not allow for a full assessment of the effect given to the provisions of the Convention. *The Committee requests the Government to provide a detailed reply to the Committee's previous comments which read as follows:*

*Article 3(1)(a) and (c) and (2) of the Convention. Action against illegal employment, and monitoring of legislation relating to conditions of work and the protection of workers.* In its previous comments, the Committee noted that the labour inspectorate's priority for a number of years had been the fight against illegal employment and emphasized that the exercise of such a function by the labour inspectorate should have as its corollary the reinstatement of the statutory rights of all the workers in order to be compatible with the objective of labour inspection. The Committee notes the Government's statement in its latest report to the effect that the fight against illegal labour is part of the European Union Accession Strategy and the Strategy on Poverty Reduction and focuses on industries where unregistered workers – mostly young and unqualified workers or older workers over 40 years – are most dominant (hotel/restaurant/cafe and tourism, trade, civil engineering and artisan and personal services). The Government adds that illegal employment is primarily due to a transition from public companies towards a huge number of small and medium-sized private enterprises, which has led to an aggravation of working conditions, often with regard to high-risk jobs (e.g. engineering). This is why the Government is of the view that it is important to carry out regular and intensified inspection. The Government specifies that, where illegal employment has been detected, the employer is ordered to sign employment contracts and charges are pressed against employers in cases where more than one irregular worker is hired; as a result, the number of signed employment contracts and workers reported for compulsory social security coverage usually increases after the inspection is carried out. In order to address key legislative obstacles in this regard, the labour inspectorate has, among other things, proposed amendments to applicable regulations that would require the registration of signed employment contracts and improve the procedure for registration of workers in compulsory social security schemes under section 144 of the Pension and Disability Insurance Act.

*Taking due note of the Government's statement that the fight against illegal employment aims among other things at the "formalization" of employment relations so as to prevent a deterioration of conditions of work and that this has led to an increase of the number of signed employment contracts and workers reported for compulsory social security coverage, the Committee would be grateful if the Government would provide statistical data illustrating the improvements made in the enforcement of the legal provisions relating to conditions of work and the protection of workers through the activities of the labour inspectorate in the framework of the fight against illegal employment.*

*Article 3(1)(b). Preventive role of the labour inspectorate in the field of occupational safety and health.* The Committee takes due note of the information provided by the Government on various activities relative to cooperation with services and institutions dealing with prevention during the period under review, including the organization of 15 round tables on risk assessment throughout the country from 20 to 24 October 2008, with an active participation of representatives from trade unions, employers' organizations, chambers of commerce, and experts in the area of occupational safety and health (OSH). *The Committee would be grateful if the Government would continue to provide information on any action relative to cooperation with all the services and institutions dealing with prevention, including the social partners, the intensification of media campaigns, particularly in high-risk sectors, and the development of promotional material for public information.*

*Recalling that in its previous comments the Committee had welcomed the implementation of a new policy regarding health and safety in small and medium-sized enterprises, according to which regular inspection visits would focus on prevention through information and education, the Committee also requests the Government to indicate the part of regular inspection visits targeted at small and medium-sized enterprises, and to provide information on information and education campaigns addressed at such enterprises.*

*Articles 5(a) and 18. Effective cooperation of labour inspection services with government institutions and with the judicial system. Adequate penalties imposed and effectively enforced.* In its previous comments, the Committee referred to comments by the Confederation of Autonomous Trade Unions of Serbia, according to which the system of penalties against employers is not efficient. The Committee notes that the Government refers in its latest report to the pronouncement of sentences far below the minimum foreseen by the law which constitutes an obstacle to the proper and full application of the penal

provisions envisaged under the Labour Law and the Law on Safety and Health at Work (OSH Law). The Government's report also refers to the need to accelerate judicial procedures so as to overcome related problems with regard to the statute of limitations.

According to the Government, the labour inspectorate organized expert meetings and consultations between the labour inspectorate and bodies responsible for criminal prosecution in Serbia, both at the first instance and at the level of the Council for Criminal Offences. The need to further intensify the cooperation between these bodies was underlined in these meetings with a view to overcoming problems in the duration of the criminal procedures and the amount of the penalties imposed. The importance of exchange of data between municipal bodies and prosecution councils on the collection of fines was also stressed so as to ensure the harmonization and alignment of databases and monitor the economic effects of inspections as well as the efficiency of penal policy. ***The Committee would be grateful if the Government would provide statistical data on the average duration of proceedings and the average amount of penalties imposed for violations of the Labour Law and the OSH Law as well as information on the impact of the steps taken in order to overcome problems in the duration of proceedings, the amount of fines and their effective enforcement. The Committee would also like to request the Government to continue to provide information on any further steps taken or envisaged in order to ensure effective cooperation between the labour inspection services and the judicial authorities.***

According to the Government, in 2008, 60 requests for the institution of criminal proceedings were filed by the labour inspectorate in relation to offences which apparently concerned only the area of OSH. ***Recalling that the functions of the labour inspectorate are not limited to the enforcement of the OSH legislation (the OSH Law) but also include the enforcement of legal provisions and advice relating to the conditions of work under the Labour Law, the Committee requests the Government to specify in its next report the manner in which the labour inspectorate addresses violations of legal provisions on hours of work, wages, the employment of children and young persons and other connected matters and the number of proceedings instituted for such violations.***

***Article 7(3). Adequate initial and further training of labour inspectors.*** In its previous comments, the Committee had noted the comments of the Union of Employers of Serbia, according to which, following the restructuring of the labour inspectorate as a single body, labour inspectors were not provided with adequate training to perform both legal and technical supervision. According to the Government's report, the labour inspectorate launched in 2008 a modernization process to be delivered through internal training in three phases so as to enable labour inspectors to undertake integrated inspections. In this framework, an inspection methodology was designed and all inspectors gained adequate knowledge in areas in which they had not yet performed inspections (e.g. engineers in the field of labour relations, lawyers in the field of safety and health at work, etc.). ***The Committee would be grateful if the Government would communicate additional information as to the number of participants in the training sessions, their duration, the topics covered and the evaluation of the results. It also requests the Government to continue to furnish information on further periodical training for labour inspectors.***

***Articles 12(1) and 18. Penalties for obstructing labour inspectors in the performance of their duties, particularly with regard to their right of free entry in establishments.*** In its previous comments, the Committee took note of comments by the Confederation of Autonomous Trade Unions of Serbia, according to which labour inspectors were occasionally denied the right to enter a workplace for inspection purposes, particularly in new private enterprises. The Committee notes that, according to the Government, the 2005 Labour Law and the 2005 OSH Law contain an obligation for the employer to allow the labour inspector to access facilities and premises at any time when occupied by workers, and, should it occur that the labour inspector is prevented from undertaking inspections, the labour inspectorate should address the Ministry of the Interior, which will enable unobstructed inspection with the assistance of the police. ***Keeping in mind that section 273(10) of the Labour Law and section 69, paragraph 1(32), of the OSH Law set fines in cases where a labour inspector is prevented from conducting an inspection, the Committee once again requests the Government to indicate if any acts of obstruction were reported by labour inspectors to the central inspection authority and, if so, to describe the penalties imposed and the proceedings followed to ensure their effective enforcement in conformity with Article 18 of the Convention.***

***Article 5(a), 14 and 21(f) and (g). Notification of industrial accidents and cases of occupational disease.*** In its previous comments the Committee took note of difficulties in the actual system of notification and registration of occupational accidents and diseases, despite the existence of a legal obligation for the employer to notify these under section 50 of the OSH Law. The Government's report contains a list of steps that are necessary to ensure effective prevention of occupational accidents and diseases, including coordination of all services, institutions and individuals who work on the prevention of occupational accidents; intensified media campaigns, brochures aimed at promoting a national prevention culture in the field of safety and health at work; the introduction of a continuous data processing practice in all departments and institutions working in the area of OSH; as well as an efficient national system for recording and collecting data on occupational accidents and diseases. With regard to the latter, the Government indicates that the Serbian Institution for Occupational Medicine and Radiology "Dr Dragomir Krajovic" (under the Ministry of Health) is implementing a project on the development of a register for occupational accidents and on the identification, reporting and registration of occupational diseases. Working groups, in which representatives of the labour inspectorate have taken active part, were established in order to consider proposals for a new list of occupational diseases and an efficient registration system for occupational accidents.

The Committee once again draws the Government's attention to the 1996 ILO code of practice on the recording and notification of occupational accidents and diseases which could offer guidance in this framework. ***The Committee requests the Government to continue to provide information on the measures taken or envisaged in order to strengthen the efficiency of the system for recording and notifying occupational accidents and diseases, including through the adoption of a new list of occupational diseases and a better collaboration of all institutions concerned for that purpose.***

***Articles 20 and 21. Communication and content of the annual report.*** In its previous comments, the Committee welcomed the detailed information contained in the annual report on the labour inspection activities for 2007 and requested additional information including on the total number of industrial and commercial establishments under the supervision of the labour inspectorate and the number of workers employed therein. The Committee takes due note of the information provided by the Government as to the number of establishments subject to labour inspection (318,540 businesses of which 10,056 are legal entities and 33,592 are individual entrepreneurs engaged in industrial activities as well as 35,738 legal entities and 72,703 entrepreneurs engaged in the trade sector). Drawing the Government's attention to its 2009 general observation on the importance of statistics on workplaces liable to inspection and the number of workers covered as a basis for assessing the effectiveness of the labour inspection system and its needs, the Committee takes due note of the Government's indication that, in its future annual reports, the labour inspectorate will provide statistical data on the number of registered companies engaged in industrial and commercial activities as well as on the number of workers employed therein.

The Committee also notes however, that no further annual report on the labour inspection activities was received. It recalls that, according to *Article 20*, the annual report should be published by the central authority and duly forwarded to the ILO within a reasonable time after its publication. *The Committee therefore requests the Government to ensure that the annual report on the labour inspection activities is forwarded to the ILO on an ongoing basis in accordance with Article 20 and that it contains information on the items listed in Article 21. In particular, in order to assess the coverage of labour inspection, the Committee would be grateful if the Government would also indicate in its next report, in addition to the information usually provided in the annual report, the total number of industrial and commercial establishments under the supervision of the labour inspectorate and the number of workers employed therein (clause (c)), the statistics of inspections carried out (clause (d)), and statistics on the outcome of judicial procedures and penalties imposed (clause (e)).*

*The Committee hopes that the Government will make every effort to take the necessary action in the very near future.*

## Sri Lanka

### Labour Inspection Convention, 1947 (No. 81) (ratification: 1956)

*Articles 3, 8, 10, 11, 16, 20 and 21 of the Convention. Functioning of the labour inspection system.* The Committee notes the Government's indication that the impact of the restructuring of the labour inspection system on the effective discharge of the labour inspection functions has not been evaluated yet. Nevertheless, the Government provides information on the number of workplaces liable to inspection (a total of 86,619), including information on their distribution by economic sector, and the number of workers employed therein (a total of 345,730).

The Committee notes the Government's statement at the 100th Session of the International Labour Conference according to which further assistance is needed, particularly to help inspectors deal with the challenges of outsourcing, occupational safety and health (OSH), and working conditions in the informal economy. According to the Government, an intensive training programme for the numerous newly recruited labour inspectors is urgently needed. The Government also emphasized the need to use new technologies to assist labour inspection activities, especially in export processing zones (EPZs) (source: ILC 2011 *Provisional Record* No. 19, page 14). The Committee notes that ILO technical assistance is given in this framework for the training of labour inspectors.

The Committee also notes that according to the Government's report and the annual inspection report, the number of inspections in factories has slightly decreased (from 4,197 in 2008/2009 to 4,074 in 2010/2011) even though the number of the staff of the labour inspectorate has continued to increase (from 544 officers in 2009 to 608 officers in 2011). It also observes that the Government has not yet provided any information on inspection visits in EPZs or the number of inspection visits in the different economic sectors even though it indicates that initial steps have been taken for the collection of data on this question and that labour inspectors can enter freely workplaces, including in EPZs without prior approval or notice to the Board of Investment.

*The Committee once again asks the Government to provide detailed information on the impact of the restructuring of the labour inspection system on the effective discharge of labour inspection functions, including in EPZs, as soon as it is available.*

*The Committee requests the Government to keep the ILO informed of progress made in the collection of data and once again reiterates its requests under Articles 20 and 21 of the Convention for the publication of an annual inspection report containing information and data on the number of inspection visits in different sectors, including in EPZs; the violations detected and the penalties imposed with reference to the legal provisions concerned; cases brought to the courts and outcomes of the proceedings; number and subject of complaints investigated and results obtained.*

*Noting the information provided by the Government on the training of labour inspectors, the Committee requests the Government to continue to provide details in this regard and to indicate the impact of the technical assistance provided by the ILO in this area.*

*Recalling also from its previous comments that the Government had referred to the need for ILO technical assistance in relation to data collection, the Committee requests the Government to indicate any formal steps taken for the provision of such assistance and to indicate whether further assistance is needed in other areas.*

*Noting also that the number of female inspectors has further increased to 227 out of 608 labour inspectors (from 154 out of 544), the Committee once again requests the Government to indicate the impact of the recruitment of female labour inspectors in terms of the effective discharge of labour inspection functions in sectors with a predominantly female workforce, such as the textile sector, and to keep the ILO informed of progress made in terms of the further recruitment of female staff.*

*Finally, recalling that the number of labour inspectors increased, among other things, through the absorption of 178 field officers entrusted with the enforcement of the Employees' Provident Fund Act (i.e. the social security law covering the private sector), the Committee notes with interest the figures provided on the number of cases filed and considerable amounts to be recovered for violations of the Act, and once again requests the Government to indicate the progress made in recovering social security contributions.*

*Article 11(1)(b). Travelling expenses.* The Committee notes with *interest* that the travelling allowance for labour inspectors, previously criticized as being inadequate by the Lanka Jathika Estate Workers' Union (LJEWU) and the

National Trade Union Federation (NTUF), has been increased from 10 Sri Lankan rupees (LKR) per mile (approximately US\$0.09) to LKR12 per mile (approximately US\$0.108) by Public Administration Circular (PAC) No. 9 of 2010. However, PAC No. 9 of 2010, attached to the Government's report, still provides for limitations on the mileage that is reimbursed, while it allows for exceptions in special cases to be decided upon by the Commissioner General of Labour. For example, the monthly reimbursement limit for a Labour Officer (District) is set at LKR5,750 (approximately US\$52,17), which the Committee understands to mean that labour inspectors at that grade are reimbursed for travel for up to 483 miles per month. ***The Committee asks the Government to provide information on the circumstances in which travel costs exceeding those set out in PAC No. 9 of 2010 are reimbursed. If available, please provide a copy of a reimbursement form and information on the average length of procedures for reimbursement.***

*Articles 3, 7, 9, 13, 14, 17, 21(f) and (g). Role of the labour inspectorate in the field of occupational safety and health. Statistics of industrial accidents and cases of occupational disease.* Recalling from its previous comments, the observations made by the World Confederation of Labour (WCL) (WCL now merged into the International Trade Union Confederation (ITUC)) and the NTUF on the persistent shortage of factory inspecting engineers, medical officers and occupational hygienists to carry out routine inspections in industrial enterprises. With regard to the commitment made by the Government in previous reports to develop the prevention side of labour inspection in the framework of the restructuring of the labour inspection system, the Committee notes with ***interest*** that according to the Government, section 100 of the Factories Ordinance No. 45 of 1942 (FO) has been consolidated in order to make provision for the maintenance of health, safety and welfare of workers in factories and that the OSH staff has increased from 27 to 42, now encompassing 38 factory inspecting engineers, two medical officers and two research officers in order to carry out routine inspections in the various industrial sectors.

The Committee notes that the annual report of the labour inspection service for 2010 and 2011 provides no information on the activities of the labour inspectorate in the field of occupational safety and health, and indicates that no industrial accidents have been notified under the Factory Ordinance No. 45 of 1942, despite the fact that the same report also provides data on the total number of fatal accidents. The Committee notes from this data that fatal accidents have risen from 49 in 2008 to 62 in 2010 and non-fatal accidents have decreased from 1,525 in 2008 to 1,456 in 2010. It notes the Government's statement that both fatal and non-fatal accidents are likely to be much higher due to deficiencies in reporting as well as the lack of coverage of the informal sector. Finally, the Committee notes that no information has been provided on the number of cases of occupational disease.

The Committee would like to recall that the activities of the labour inspectorate in the area of occupational safety and health should focus both on securing the enforcement of the relevant legislation (*Article 3(1)(a)*) and preventing industrial accidents and occupational diseases including through the provision of technical information and advice (*Article 3(1)(b)*), as well as measures with immediate executory force in the event of imminent danger to the health or safety of workers (*Article 13(2)(b)*). The Committee would like to draw the Government's attention to the fact that the establishment of a system that ensures access of the labour inspectorate to information on industrial accidents and cases of occupational disease (*Article 14*) is essential to the development of the prevention policy to which the Government has committed itself in the framework of the restructuring of the labour inspection system. The Committee notes that even though sections 61 and 63 of the FO clearly indicate the cases and circumstances in which such incidents are to be notified to the District Factory Inspecting Engineer, it is essential in order for such a system to function effectively in practice, that comprehensive regulations exist on the procedure for notification and the penalties that apply in the event of negligence. In this regard, the Committee wishes to draw the Government's attention to the ILO code of practice on the recording and notification of occupational accidents and diseases which offers guidance on the collection, recording and notification of reliable data and the effective use of such data for preventive action (available at [www.ilo.org/safework/normative/codes/lang-en/docName--WCMS\\_107800/index.htm](http://www.ilo.org/safework/normative/codes/lang-en/docName--WCMS_107800/index.htm)). The Committee also wishes to emphasize that labour inspectors can inform and sensitize employers and workers about the importance of notifying industrial accidents and cases of occupational disease so as to encourage compliance with the relevant legal provisions in pursuance of *Article 3(1)(b)* and of Paragraphs 6 and 7 of *Labour Inspection Recommendation, 1947 (No. 81)*.

***The Committee once again requests the Government to provide detailed information on the labour inspection activities carried out in the area of OSH, including the adoption of measures with immediate executory force in the event of imminent danger to the health or safety of the workers. It also asks the Government, once again, to provide information on the difficulties encountered in enforcing OSH legislation vis-à-vis employers pursuant to the comments previously made by the NTUF.***

***Furthermore, the Committee requests the Government to indicate the measures taken or envisaged to ensure that the labour inspectorate is duly informed of industrial accidents and cases of occupational disease and that relevant statistics are included in the annual labour inspection report, in accordance with Article 21(f) and (g), if possible in the manner indicated in Paragraph 9(f) and (g) of Recommendation No. 81.***

***The Committee finally requests the Government, once again, to provide information on any arrangement to associate technical experts and specialists from the National Institute of Occupational Safety and Health with the work of the labour inspectorate for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers and investigating the effects of processes, materials and methods of work on the health and safety of workers.***

*Articles 17 and 18. Amendments to legislative acts concerning enforcement procedures and dissuasive sanctions.* The Committee previously noted that steps had been taken to update the fines and penal provisions in all legislative acts relating to conditions of work and had asked the Government to keep the ILO informed of the progress made in the adoption of the relevant bills. In this regard, it notes that amendments to the Industrial Disputes Act (IDA) have been approved by the Cabinet of Ministers and that the bill has been submitted to Parliament. Further, it notes the Government's indication that initial steps have been taken for the envisaged amendments to be introduced in the Wages Boards Ordinance so as to facilitate enforcement in cases of subcontracted work. ***The Committee asks the Government to continue to keep the ILO informed of any progress made in the adoption of the relevant bills, including with regard to the Shop and Office Employees' Act, the Maternity Benefits Ordinance, and the Termination of Employment of Workmen (Special Provisions) Act.***

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Suriname

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)**

*Articles 3(1)(a) and (b) and 5(b) of the Convention. Labour inspection activities in the area of occupational safety and health.* The Committee notes the Government's indication that it will analyse the reasons for the increase in the number of accidents and take the necessary measures. The labour inspectors have taken the necessary steps to begin the occupational safety and health training of contractors in mines, construction and the public service. ***The Committee would be grateful if the Government could provide information on the training programmes carried out and on any other measures taken to cope with the increasing number of serious or fatal occupational accidents, and on their impact on the reduction in the number of these accidents, by providing in particular statistical data and any other documents that might serve to assess the situation.***

*Article 7. Training of labour inspectors.* The Committee notes that, according to the Government, a centre for the further training of labour inspectors has been operating since 2010, and a training programme for inspectors and employers was held on ways to combat AIDS at the workplace. Furthermore, a specific training programme on occupational safety and health is being prepared in cooperation with trainers from the Netherlands, which will be organized for the senior labour inspectors. ***The Committee would be grateful if the Government would provide information on the training programmes dispensed to the labour inspectors since the establishment of this centre, and to report on their impact on the operations and results of the labour inspection services.***

*Article 14. Notification to the labour inspectorate of cases of occupational disease.* In its previous report, the Government had stated that, in view of the crucial role of labour administration in administering and enforcing labour laws, the labour inspection legislation was to be reviewed in order to bring it more into line with the provisions of the Convention. In its report under review, the Government does not provide any information on the progress achieved in reviewing this legislation, merely stating that it will examine the recommendations of the Committee on the application of this provision of the Convention. However, the Committee has been drawing the Government's attention, for many years, to the need to ensure that full effect is given to this Article of the Convention, specifically as regards cases of occupational disease. ***The Committee requests the Government once again 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 industrial 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.).***

*Article 15(b). Scope of the obligation of labour inspectors to maintain professional secrecy.* The Committee takes note of the Government's indication that efforts have been made, in the context of the planned revision of the labour legislation, to take account of the Committee's recommendations on this point, and that the provisions of section 15(b) of the decree have been amended to bring it more into line with the provisions of the Convention with respect to the obligation of labour inspectors to maintain professional secrecy, even once they have left the service. ***The Committee hopes that this labour legislation will be revised and implemented as soon as possible and requests the Government to provide information on any progress achieved in this area, and to send the ILO a copy of the revised labour legislation once it has been adopted.***

The Committee is raising other points in a request directly addressed to the Government.

## Sweden

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 1970)

Following on from its previous comments on progress made in the operation of the labour inspection service in agricultural and forestry undertakings, the Committee once again notes with *satisfaction* the Government's constant efforts to provide the labour inspection services with the human and logistical resources they require to carry out their tasks of inspection, education and improving legislation (*Article 6(1) of the Convention*), in particular in the areas of health and safety of agricultural workers and their work environment.

*Measures to improve occupational safety and health conditions in agricultural undertakings.* Given that agricultural and forestry are among the areas of activity with the highest accident rates (on average 15 deaths and thousands of cases of injury every year), the Work Environment Authority is endeavouring to adapt its activities in the light of the results of labour inspections and advances in technical knowledge in order to reduce occupational risks specific to the areas of activity concerned. According to the Government, six occupational accident surveys carried out in the agricultural sector since 2010 and published on the Internet are to be followed up with a range of measures with that purpose in mind. The Committee notes that a detailed list of points for inspection and a glossary of terms used in labour inspection in the agricultural sector will shortly be made available to all inspectors.

*Inspection of agricultural machinery and its use.* The Committee notes that the competence of the labour inspection service in agriculture also includes preventive inspection of market products intended for small-scale forestry undertakings and their customers, with the aim of registering those products with regard to their safe use. With the same concern in mind, the labour inspection service provides manufacturers and purchasers of certain agricultural machinery with information on the assembly of that machinery by means of a brochure which focuses on conformity with European standards.

*Inspection of livestock breeding activities.* The Committee notes with *interest* that the activities of the labour inspection service in livestock breeding undertakings have prompted the Work Environment Authority, during the period of the report, to initiate a range of measures intended to improve safety and health conditions in the work environment, including: seeking alternative solutions for marking livestock; revising regulations on pesticide spreading machinery and the use of motorized saws and chainsaws; and Internet publication of information and recommendations concerning microbiological risks and protection of persons caring for horses, dogs or cats infected with certain serious infectious diseases. In addition, organic dust in livestock breeding establishments is the focus of a two-year national project. Dust concentrations are measured and recorded on poultry farms, in piggeries and other livestock breeding undertakings.

*Measures to protect foreign workers employed in certain seasonal activities.* Lastly, the Committee notes with *interest* the publication of a brochure available in several languages (English, Latvian, Lithuanian, Romanian, Russian and Polish) intended for foreign workers employed in seasonal work in forestry and berry picking. The brochure covers the social and legal aspects of seasonal work as well as issues of safety and health pertaining to particular activities of this kind.

## Syrian Arab Republic

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)**

The Committee notes with *interest* the Government's favourable reception to the labour inspection audit carried out by the ILO in the context of the Decent Work Country Programme. Furthermore, it notes, according to information available to the ILO, that the Government has expressed its firm intention to continue the cooperation with a view to following up on the audit's recommendations, particularly the one concerning the establishment of a structure responsible for developing the training and human resources of the labour inspectorate.

The Committee notes with *interest* that some of the audit's recommendations were already taken into account with the adoption of the new Labour Code under Act No. 17/2010, inasmuch as the labour inspection services were strengthened by provisions ensuring that inspectors have the authority and credibility they need in the exercise of their functions, and guaranteeing that they will not be vested with any responsibilities liable to prejudice their mandate or prevent the exercise of this mandate (section 250). It particularly notes in this respect that labour inspectors will henceforth be recruited on the basis of skills criteria related to the functions they will have to assume: candidates for the post of labour inspectors dealing with general working conditions will be required to have a degree in law or economy, whereas those making a career as occupational safety and health inspectors will be obliged to have a degree in natural sciences, chemistry, pharmacy or engineering (section 245). The number of each category of inspectors will be determined by decree issued at the recommendation of the Minister of Labour. According to sections 253 and 254, labour inspectors will have legal protection from their ministry against anyone inflicting any physical or moral injuries on them in the course of their missions.

Subsequent implementing texts will determine the inspectors' remuneration scheme (issued in coordination with the Ministry of Finance (section 247(b)), the extent of their right of entry into establishments liable to inspection, as well as

their supervisory prerogatives and powers to prosecute those having committed a violation (sections 247(a), 250(b) and 251).

The Committee also notes that the principle of absolute confidentiality as to the source of complaints has finally been set forth in the legislation (section 249(g)) and hopes that measures will be taken to ensure that this obligation of confidentiality extends to the existence of any link between the inspection visit and a complaint, as this is a prerequisite for the protection of employees against any risk of reprisals on the part of the employer.

The Committee trusts that this active cooperation between the Government and the ILO with a view to implementing the recommendations of the labour inspection audit will continue with due regard for the principles contained in the Convention, and taking into account the relevant guidelines of the *Labour Inspection Recommendation, 1947 (No. 81)*, as well as those contained in the general observations made by the Committee in 2007, on the need for effective cooperation between the labour inspection services and the justice system; in 2009 on the importance of having and updating a register of workplaces; and, in 2010, on the usefulness of publishing an annual report of the activities of the labour inspection services enabling them to evaluate the results of the work they have been assigned and subsequently, to determine the means necessary to improve their effectiveness.

***The Committee requests the Government to inform the ILO of the progress made, as well as of any possible difficulties encountered in the implementation of the audit's recommendations, and to send it a copy of any relevant texts, in particular the implementing texts provided for under sections 245, 247, 250 and 251 of the new Labour Code.***

### ***Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)***

The Committee refers to its observation on the application of the *Labour Inspection Convention, 1947 (No. 81)*, concerning the follow-up given to the ILO technical assistance in the context of the Decent Work Country Programme, the recommendations of the labour inspection audit and the adoption of the new Labour Code.

The Committee trusts that the active cooperation between the Government and the ILO for the implementation of the recommendations of the labour inspection audit will continue, with due regard for the provisions of this Convention and taking into account the relevant guidelines contained in the *Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, as well as those contained in the general observations that the Committee addressed to the governments: in 2007, on the need for effective cooperation between the labour inspection services and the justice system; in 2009 on the importance of having and updating a register of establishments; and, in 2010, on the usefulness of publishing an annual report containing information on labour inspection activities in agriculture, enabling them to evaluate the results of the work they have been assigned and, subsequently, to determine the means necessary to improve their effectiveness.

***The Committee requests the Government to inform the ILO of any progress achieved as well as of any difficulties it might have encountered in the implementation of the audit's recommendations concerning the organization and running of the labour inspection services in agriculture, and to send a copy of any relevant text, in particular the implementing texts provided for under sections 245, 247, 250 and 251 of the new Labour Code.***

*Articles 14 and 21 of the Convention. Establishing a register of agricultural enterprises and strengthening the labour inspection staff.* The Committee notes with **interest** that, thanks to the cooperation between the Ministry of Agriculture and the provincial directorates of social and labour affairs, the plan to set up a database on agricultural enterprises has advanced to such an extent that it has been possible to establish a list of definitely approved establishments. These enterprises are mainly involved in cattle farming, chicken farming, fish farming and bee-keeping. The Committee notes with **interest** that other data, on the geographical distribution and type of workers employed in these enterprises, will soon be available. ***The Committee would be grateful if the Government would indicate in its next report the progress made in this area and to send the ILO a copy of any documents or relevant reports.***

The Committee also notes with **interest**, according to information provided by the Government, that several officials have been recruited and are at present undergoing training, and that they will fill the posts of labour inspectors in agriculture. Furthermore, the provincial directorates of social and labour affairs are being asked to state their needs in terms of inspectors, with a view to the budgetary planning for 2012. ***The Committee would be grateful if the Government would indicate the number of inspectors recruited and to provide details on the type and duration of their training before being assigned to their post of labour inspector in agriculture.***

## **United Republic of Tanzania**

### **Tanganyika**

#### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)***

*Articles 10, 20 and 21 of the Convention. Labour inspection staff and annual report on their work.* The Committee notes that, according to the Government, despite the fact that the labour inspectorate had inadequate human resources owing to resignations, retirements and financial constraints regarding the recruitment and retention of staff, 26 new labour officers were appointed in 2009 to make a total of 92. The Government also indicates that steps have been

taken to keep a register of workplaces in collaboration with employers' and workers' organizations, ministries and public agencies, and also non-governmental organizations, but that it is nevertheless facing certain difficulties in determining the exact number of workers employed therein. The Government considers that technical assistance from the Office might be important in this sphere. The Committee notes the favourable reception from the Government with regard to its proposal for technical assistance in the context of preparation and publication of the labour inspectorate's annual report. **The Committee requests the Government to supply information on the steps taken to obtain the technical assistance of the Office and also on the results thereof once it has been provided, including with regard to determining the exact number of workers employed in these workplaces.**

*Article 12(1)(a). Right of inspectors to enter workplaces freely. Timing of inspections.* The Committee notes the Government's indication that the expression "at any reasonable time" means at any time of the day or night that the inspector deems suitable for undertaking an inspection in view of the nature of the work and the conditions in which it is done. The Government gives the example of casinos and bars where it is not convenient to undertake an inspection during the day, which suggests that inspections generally take place during working hours. The Committee recalls that, as indicated in paragraph 270 of the 2006 General Survey, the protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example, to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It should be for the inspector to decide whether a visit is reasonable – obviously, inspections should only be carried out at night or outside working hours where this is warranted. **The Committee requests the Government to indicate the steps taken or contemplated to ensure that labour inspectors can enter freely at any hour of the day or night any workplace liable to inspection and that they have a clear entitlement to decide whether the timing of the visit is reasonable.**

The Committee is raising other points in a request addressed directly to the Government.

## Tunisia

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)**

While noting that the Government replies to the general observation of 2010, by indicating that the Ministry of Social Affairs carries out the registration of workplaces liable to inspection in coordination with the National Fund of Social Security and the Ministry of Employment, the Committee also notes that the Government's report contains no reply to its previous individual observation. **The Committee requests the Government to indicate any development in the application of the Convention in the light of the current events in the country.** It also repeats its previous observation, which read as follows:

*Articles 10, 21(b) and (c) of the Convention. Number of inspectors and geographical distribution. Statistics of workplaces liable to inspection and number of workers employed.* The Committee notes from the labour inspection reports for 2006 and 2007 the composition and distribution by sex of the labour inspectorate staff (*Article 21(b)*). However, the reports contain no information on the number of workplaces subject to inspection and the number of workers employed therein (*Article 21(c)*). According to *Article 10*, the number of labour inspectors shall be determined according to the number, nature, size and situation of the workplaces. It is therefore important that the Government should ensure that such data are collected so that it is in a position to distribute the inspection staff appropriately throughout the territory in accordance with priorities to be defined on the basis of criteria such as the risk level of the main activities, worker categories (young workers, women, level of qualification, etc.) and available resources. Besides, such information is essential for the central authority in scheduling routine inspection visits, assessing the workplace coverage rate and establishing resource requirements in annual budgets with a view to better coverage. The Government may wish to refer in this connection to paragraphs 325 and 326 of the 2006 General Survey on labour inspection, and to Paragraph 9(c) of Labour Inspection Recommendation, 1947 (No. 81) regarding the level of detail to be given in the relevant information. **The Committee asks the Government to provide figures showing the geographical distribution of labour inspectorate staff, so that it can assess the extent to which the abovementioned Articles of the Convention are observed, and to ensure that the annual labour inspection report contains, in the future, statistics of the workplaces liable to inspection and the number of workers employed therein.**

*Articles 17 and 18. Information concerning action taken on unheeded warnings and on reports of violations.* The Committee notes from the labour inspection reports that inspectors issued 3,386 warnings in 2007 and 3,318 in 2006, as well as 652 violation reports in 2007 and 402 in 2006. It notes, however, that no information has been sent on the action taken on these warnings and reports.

The Committee further notes that since the inspection report for 1998, received at the ILO in 2000, according to the Government, inspections of labour suppliers have been stepped up, the aim being to get employers to comply with the legislation in force. However, the Government provides no information on any follow-up to such inspections. To assess how effective such action has been, a record is needed of all the offences committed by labour suppliers and the action taken by labour inspectors to remedy them or punish the offenders.

The Committee invites the Government to refer to Chapter VIII of its General Survey of 2006 in which it points out that the provision of advice and information, the issuing of orders and the initiation of legal procedures are complementary approaches to achieving the Convention's objective. The credibility and effectiveness of a labour inspection system depend to a large extent on the action taken on contraventions reported. It is accordingly essential that penalties imposed by labour inspectors for violations should be visible enough to be dissuasive. **The Committee therefore asks the Government to provide information on the action taken on unheeded warnings and on violations notified to courts of law, and to ensure that in future relevant statistics are supplied in the annual report of the central labour inspection authority.**

*Articles 3(1)(b), 14, 21(f) and (g). Statistics of industrial accidents and cases of occupational disease.* The Committee notes from the labour inspection report for 2007 that employers too often neglect to notify industrial accidents and cases of occupational disease and that this prevents the inspectorate from compiling complete and relevant data. In this connection, the report only refers to the statistics contained in the annual report of the Sickness Insurance Fund (CNAM), without providing the report in question. The Committee reminds the Government that according to *Article 14* of the Convention, the labour inspectorate must be notified of industrial accidents and cases of occupational disease. The inspectorate needs data of this kind, in particular so that it can fully assume its preventive role and so that in the annual inspection report it can include statistics of industrial accidents and of the case of occupational disease, as required by *Article 21(f) and (g)*. In this connection, the Committee invites the Government to refer to paragraphs 118 to 132 of the abovementioned General Survey in which it points out the importance and scope of the labour inspectorate's preventive role. To enable the central authority to include in its annual report information regarding industrial accidents and instances of occupational disease, the competent authority is required by *Article 5(a)* of the Convention to promote cooperation between the two institutions to this end. Furthermore, such information is essential to the development of a relevant prevention policy.

In order to combat negligence of employers in notifying industrial accidents and cases of occupational disease, it would likewise be appropriate to ensure that laws and regulations are sufficiently clear as to the cases and circumstances in which such incidents are to be notified to the competent authorities, and as to the procedure for notification and the penalties that apply in the event of negligence. Informing and sensitizing employers and workers about this matter is an essential means of encouraging compliance with the relevant legal provisions. Labour inspectors can carry out such measures as part of the duties they perform in pursuance of *Article 3(1)(b)* and of Paragraphs 6 and 7 of Recommendation No. 81. ***The Committee accordingly asks the Government to take steps to ensure that the labour inspectorate is informed of industrial accidents and cases of occupational disease in the instances and circumstances laid down in the national legislation. If failure to notify is a result of gaps in the legislation, the Government is asked to take steps to complete the legislation accordingly so as to facilitate enforcement and supervision by the labour inspectorate. The Committee would be grateful if the Government would proceed at once to encourage cooperation between the labour inspection services and the CNAM so that, in future, available relevant statistics may be included in the annual labour inspection report, in accordance with Article 21(f) and (g), if possible in the manner indicated in Paragraph 9(f) and (g) of Recommendation No. 81.***

*Article 20. Publication and communication to the ILO of the annual inspection report.* The Committee appreciates the Government's efforts to compile annual labour inspection reports. It notes, however, that there is no requirement for such reports to be published and that they are in any event not communicated to the Office within the deadline prescribed by *Article 20* (the inspection report for 2007 was not received until March 2010). The Committee reminds the Government that according to *Article 20*, the annual report must be published at the latest within 12 months of the end of the period they cover. ***Consequently, the Committee asks the Government to ensure that full effect is given to the abovementioned Articles of the Convention and that, in future, the annual report of the central inspection authority on the work of the inspection services under its control is published and that a copy of it is sent to the International Labour Office within the period prescribed. It would be grateful if, in the meantime, the Government would ensure that the reports for 2007, 2008 and 2009 are published and sent to the Office promptly.***

The Committee is raising other points in a request addressed directly to the Government.

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Uganda

### ***Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)***

The Committee notes with *regret* that the Government's report contains no reply to the Committee's previous comments on the application of the Convention in the country, and is confined to providing vague information in reply to the general observation of 2007, simply indicating that the Ministry of Gender, Labour and Social Development works closely with the Office of the Inspector General of Government, the Human Rights Commission and the Director of Public Prosecution, seeking from time to time technical guidance on some difficult legal provisions, while the Solicitor General's office has been an important partner in the development of regulations on the labour laws.

Nevertheless, the Committee notes with *interest* that the Government has asked for the technical assistance of the Office in order to carry out a needs assessment of the labour inspection and labour administration system. ***The Committee requests the Government to keep the Office informed of the results of this assessment and the follow-up measures taken or envisaged in this framework, with a view to giving full effect to the Convention and addressing the Committee's previous comments, which read as follows:***

The Committee notes that the Government has not sent the report requested by the Conference Committee on the Application of Standards concerning the measures taken to follow up its conclusions adopted at its session in May–June 2008. However, it notes the information received by the ILO on 11 November 2008 concerning the adoption in 2006 of Employment Act No. 6 and Occupational Safety and Health Act No. 9, and the views expressed by the Central Organization of Free Trade Unions (COFTU) and the National Organization of Trade Unions in Uganda (NOTU) at a tripartite workshop on the application of the Convention. The Committee also notes that, as recommended by the Conference Committee in 2001, 2003 and 2008, an ILO technical assistance mission was received from 13 to 17 July 2009 and that, together with the Government and the social partners and various public bodies, it examined the reasons for the deterioration in the labour inspection system since the 1990s, with a view to remedying it.

*Need to establish a labour inspection system that meets the requirements of the Convention*

The ILO technical assistance mission noted that the dismantling of the labour inspection system that followed its decentralization observed by an earlier ILO mission in 1995, has progressively worsened. The many interviews it had with staff of the labour administration and other public departments and with the social partners provided the mission with information

betraying a level of distress that demands the urgent re-establishment of a labour inspection system able to ensure the supervision of the legal provisions related to conditions of work and the protection of workers, in accordance with *Article 3, paragraph 1(a), of the Convention* and to provide both employers and workers in industrial and commercial workplaces with useful information for their implementation, as required by *Article 3(1)(b)*.

The field visits proposed to the mission were limited to two very large foreign-owned agro-food companies located in areas of very intense industrial activity (Kampala and Jinja) and the mission *regretted* that it had not been in a position in which it could assess working conditions in small and medium-sized Ugandan establishments. However, the gradual deterioration in the labour inspection situation can be discerned from the information contained in the annual inspection reports received at the ILO in 1994 and 1996. According to the report covering 1994, the Labour Department had 83 employees, of whom 62 worked in the districts. Despite limited resources, the inspection staff managed to carry out 280 fully fledged visits, 292 visits to monitor implementation and 436 visits for other purposes. As prescribed by *Article 3(1)(a)* of the Convention, these inspections focused on application of the provisions on working conditions (general conditions and occupational safety and health) and the protection of workers. Of the many complaints from workers that had reached it, the labour inspectorate was able to deal with 1,252 and refer 32 to the courts. The annual inspection report for 1994, as well as providing detailed information on the work of the inspectorate, supplied statistical data together with relevant analyses and comments, including on occupational accidents, placing special emphasis on the lack of general safety and health standards in small and medium-sized establishments.

In 1995, an ILO technical assistance mission found that the labour administration was only represented in 20 of the country's 39 districts and had lost over 75 per cent of its human resources. For example, of the 67 posts planned for the occupational safety and health department, only two existed, one in Jinja, the other in Mbala, notwithstanding the significant number of establishments covered by the 1964 Factories Act and the fact that they were located throughout the country.

The annual inspection report for 1996 referred to 17 collective labour disputes concerning trade union rights, the refusal by employers to pay wage arrears and retirement benefits, and unfair dismissals of unionized workers. With the restructuring of the country's administration, unemployment was compounded by the dismissals of public employees. During the period covered, supervision of working conditions appears to have been marginalized in relation to employment policy and to no longer have been a matter of concern for the Government. The central labour administration's resources had been so reduced that no vehicles were left for travel outside the capital to supervise the operation of district services, some of which were unattainable by telephone. During the year covered by the above report, only 13 of the 21 district labour services were able to communicate information on their work: in all, 1,151 inspection visits were carried out, for some of which transport was provided by the employers. In total, there were 19 occupational safety and health inspection staff. Out of the 104 occupational accidents notified, only eight were investigated. Records showed that 25 per cent of the accidents were in construction and 33 per cent in government services and private security bodies. The 26–30 age group accounted for 34.61 per cent of the accidents, but no legal proceedings had been initiated during the period covered. The industrial court nonetheless apparently played an important role in pacifying and harmonizing industrial relations and, in most of its decisions it found for the workers. Its impact was attributed to its functional and financial independence.

In the observations it made in the years that followed, the Committee repeatedly noted that the Convention was not applied and reminded the Government of the obligations arising out of ratification, asking it to take the necessary steps to remedy the situation of the labour inspection services. Such measures involve, in particular, placing the inspection services under the supervision and control of a central authority and recruiting qualified and properly trained personnel. Financial, material and logistical resources are also essential for the control of the industrial and commercial establishments covered by the Convention and of the relevant national legislation (suitably equipped offices, provision of appropriate technical equipment for inspections and transport facilities and repayment of duty travel expenses). The diversity and complexity of the labour inspection functions defined in the Convention also require labour inspectors to devote most of their time to these duties, in their capacity as public officials who are assured of stability of employment and are independent of improper external influences.

Nevertheless, due to the decentralization of the labour administration as a whole, the Ministry of Labour as such soon disappeared and its component parts were absorbed by a succession of ministries. The labour administration is now a department in the Ministry of Gender, Labour and Social Development (MGLSD). Its resources have been significantly reduced, as has its authority over the decentralized services. While decentralization was designed as a response to the demands of a policy to encourage investment, both national and international, in the interests of developing the national economy and creating jobs, its implementation has become increasingly detrimental to workers because it has overlooked issues relating to conditions of work, which is in violation of the Convention.

The Local Governments Act, No. 1 of 1997, transferred labour issues to the districts, together with services and activities for social rehabilitation, probation and well-being of street children and orphans, the role of women in development, community development, youth, culture and information services. With this transfer of authority, the districts are now exercising powers formerly held by central government, such as formulating development plans on the basis of priorities defined at the local level including raising, levying, managing and assigning resources through separate budgets, and establishing or abolishing public service bodies. As labour administration issues were no longer given priority, district labour departments were consequently reduced to rudimentary structures, and in some instances disappeared altogether. Furthermore, the number of districts increased from 56 to 75 in 2005 and to 80 in 2009, and is likely to increase further in the near future. Only the district of Kampala, which has a special status, is administered by the country's central authorities. COFTU and NOTU have expressed concern at the fragmentation of the country's administration at a time of drastic reductions in labour administration personnel and have called for amendment of the Constitution so that labour inspection can be placed back under the control and supervision of a central authority in a fully fledged ministry of labour endowed with the necessary capacities to fulfil its functions effectively. Although a similar view was expressed by nearly all the political and administrative officials and other stakeholders it met, the mission concluded that there is no such prospect on the agenda.

On 15 September 2008, the Local Governments Act was again amended with a view to the further decentralization of the administration taking account of a distinction between rural and urban entities. In accordance with section 77 of the Act, local governments will have the right and duty to formulate, approve and execute their budgets and plans subject to compulsory budgetary equilibrium (paragraph 1). Subject to the obligation to give priority to the objectives set out in national programmes (paragraph 2), urban governments are given financial independence, provided that their plan is incorporated into the district plan (section 79). The Committee notes that, according to section 83 (paragraph 2), central Government allocates to local governments to finance the operation of decentralized services, an unconditional minimum amount calculated in accordance with Chapter 7 of the Constitution, equal in value to the amount of the previous tax year for the same item.

In its report received in November 2008, the Government stated that it was seeking funds within the framework of the Decent Work Country Programme adopted in May 2007, while pointing out that the enhancement of labour inspection is a key element of a strategy for improvement of industrial relations through the promotion of rights at work. It undertakes to address all the issues raised by the Committee in the report due in 2009, taking into account the conclusions of the Conference Committee on the Application of Standards in June 2008. However, the Government has not sent the report as announced, but documented information gathered by the ILO mission of July 2009 shows that, while the MGLSD received an additional budgetary allocation in the course of the year, the labour inspectorate had no place in the MGLSD's budgetary allocations for the current fiscal year and that, moreover, labour administration issues in general are not included in any of the projects or strategies developed for the short and medium term by the Ministry in charge of local governments.

The Committee nevertheless hopes that, as soon as possible, the labour inspectorate will be given a key role in the country's social and economic development strategy, in particular through the process for revising the Decent Work Country Programme adopted in 2007, through the enactment of the above new legislation on employment and occupational safety and health, and to ILO technical assistance in fulfilling the objectives of the Convention. The Committee recalls that labour inspection is a function of the public administration that needs its own operating budget allowing the recruitment of suitable personnel and adequate resources to be made available. It is for the ministry responsible for labour to define requirements for this purpose and to raise awareness among governmental authorities and the social partners, particularly employers, of the positive impact of efficient labour inspection on a country's economic development and enterprise financial results.

The Committee notes the re-establishment of an Industrial Court financed by the state budget. In accordance with Act No. 8 of 2006 on labour disputes (arbitration and settlement), the court hears disputes that the labour inspector has been unable to settle or appeals by one of the parties where there has been no decision within 90 days. However, if the Industrial Court is to play its role fully, it would be advisable for the legislation on the functioning and powers of the labour inspectorate to be revised so as to adapt it to developments in the world of work, and for the legislation on conditions of work to be supplemented by regulations to give it practical effect under the supervision of the labour inspectorate. The Committee notes the indication to the technical assistance mission that a parliamentary process is under way for this purpose. *The Committee notes that the Employment Act, No. 6 of 2006, and the Occupational Safety and Health Act, No. 9 of 2006, contain provisions that are largely consistent with the Convention, and requests the Government to take measures promptly to give effect to them in practice. In particular, it requests it to ensure that effect is given in the near future to section 3(1) of the Occupational Safety and Health Act (No. 9) and section 9 of the Employment Act (No. 6), concerning the recruitment of the necessary inspection staff to ensure the implementation of these Acts, and that the number of inspectors will be determined in each district on the basis of the technical and geographical criteria referred to in Article 10 of the Convention. The Committee therefore urges the Government to ensure that the necessary conditions are created to establish effective cooperation between the labour administration and the other public services and private institutions that possess useful data (such as the ministries of finance, justice, tourism, commerce and industry, the Bureau of Statistics, the Investment Authority and the National Social Security Fund (NSSF)) for the establishment of a company's register providing the labour inspectorate with the necessary information to develop an inspection programme that takes into account the branches of activity in which workers are the most vulnerable in view of the general conditions of work and the risks for their safety and health.*

The Committee notes that, in accordance with section 20 of the Employment Act (No. 6), an annual report containing information on labour inspection must be published by the labour commissioner at the ministry responsible for labour, which seems at least to suggest a return to the idea of a central labour inspection authority within the meaning of Article 4 of the Convention to supervise and control the work done by the district inspection services. An annual report, prepared in accordance with Articles 20 and 21 of the Convention, will also enable the national authorities concerned, as well as the social partners and the ILO's supervisory bodies, to gain a sufficiently clear idea of the way the labour inspection system functions and hence to envisage or propose, as the case may be, the necessary means of improving it.

*The Committee requests the Government to provide information on any measures taken in pursuit of the above objectives, together with any relevant documents. It would be grateful in particular for information on the manner in which it plans to give effect to Article 4 of the Convention in terms of organizing and running the labour inspection system in practice in the context of the application of the current version of the Local Governments Act. The Committee finally requests the Government to ensure that an annual inspection report, containing the information available on the subjects listed at Article 21 of the Convention and reflecting both progress made and the shortcomings of the labour inspection system, will be published and that a copy will be sent to the ILO.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Ukraine

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)**

The Committee notes that the Government's report contains no information on the issues raised in the Committee's previous comments pursuant to the observations made by the Federation of Trade Unions of Ukraine (FTUU). The Committee recalls that these comments concerned discrepancies between the Convention and Act No. 877-V concerning the fundamental principles of state supervision in the area of economic activity adopted on 5 April 2007 by the Supreme Council as well as Order No. 502 concerning temporary restrictions on state supervision activities in the area of economic activity which was adopted by the Cabinet of Ministers of Ukraine on 23 May 2009 and was applicable until 31 December 2010. *The Committee requests the Government to indicate the measures taken in order to ensure that Act No. 877-V, which it recognized to be in violation of Articles 12(1)(a) and (2), and 15(c) of the Convention, is amended with a view to bringing it into conformity with the Convention. It also requests the Government to clarify whether Order No. 502, which it also recognized to be contrary to Articles 16 and 18 of the Convention, has ceased to be in force since 1 January 2011, and if that is not the case, to indicate the measures taken in order to repeal it.*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129)** (ratification: 2004)

*Referring to its observation under the Labour Inspection Convention, 1947 (No. 81) and noting that the issues raised relate also to Articles 1(1)(a) and (2), 20(c), 21 and 24 of the present Convention, the Committee requests the Government to provide the information requested under Convention No. 81 in so far as it also concerns the rights, powers and means of action of the labour inspection staff in agricultural enterprises.*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2013.]*

## **Uruguay**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)**

*Article 6 of the Convention. Legal status and conditions of service of labour inspection staff. Stability of employment and independence.* The Committee notes with *interest* the information that 33 persons under contract as occupational safety and health inspectors in the Working Environment Conditions (CAT) Division, who had not yet attained the status of public officials, entered the public service, in the same way as the other inspectors, after participating in a competitive and merit-based selection process. According to the Government, the conclusion of a public service contract without limit of time means that these officials enjoy the necessary guarantees and stability. The Government clarifies that the administration may assess their suitability for a specific period, before including them in the ranks of budgeted public officials, and that currently all labour inspectors are protected by the status of budgeted public officials.

The Committee also notes with *interest* that, according to the Government, as from the middle of 2007, and as a consequence of the application of their status of exclusive assignment, the earnings of inspectors rose by 100 per cent and, although there remains a small difference in relation to the number of working hours, inspectors receive salaries that are more than double those of other public officials. The Committee notes with *interest* that, according to the Government, there is currently only one labour inspector who has not been granted the status of exclusive assignment. *The Committee would be grateful if the Government would keep the Office informed of developments regarding the number of inspectors who have attained the status of exclusive assignment. The Committee also requests the Government to indicate the percentage of working hours for which an inspector may be dispensed from the status of exclusive assignment to labour inspection.*

*Allegations of discrimination.* With regard to the allegations of discrimination against unionized inspectors previously made by the Ibero-American Confederation of Labour Inspectors (CIIT), the Government reaffirms that no type of discrimination occurs against unionized inspectors and that, on the contrary, trade union leave is facilitated and respected so that inspectors can undertake trade union activities. The text of the forms which inspectors have to complete daily on their activities was decided upon in a common agreement with inspectors, the directors of inspection services and supervisors, and those concerned were the ones that requested the inclusion of the item relating to trade union activities, which responds to the desire to clearly identify their various everyday activities. The Committee takes due note of the information provided by the Government.

*Conditions of service.* The Committee also notes that, according to the Government, the salaries determined for tax inspectors are similar to those of labour inspectors. The difference lies in the variable component of their remuneration which, in the case of tax inspectors, attached to the service which collects and administers taxes, is related to management and collection responsibilities. This difference can, on occasions, amount to 25 per cent of the salaries of labour inspectors, while on other occasions it may be lower or zero. The Committee notes with *interest* that the authorities of the Ministry and of the inspection services are analysing the possibility of revising these aspects of the remuneration of inspectors. *The Committee requests the Government to provide information on any measures envisaged or adopted with a view to improving the remuneration or benefits of labour inspectors in the light of the socio-economic importance of the objectives assigned to the labour inspection services.*

*Article 7. Retraining of inspectors.* The Committee notes with *interest* the creation of communication and training teams, which include inspectors, with a view to defining, jointly with management, the necessary training courses for labour inspectors. It notes that during the course of 2010, training days were held, among other subjects, on vertical work techniques, that all inspection staff are currently participating in workshops relating to the installation of the electronic management system and that a workshop has been planned for 2011 on the interdisciplinary treatment of harassment, together with courses to update knowledge in the field of social security contributions and rulings on wages. *The Committee would be grateful if the Government would keep the Office informed of the planning of future training activities for inspectors and their impact on the achievement of the objectives of the Convention.*

*Articles 10(a)(i) and (ii) and (b), 11, 16 and 21(c).* *Number of labour inspectors, working conditions of inspectors, and inspection visits.* The Government indicates that the current number of inspectors is 147, of whom 63 are assigned to the CAT Division and 84 to the General Labour Conditions (CGT) Division (eight of these posts are currently vacant).

According to the Government, in view of the size of the country (the most distant point from the capital is only 600 km away) and the availability of appropriate vehicles to cover these distances rapidly and with sufficient ease, all of the inspection staff covers the interior of the country, and not only inspectors who are based outside the capital. Inspection activities in departments with few inhabitants are difficult for inspectors who live there. For these reasons, the Government considers it important to maintain the current system. Moreover, a draft agreement with other State bodies is under examination with a view to making air transport facilities available to labour inspectors, where necessary. The Government also reports the purchase in 2010 of four new 4x4 vehicles and indicates that, together with the remaining vehicles, they cover the needs of the inspection staff in this respect. The Government adds that it is in the process of implementing an electronic management system which will involve the total computerization of inspection functions. The Government indicates that in this framework, teams of inspectors have been set-up in order to introduce in the system statistics on inspection activities, and particularly on accidents. With reference to offices, the Government indicates that the work that is planned and budgeted will result in the doubling of the physical space currently available to both Divisions. *The Committee takes note of this information with interest and requests the Government to keep the ILO informed of progress made in the establishment of the electronic management system and its impact on the effective discharge of the duties of the labour inspectorate. Furthermore, the Committee would be grateful if the Government would keep the ILO informed of progress in the recruitment of new labour inspectors to fill the vacant posts and specify the number of inspectors who are engaged in inspections of workplace.*

*Articles 20 and 21. Publication and communication of an annual report on the work of the labour inspection services. The Committee once again requests the Government to ensure that the relevant measures are taken with a view to ensuring that the annual inspection reports henceforth contain information on all of the issues envisaged in Article 21, and particularly on clause (c) (statistics of workplaces liable to inspection and the number of workers employed therein), (e) (statistics of violations and penalties imposed, including references to the respective legislative provisions) and (g) (statistics of occupational diseases).*

The Committee is raising other points in a request addressed directly to the Government.

### **Labour Administration Convention, 1978 (No. 150) (ratification: 1989)**

The Committee notes the Government's report received at the office on 7 September 2010. It notes the information supplied by the Government in reply to its previous comments. It will examine this information in the context of the *Labour Inspection Convention, 1947 (No. 81)*.

The Committee is raising other points in a request addressed directly to the Government.

## **Bolivarian Republic of Venezuela**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)**

The Committee takes note of the Government's report. It also takes note of the comments made by the Confederation of Workers of Venezuela (CTV) in a communication dated 29 August 2011 as well as by the Independent Trade Union Alliance (ASI) in a communication dated 30 August 2011. It also notes the Government's reply to the comments of the CTV dated 30 November 2011. Since the latter was received too late to be examined, the Committee will examine the Government's report along with the comments of the trade unions and the Government's reply at its next session. *The Committee requests the Government to communicate any comment or information it deems appropriate in reply to the comments of the ASI.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Zimbabwe**

### **Labour Inspection Convention, 1947 (No. 81) (ratification: 1993)**

*Articles 3(1) and (2), 5(a), 7 and 18 of the Convention. Strengthening of the primary functions of the labour inspection system and cooperation with the justice system.* With reference to its previous comments, the Committee notes with *interest* the Government's statement that it has taken measures to introduce tripartite discussions on the structural separation of the functions of the labour inspectorate from the functions of conciliation and arbitration in the context of the ongoing labour law reform. According to the Government, this is a first step in the process of strengthening the function of the labour inspectorate within the framework of the ILO Technical Assistance Package which was launched in August 2010 for the implementation of the Recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Zimbabwe of the *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, and the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. The Committee also notes with *interest* in the report under the *Labour Inspection (Agriculture) Convention, 1969 (No. 129)*, that the Government has engaged in discussions with labour inspectors in provincial levels with a view to identifying the challenges that hamper labour inspection.

The Committee further notes with *interest* that under the ILO technical assistance package, training is provided to members of the Judicial Services Commission including the Labour Court and Magistrates' Court as well as labour

inspectors on ILO Conventions on Freedom of Association and Collective Bargaining. Furthermore, a workshop was organized to discuss the comments of the Committee on the application by Zimbabwe of the *Weekly Rest (Industry) Convention, 1921 (No. 14)* so as to keep labour inspectors well informed of the relevant developments and to be in a position to come up with remedial action where challenges are identified.

***The Committee requests the Government to provide information on the progress made in identifying the obstacles that hamper labour inspection and the measures taken or envisaged to address them in the framework of the ILO Technical Assistance Package. In this context, the Committee would be grateful if the Government would keep the ILO informed of progress made in separating the functions of labour inspection from those of conciliation and arbitration. Furthermore, the Committee would be grateful if the Government would provide details on the training provided to labour inspectors and indicate in particular, the issues addressed, the duration, the number of participants as well as the impact of the training on the effective discharge of the functions of the labour inspection, including with regard to freedom of association. The Government is also requested to indicate any further steps taken to reinforce the cooperation between the labour inspection and the justice system and the impact of such cooperation on the level of enforcement of legislation concerning the conditions of work and the protection of workers, including in the area of freedom of association.***

***In particular, while noting the information provided by the Government on the fines applicable for violations of the Labour Act, the Committee requests the Government to provide statistical data on the effective enforcement of such sanctions by the justice system.***

*Articles 4, 5(b), 6, 10, 11, 17 and 18. Functioning and supervision of the labour inspection system.* The Committee notes that in reply to its previous comments concerning the composition, distribution and conditions of service of labour inspectors, the Government indicates that 96 labour officers carry out inspections on general conditions of work, and 31 inspectors from the National Social Security Authority carry out inspections on occupational safety and health (OSH). The Government provides information on the geographical distribution of the two inspection services and specifies that they are distributed in a complementary manner so as to make at least one of them available in each province.

The Government indicates that, in addition to the labour inspectors who are public officials with authority under the Labour Act to carry out inspection functions, complementary inspection functions are carried out in accordance with section 63 of the Labour Act by designated agents of employment councils. The latter are bipartite bodies set up by employers and their organizations and trade union organizations. The Government indicates that measures have been taken to ensure that all of the 12 employment councils in the country have designated agents so that they can carry out inspection functions. In its report under Convention No. 129 the Government clarifies that the labour inspection functions of the designated agents are of a consultative and tripartite nature as they are exercised under delegated authority from the Ministry.

According to the Government, even though the salaries of the inspectors have been substantially increased following the introduction of a multiple currency system by the Government in February 2009, their conditions of service are in need of significant improvement in order to address the high turnover of labour inspectors. In addition, facilities such as motor vehicles, stationery and communication technologies are generally inadequate and the lack of technical equipment for OSH inspectors impedes their activities. According to the Government's report on Convention No. 129, the abovementioned "designated agents" have better conditions of service, characterized by competitive salaries and the relative availability of tools for the labour inspection including motor vehicles. The Government indicates that it has undertaken to remedy this situation as the economy recovers.

While recalling from its previous comments the need to ensure an effective and efficient labour inspection system with the support of the social partners, the Committee also recalls that according to *Article 4 of the Convention*, labour inspection should be placed under the supervision and control of a central authority and that the enforcement powers foreseen in *Articles 17 and 18* of the Convention should be the exclusive prerogative of labour inspectors and the justice system. The Committee also emphasizes the need to ensure that the status and conditions of service of the labour inspectors are such that they are assured of stability of employment and are independent of changes of government and of improper external influences as provided for in *Article 6*.

***The Committee requests the Government to indicate the manner in which the central labour inspection authority maintains supervision and control of the labour inspection system in its entirety and to specify the conditions and modalities under which it collaborates with designated agents of employment councils (including the manner in which it delegates powers and supervises their activities). The Government is also requested to provide clarifications and statistical data on the distribution of enforcement and advisory functions (Articles 3(1)(a) and (b)), between the labour inspectors and the designated agents of employment councils as well as on the practical aspects of their collaboration.***

***The Committee requests the Government to indicate the steps taken or envisaged in order to gradually improve on the conditions of service of labour inspectors as well as the material facilities at their disposal and to ensure, as soon as the financial situation of the country will allow it, that both categories of inspectors (on general conditions of work and OSH) are progressively posted in all provinces so as to cover the entire territory.***

*Articles 3(1)(b), 13, 14, 16, 20 and 21. Data on the activities of the labour inspection system to publish an annual labour inspection report.* While the Government communicates sample documents on the results of inspection visits and the investigation of industrial accidents, it indicates that it faces significant challenges in terms of compilation of labour inspection statistics due to the non-existence of a labour market information system. The Government also indicates that despite its appeal, ILO technical assistance has not been provided in this regard.

The Committee considers that a labour market information system would allow, to a large extent, the labour inspection central authority to publish an annual labour inspection report in conformity with *Articles 20 and 21* of the Convention. As stressed in its general observation of 2011, when well prepared, the annual report offers an indispensable basis for the evaluation of the results in practice of the activities of the labour inspection services and subsequently, the determination of the means necessary to improve their effectiveness. Moreover, with reference to its general observation of 2009, the Committee emphasizes that the elaboration of a register of workplaces liable to inspection and workers employed therein is an important tool for the central authority to assess the relationship between the activities carried out and the resources available, especially for the development of a human resources policy that takes into account merit and motivation.

*The Committee expresses the hope that the technical assistance of the ILO in relation to the elaboration of a labour market information system will be provided without delay and that progress will be reported by the Government in its next report in relation to the steps taken for the establishment of a register of industrial and commercial workplaces liable to labour inspection and the number of workers covered.*

*With reference to Articles 16, 17, 18 and 21(d)–(e) of the Convention, the Committee requests the Government to provide information on the number of inspection visits (both programmed and pursuant to complaints), the number of violations detected with reference to the legal provisions and economic sectors concerned, as well as the number of notices served and cases brought to the justice system.*

*With reference to Articles 14 and 21(f)–(g), the Committee also requests the Government to describe the mechanism in place for the recording and notification of industrial accidents and cases of occupational disease and to communicate relevant statistical data.*

*Finally, the Committee would be grateful if the Government would indicate the preventive activities carried out by the labour inspectorate in the area of OSH in conformity with Articles 3(1)(b) and 13, and to indicate in particular the number of measures with immediate executory force issued by the labour inspection during the reporting period.*

### **Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1993)**

Referring to its comments under the *Labour Inspection Convention, 1947 (No. 81)*, the Committee requests the Government to reply to the questions raised in that framework to the extent that they relate to labour inspection in agriculture. In addition, the Committee draws the Government's attention to the following.

*Article 6(1) of the Convention. Enforcement of legislation on freedom of association rights and wage payment.* The Committee takes note of the Government's reply to the comments made by the Zimbabwe Congress of Trade Unions (ZCTU) in September 2009. The Government indicates that these comments concerned events that have in the meantime become obsolete. In particular, the question of wage levels and their payment has been resolved since the introduction of the multiple currency system in February 2009. According to the Government, the major obstacle to the effective functioning of the enforcement mechanism has been that of limited financial and material resources. **Recalling that the comments of the ZCTU referred to grave issues like acts of violence against trade unionists and the absence of an effective enforcement mechanism to address the non-payment of wages, the Committee requests the Government to provide detailed information and data on the activities of the labour inspectorate in agriculture aimed at the enforcement of legislation on freedom of association rights and wage payment. Please indicate in particular, the number of visits carried out, including incidents investigated in response to complaints, the violations found and the sanctions imposed to ensure the effective enforcement of the relevant provisions.**

*Articles 6(1), 17, 18 and 19. Labour inspection functions in the area of occupational safety and health.* The Government indicates that there is currently no labour inspection on occupational safety and health (OSH) in agriculture even though in practice OSH inspectors from the National Social Security Authority conduct inspections in farms notwithstanding the legislative gaps. Furthermore, in the event of occupational accidents in farms the OSH inspectors are supposed to conduct inspections to enable processing of workers' compensation (Statutory Instrument 68 of 1990: National Social Security Authority (Accident Prevention and Workers' Compensation Scheme) Notice, 1990).

The Committee notes, however, the information by the Government according to which, in the framework of a concerted effort to harmonize all legislation on OSH in Zimbabwe so as to cover agriculture, the OSH legislation is being reviewed with the intention to extend the coverage of the Factories and Works Act to include the agricultural industry. This development will enhance the work of the presently existing inspectorates.

*The Committee would be grateful if the Government would keep the ILO informed of progress made in amending OSH legislation so as to extend its application to agriculture and formally extend the functions of the labour inspectorate in this area. It hopes that the Government will soon be in a position to report on the activities carried out*

*by labour inspectors in agriculture with regard to both enforcement and prevention in line with Articles 6(1), 17 and 18 of the Convention. The Committee also requests the Government to provide any available statistical information on occupational accidents and cases of occupational disease recorded in agriculture (Article 19).*

*Articles 16(1), 16(3) and 20(c). Right of access to workplaces.* The Government indicates that, while in terms of the legislation advance notice to an employer of an inspection visit is at the discretion of the labour inspector, the latter is expected to give such notice in practice. The Committee recalls that the possibility to carry out unannounced inspections at any time is essential in order to ensure that the duty of confidentiality as to the existence of a complaint and its source is fully respected when visits are conducted pursuant to complaints, in line with *Article 20(c)*. According to *Article 16* of the Convention, labour inspectors should be able to avoid notifying inspection visits to employers if they consider that such a notification may be prejudicial to the performance of their duties. ***The Committee requests the Government to indicate the measures taken or envisaged in order to ensure that there is no formal or informal requirement to give advance notice for inspection visits in agriculture.***

*Articles 13 and 14. Number of labour inspectors in agriculture and collaboration with employers, workers and their organizations.* The Government indicates that in the agricultural sector labour inspectors and designated agents of Employment Councils coordinate their activities in order to maximize the use of resources and the quality of inspection services. The Ministry, which has the overall authority for ensuring the implementation of labour inspection services, has at its disposal 96 labour officials distributed across the country with the ability to cover all agricultural industries (along with the other sectors of the economy). The Ministry delegates the authority for labour inspection on conditions of service to the responsible Employment Council for the Agriculture Industry. The latter is a bipartite body that operates under the supervision of the Ministry of Labour and Social Services and has five designated agents who also carry out inspections. According to the Government, the labour inspection functions of the Employment Council are of a consultative and tripartite nature.

***The Committee would be grateful if the Government would specify the proportion of the activities of labour inspectors which are focused on agricultural industries in relation to other industries. Moreover, the Committee would be grateful if the Government would provide further details on the manner in which labour inspectors and designated agents collaborate in terms of nature of activities (enforcement and advisory) and the impact of this collaboration on the attainment of the objectives of the Convention.***

*Article 15. Transportation facilities.* The Government indicates that in cases where suitable public transport is not generally available, inspectors make use of officials' motor vehicles during their work. Inspectors are given advance payments for out of station allowances to cater for travel and subsistence during field work. Upon return to station, the inspectors are only required to present receipts for the funds spent. ***Recalling the importance of adequate transport facilities for the effective exercise of the functions of labour inspectors in agriculture, including appropriate vehicles to reach enterprises that are difficult to access, the Committee requests the Government to specify the number of vehicles at the disposal of labour inspectors in agriculture, as well as any measures taken or envisaged in order to gradually improve on the transportation facilities available to them.***

*Article 24. Enforcement of penalties for obstruction of labour inspectors' work.* The Committee notes that, under section 126 of the Labour Act, any person who hinders an officer during inspections is liable to a fine not exceeding level 5 or imprisonment not exceeding six months or both. ***The Committee requests the Government to provide information on the enforcement of section 126 of the Labour Act and any protection afforded to labour inspectors in case of obstruction in the exercise of their duties during inspection visits.***

***The Committee reminds the Government that it may avail itself of further technical assistance from the Office if it so wishes.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 63** (Djibouti, Kenya, Myanmar, Nicaragua, South Africa, Syrian Arab Republic, United Republic of Tanzania, United Kingdom: Guernsey, United Kingdom: St Helena); **Convention No. 81** (Albania, Algeria, Argentina, Bahamas, Belarus, Belize, Benin, Plurinational State of Bolivia, Bulgaria, Burkina Faso, Costa Rica, Croatia, Cuba, Cyprus, Democratic Republic of the Congo, Denmark, Dominica, Dominican Republic, Egypt, Estonia, Fiji, Finland, France: French Polynesia, Gabon, Germany, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Indonesia, Iraq, Israel, Kuwait, Kyrgyzstan, Latvia, Lebanon, Liberia, Lithuania, Luxembourg, Mali, Malta, Mauritania, Mauritius, Montenegro, Morocco, Netherlands, Netherlands: Curaçao, Netherlands: Sint Maarten, Norway, Panama, Poland, Portugal, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Seychelles, Sierra Leone, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Sweden, United Republic of Tanzania: Tanganyika, The former Yugoslav Republic of Macedonia, Tunisia, Ukraine, United Kingdom: Gibraltar, United Kingdom: Guernsey, United Kingdom: Isle of Man, Uruguay); **Convention No. 85** (Papua New Guinea, United Kingdom: St Helena); **Convention No. 129** (Albania, Plurinational State of Bolivia, Costa Rica, Croatia, Denmark, Finland, France: French Polynesia, Hungary, Luxembourg, Malta, Montenegro, Morocco, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Spain, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay); **Convention No. 150** (Algeria, Cambodia, Congo, Czech Republic,

*Democratic Republic of the Congo, Guinea, Guyana, Iraq, Republic of Korea, Kyrgyzstan, Lebanon, Lesotho, Liberia, Luxembourg, Malawi, Mexico, Morocco, Namibia, Portugal, Romania, Russian Federation, San Marino, Seychelles, Tunisia, United Kingdom: Isle of Man, United Kingdom: St Helena, Uruguay, Zambia); Convention No. 160 (Czech Republic, Ireland, Republic of Korea, Kyrgyzstan, Latvia, Mauritius, Mexico, Netherlands, Norway, Panama, Poland, Portugal, Russian Federation, San Marino, Slovakia, Spain, Sri Lanka, Sweden, Switzerland, Ukraine, United Kingdom, United Kingdom: Gibraltar, United Kingdom: Isle of Man, United Kingdom: Jersey).*

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 81** (*Switzerland, United Kingdom*); **Convention No. 160** (*Lithuania, United States*).

## Employment policy and promotion

### Angola

#### Employment Service Convention, 1948 (No. 88) (ratification: 1976)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2010 observation which read as follows:

*Contribution of the employment service to employment promotion.* The Committee notes the succinct report provided by the Government in May 2010. In its 2008 observation the Committee noted that, in the context of its policy to combat unemployment and poverty, the Government established some public policies with a view to stimulating employment. It further noted that employment and vocational training were one of the ten priorities of the poverty reduction strategy, which should channel the resources obtained from oil to create favourable opportunities for productive employment for young persons and to reduce the informal economy. The Committee observed that the social indicators were a source of great concern – 70 per cent of the population survived on less than US\$2 a day and enrolment in primary schools was increasing very slowly (from 50 per cent in 1990 to 53 per cent in 2000). It therefore emphasized the need to guarantee the essential function of employment services to promote employment in the country. The Committee notes the Government's statement that the employment service staff is composed of public officials who are hired through public competition according to the needs of the Ministry of Public Administration, Employment and Social Security and of the employment centre. ***The Committee once again requests the Government to provide a report containing the available statistical information on the number of public employment offices established, the number of applications for employment received, vacancies notified and persons placed in employment by such offices (Part IV of the report form) and to 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 of the Convention);*
- *the manner in which the employment service is organized and the activities which it performs to effectively carry out the functions set out in Article 6;*
- *the activities of the public employment service in relation to socially vulnerable categories of jobseekers, with particular reference to workers with reduced mobility and disabilities (Article 7);*
- *the results of the measures adopted to give effect to Act No. 1 of 2006 to encourage young persons seeking their first job (Article 8);*
- *the measures proposed by the Training Centre for Trainers (CENFOR) and other institutions to provide training or further training to employment service staff (Article 9(4));*
- *the measures proposed by the employment service in collaboration with the social partners to encourage the full use of employment service facilities (Article 10); and*
- *the measures adopted or envisaged by the employment service to secure cooperation between the public employment service and private employment agencies (Article 11).*

The Committee recalls that the Office is in a position to provide the Government with technical advice and assistance for the establishment of a public employment service, as required by the Convention.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### Plurinational State of Bolivia

#### Employment Service Convention, 1948 (No. 88) (ratification: 1977)

*Contribution of the employment service to employment promotion.* The Committee notes the Government's report received in August 2010, which includes detailed statistics on the numbers of vacancies and applications for employment within the ten Employment Promotion Units, registered vacancies by department and sex, and other relevant data on the operation of the public employment service. The Government suggests that the service is not being used by enterprises. ***The Committee requests the Government to continue providing information on the new measures adopted to ensure the efficient operation of the free public employment service comprising a network of employment offices sufficient in number to meet the needs of employers and workers throughout the country (Articles 1–3 of the Convention). The Committee hopes that the Government will continue to supply information on the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices (Part IV of the report form).***

*Cooperation with the social partners.* In the 2010 General Survey concerning employment instruments, the Committee noted that in the Plurinational State of Bolivia, employers' and workers' organizations, as well as other civil society organizations, cooperate even further with the public institutions. The Committee noted that these organizations actively participate and share responsibility with the public employment service in regard to policy development, implementation and even co-financing of certain programmes (paragraph 215 of the General Survey). ***The Committee requests the Government to include up-to-date, detailed information in its next report on the cooperation of the social partners in the operation of the employment service at both the national and local levels (Articles 4 and 5).***

## **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1996)**

*Implementation of a national policy.* The Committee notes the Government's report received in August 2010 listing the legal provisions on persons with disabilities in force and indicating the most recent statutes on the subject. The Government states that in August 2009 a National Solidarity and Equity Fund was created on a temporary basis for persons with disabilities with the aim of increasing the probability of integrating men and women with disabilities in the labour market, either in employment or self-employment. The Government suggests that the apparent ignorance of the existing rules and regulations by employers prevents their implementation by the Ministry of Labour. The Government also includes a list of measures taken under Supreme Decree No. 27477 of May 2004, the aim of which was to promote preferential treatment for persons with disabilities in terms of labour market access, progress and stability, with the requirement that in public entities, such persons must account for at least 4 per cent of total human resources on average. *The Committee refers to its observation of 2006 and requests the Government to provide information in its next report on the results obtained in integrating persons with disabilities into the open labour market (Article 2 of the Convention). It also asks the Government to provide further information on the impact of the measures adopted to ensure effective equality of treatment between men and women workers with disabilities and other workers (Article 4), the provision of vocational guidance, vocational training, placement, employment and other related services to enable persons with disabilities to secure, retain and advance in employment (Article 7), the provision of vocational rehabilitation and employment services for persons with disabilities who live in remote areas and who lack economic resources (Article 8) and the specific measures put into effect to ensure the availability of suitably qualified vocational rehabilitation staff (Article 9).*

*Consultation of the representative organizations of employers and workers.* *The Committee again asks the Government to provide information on the consultations held with employers and workers organizations – such as the Bolivian Central of Workers and the Confederation of Private Employers of Bolivia – regarding the measures taken to promote cooperation and coordination between public and private institutions engaged in vocational rehabilitation activities (Article 5).*

*Part V of the report form.* *The Committee asks the Government to illustrate its next report with practical information such as extracts from reports, studies and enquiries concerning the matters covered by the Convention.*

## **Cambodia**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Articles 1 and 2 of the Convention. Coordination of social and economic policy with poverty reduction.* The Committee notes the Government's report received in August 2011 containing some replies to the points raised in the 2010 observation. In its report, the Government refers to the implementation of the Rectangular Strategy Plan, Phase II 2009–13. The Committee notes that the Government's six priorities in setting up the aforementioned action plan are as follows: (1) employment creation; (2) improving working conditions; (3) enforcement of the rule of law in social security matters; (4) building and development of technical and vocational skills; (5) expansion and strengthening of gender mainstreaming in the labour market; and (6) strengthening cooperation between institutions, work efficiency and accountability. The Committee also notes that the Government has set up a policy on labour migration. *The Committee invites the Government to provide information in its next report on the results achieved and the difficulties encountered in attaining the employment policy objectives in the Rectangular Strategy Plan, Phase II 2009–13. In addition, the Committee asks the Government to provide information on how it intends to meet, in the context of its new labour migration policy, the employment needs of migrant Cambodian workers.*

*Employment trends.* The Committee notes that data concerning labour market and employment trends is compiled by the Department of Labour Market Information operating under auspices of the Ministry of Labour and Vocational Training. Due to a lack of resources, reorientation of officials responsible for the data collection to other positions, the Government was unable to submit any new relevant information on employment trends. *The Committee hopes that the Government will supply detailed statistical information in its next report on the nature and extent of the country's labour market and employment trends. It also requests the Government to indicate the manner in which labour market data is collected and used to determine and review employment policy measures.*

*ILO technical assistance.* The Government indicates that the "Better Factories Cambodia" programme has led to improved compliance by Cambodian export garment factories of national and international labour standards. This has contributed to Cambodia's national social and economic growth as export garment factories continue to win-over and retain key international buyers who are weary of poor labour standards. *The Committee would appreciate continuing to receive the information on the implementation and results of the Better Factories programme in terms of employment generation.*

*Regional development and rural employment.* The Committee notes that the Cambodia–Laos–Viet Nam Development Triangle Area (CLV–DTA) is a multilateral agreement that focuses on economic, political and social objectives in the subregion. Among the social objectives mentioned in the report, the Government refers to several labour

related objectives, such as hunger eradication and poverty reduction. *The Committee requests the Government to provide additional information on how the measures taken under the CLV–DTA have promoted the objective of full and productive employment. Please also indicate how the objectives of overcoming poverty, eradicating hunger, reducing social inequalities and ensuring sustainable development have been achieved. The Committee invites the Government to continue to include information on the measures taken to reduce regional disparities so as to attain a better balance in the labour market.*

*Youth employment.* The Committee observes that its previous requests regarding information on the specific measures adopted by the Government aimed at generating employment opportunities for the youth was left unanswered in the Government's report. *The Committee reiterates its request and invites the Government to provide in its next report detailed information on the adoption of a youth policy action plan and the results achieved to promote productive employment of young persons.*

*Educational and training policies.* The Committee observes that its previous requests that the Government continue providing information on the effects of educational and training measures adopted by the National Training Board was left unanswered in the Government's report. *The Committee reiterates its previous request and invites the Government to provide in its next report detailed information on the measures taken to improve qualification standards and coordinate education and training policies with employment opportunities.*

*Article 3. Participation of social partners.* The Committee observes that its previous requests regarding information as to how the Government involves representatives of employers and workers in the formulation and implementation of employment policies was left unanswered in the Government's report. *The Committee reiterates its previous request and invites the Government to address this essential issue in its next report by demonstrating how representatives of employers and workers are consulted at the policy planning and implementation stages so that their experience and views are taken into account.*

## Canada

### **Employment Service Convention, 1948 (No. 88) (ratification: 1950)**

*Cooperation with employers' and workers' representatives.* The Committee notes the Government's response received in September 2011 in reply to the comments of the Canadian Labour Congress (CLC). The CLC indicated in September 2010 that the Government affords a low priority to consultation with the social partners on the matters set out in the Convention. It further indicated that there are no advisory committees, as set out in *Article 4 of the Convention*, involving trade unions and employer organizations dealing with the organization and operation of the employment service in the country. The CLC would welcome consideration to create such advisory committees that would examine specific issues and measure the Government's progress in implementing the Convention. In the longer term, an *Article 4* consultation process could help to better coordinate workplace training by bringing together employers, unions and various levels of government. The Government indicates that it consults with employers and workers on a number of issues related to skills development and employment through, inter alia: (i) meetings of the Roundtable on Workforce Skills (RWS), which is comprised of senior representatives from the business community, unions, and federal and provincial governments; and (ii) sectoral and regional consultations with employers and unions through the Sector Council Program and other Human Resources and Skills Development Canada (HRSDC) initiatives. The Committee notes that Service Canada is reviewing its approach in order to further improve service delivery while realizing efficiencies. This process began in 2009 and one of the objectives is to simplify and enhance Service Canada's presence across the country by balancing in-person interaction with the online self-service channel. The CLC indicated in its 2010 comments that it continued to uncover claimants who remained unassisted because of staff shortages in Service Canada offices. This has led to delays in receiving benefits or denial of benefits altogether due to incorrectly filled out forms. Furthermore, with regard to *Article 6(b)* of the Convention, the CLC expresses the view that the Canadian Employment Insurance (EI) system does not appear to be serious about facilitating mobility between one region or province to another. The Government responded that it is committed to facilitating mobility between provinces and territories. It indicates that a number of studies have looked at the determinants of labour market mobility and whether EI played a role in the decision to migrate for employment. Results of these studies reveal that factors such as personal and labour market characteristics, and moving costs, play a key role in mobility decisions, and it appears that EI is not a barrier to mobility. *The Committee invites the Government to continue to provide information on the active cooperation of employers' and workers' representatives in the organization, the operation of the employment service and in the development of the employment service policy (Article 4(1) of the Convention). Please also provide information on the effectiveness of Service Canada's review of the employment service system.*

*[The Government is asked to reply in detail to the present comments in 2014.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Implementation of an active employment policy. Involvement of the social partners.* The Committee notes the Government's report received in September 2011 which includes detailed information provided by the provincial governments. It also notes the comments and useful labour market information provided by the Canadian Labour

Congress (CLC) and the Confederation of National Trade Unions (CSN). The Government indicates that between October 2008 and July 2009, 427,900 jobs were shed from the Canadian economy (on a seasonally adjusted basis). The Committee notes that Canada has rebounded much more quickly from this recession than from those of the 1980s and the 1990s. During the recovery, the labour market gained almost 590,000 jobs since July 2009. The unemployment rate rose to an 11-year high of 8.6 per cent in July 2009 but declined by 1.2 percentage points to 7.4 per cent in June 2011. The Government indicates that it published a report on the job impact of the Economic Action Plan (Budget 2009) in January 2011. The report confirmed that Budget 2009 achieved its objective with over 220,000 jobs estimated to have been created or maintained since December 2010. The Government indicates that consultations were held with private sector employers in February and March 2010 to discuss their labour market experiences during the recession and into the economic recovery, and the nature of their human resource management responses. The Committee notes that Budget 2011 includes new targeted measures to support jobs and growth. It also notes that the CLC reiterates its 2009 comments pertaining to the Government's failure to declare and pursue, as a major goal, an active policy to promote full, productive and freely chosen employment, and for this to be well integrated into socio-economic decision making in Canada. The CLC is concerned that unemployment is much higher now than before the recession, and many workers can find only part-time and temporary, low-paid jobs. In 2010, part-time employment reached a record high of one in five workers. In the recovery period, short-term contract jobs have grown much faster than permanent jobs. The real unemployment rate, counting discouraged workers and involuntary part-timers, was still over 10 per cent at the start of 2011. In response to the comments made by the CLC, the Government indicates that all Canadian governments are pursuing, as a major goal, active policies designed to promote full, productive and freely chosen employment and that policies support the aims identified in *Article 2 of the Convention*. These policies are reviewed to respond to changing economic circumstances and all jurisdictions have established extensive programmes for the application of these measures. Persons affected by these measures, including employer and worker representatives, are consulted. ***The Committee invites the Government to continue to provide information in its next report on employment measures adopted and their outcomes with the objective of maintaining full employment. It also invites the Government to keep in mind the concerns raised by the social partners and to provide further information on the effective consultations held on the matters covered by the Convention.***

*Education and training policies.* The Government indicates that the Career Transition Assistance (CTA) initiative, which came into force on 31 May 2009, has helped more than 14,000 long-tenured workers who needed additional support for retraining to find a new job. While eligibility for the CTA measures ended in May 2010, claimants who met the eligibility criteria for the CTA could begin training until May 2011 and continue to receive benefits as late as May 2012. The Committee notes that the Human Resources and Skills Development Canada (HRSDC) has allocated more than 31.3 million Canadian Dollars (CAD) to support Pan Canadian Innovations Initiative (PCII) activities since 2006. The Government reports that while some PCII projects have been completed and results are positive, evaluation data is not yet available. ***The Committee asks the Government to continue to provide information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities.***

*Young persons.* The Government indicates that it invests almost CAD340 million into the Youth Employment Strategy (YES) to help youth between the ages of 15 and 30 acquire the skills and work experience they need to successfully prepare for the labour market and for the jobs of the future. The primary objectives of the YES are to enhance employability skills, encourage education attainment, and facilitate the transition of young persons into the labour market. The Committee notes the concerns raised by the CSN indicating that the unemployment rate of young persons between the ages of 15 and 24 reached 14.1 per cent in July 2011, as compared to 11.7 per cent in October 2008. The CSN hopes that the Government will pay attention to the integration of young persons in the labour market. ***The Committee invites the Government to provide an evaluation of labour market measures regarding young persons.***

*Aboriginal people.* The Government indicates that the HRSDC implements complementary Aboriginal labour market programmes supporting the participation of Aboriginal people in the Canadian economy. Launched in April 2010, the Aboriginal Skills and Employment Training Strategy (ASETS) is a five-year strategy designed to help Aboriginal people prepare for, find, and keep high-demand jobs now and in the long term. Aboriginal people, regardless of status or location, may access its programmes and services, which include: job-finding skills and training, programmes for youth, Aboriginal people with disabilities, and access to child care for people in training. The Committee notes that, in the 2010–11 period, more than 14,300 people found employment and over 7,000 returned to school through ASETS. It also notes other measures aimed at increasing employment opportunities for Aboriginal people such as the Skills and Partnership Fund (SPF) and the Aboriginal Skills and Employment Partnership (ASEP). ***The Committee invites the Government to include information on the impact of the measures taken to promote productive employment opportunities for Aboriginal people.***

*Means to promote employment of other vulnerable categories of workers.* The Government indicates that the Labour Market Agreements for Persons with Disabilities (LMAPDs) and the Opportunities Fund (OF) for persons with disabilities respond to the labour market needs of employers as well as support the development of education, knowledge and skills for persons with disabilities to foster their participation in the labour market. LMAPDs provide approximately CAD218 million to provinces for programmes which serve around 300,000 people. The Canada-Manitoba LMAPD was evaluated in 2010 and the results indicated that the programme addressed employment barriers, such as low educational

attainment and lack of essential workplace skills, and that employment-related interventions were associated with improvements in outcomes (earnings/hours worked). Additional funding was allocated to the Targeted Initiative for Older Workers (TIOW) in order to extend the programme until 2013–14. All provinces and territories are participating in the programme and as of July 2011, 294 projects have been approved, assisting approximately 15,500 unemployed older workers. Results from the 2010 evaluation of the TIOW show that 75 per cent of participants surveyed have found employment during or after their participation in the TIOW and 80 per cent felt more employable as a result of the project activities. The Government also indicates that in February and March 2011, HRSDC consulted with employers and older workers (aged 50 and over) in eight cities across Canada to explore factors influencing the decisions and ability of older workers to continue working, current and best practices for retaining and recruiting older workers, and the potential role for government and other labour market stakeholders. Furthermore, the Government indicates that it is committed to working with partners and stakeholders to position Canada as a destination of choice for immigrants and to break down barriers to integration, which include the recognition of foreign educational credentials. To this end, the Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications was announced in November 2009. Since the launch of the Framework, governments have worked collaboratively towards the enhancement of foreign qualification recognition processes across Canada so that internationally-trained workers can integrate more quickly and effectively into the labour market. ***The Committee invites the Government to include information on the effectiveness of labour market measures regarding workers with disabilities, older workers, immigrants, and other vulnerable categories of workers.***

## Colombia

### ***Unemployment Convention, 1919 (No. 2) (ratification: 1933)***

In its direct request in 2010, the Committee invited the Government to send its comments on the observations received from the Single Confederation of Workers (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT), which were forwarded to it in September 2010. The Committee notes the replies to the comments made by the trade union organizations, which were received in May and July 2011. The CGT and also the CUT together with the CTC made new comments, which were forwarded to the Government in September 2011.

***Measures to combat unemployment.*** In their comments, the CTC and the CUT emphasized the unemployment rate, which affects 12.5 per cent of the population (first half of 2010) and the high level of precarious employment in the labour market. The CTC and the CUT referred to the concluding observations of the Committee on Economic, Social and Cultural Rights at its 44th Session in May 2010, in which it recommended the Government to “take effective measures to reduce the high rate of unemployment; design specific policies and strategies aimed at creating employment opportunities for young persons, women, indigenous and afro-Colombian peoples; continue the vocational training programmes for young persons, as well as incentives already adopted”. The Committee on Economic, Social and Cultural Rights also recommended the Government to “promote employment opportunities while improving the working conditions in the informal economy and rural areas, in particular with regard to low wages and social security benefits” (E/C.12/COL/CO/5, paragraph 11). In the reply received in May 2011, the Government indicates that the National Development Plan 2010–14 sets as a priority the generation of formal employment. The Government is promoting the modernization of the labour market and establishing a system of protection for those made redundant and a system of employment services (SNIL). Act No. 1429 of December 2010 is intended to provide incentives for formalization at the initial stages of enterprise creation by seeking to increase profits and decrease the costs of formalization. ***The Committee requests the Government to provide detailed information in its next report on the results achieved in the context of the National Development Plan 2010–14 and the application of Act No. 1429 of 2010 to combat unemployment (Article 1 of the Convention).***

***Article 2. Labour market mediation.*** The CGT expressed the view that labour market mediation makes employment precarious, avoids the social responsibility of enterprises and reduces the quality of life for workers. In this respect, the CGT denounces enterprises known as associated work cooperatives which are exempt from the Substantive Labour Code. The Government included information in its report on the number of associated work cooperatives and on the operation of temporary employment agencies. The National Directorate of Temporary Work Agencies lists a total of 486 authorized agencies (between 2006 and 2009) which offer an option for seeking and obtaining employment for those who are unemployed. During this period, user enterprises sought over 3 million persons to meet their staffing needs and 2,918,794 persons were placed in employment. In the reply received in July 2011, the Government indicated its concern at the clear misuse of associated work cooperatives and pre-cooperatives. New regulations have been issued for such entities (Decree No. 4388 of December 2006) and a programme of inspection and monitoring was launched by the Ministry of Social Protection. In its 2010 General Survey concerning employment instruments, the Committee recalled the historical context in which Convention No. 2 was adopted in 1919. Convention No. 2 recognizes the coexistence of free public and private agencies and calls for the coordination of the operations of public and private agencies. More recent instruments, such as the Employment Policy Convention, 1964 (No. 122), and the Private Employment Agencies Convention, 1997 (No. 181), acknowledge the role played by public and private agencies in ensuring an optimal operation of the labour market. In the 2010 General Survey, the Committee noted the concerns expressed by trade union organizations concerning the growth of “pseudo cooperatives”, in the form of false associated work cooperatives, the emergence of which is often accompanied by the destruction of jobs and by massive lay-offs (2010 General Survey, paragraph 463). ***In this context, the Committee invites the Government to provide updated information on the operation of temporary work agencies***

*and the coordination of their activities with those of the public employment service. The Committee also requests the Government to provide information on the measures which ensure that cooperatives which intervene in the placement of workers comply with the values and principles set out in the Promotion of Cooperatives Recommendation, 2002 (No. 193).*

*Unemployment insurance.* The CUT and the CTC indicate in their comments that the country has not concluded agreements to guarantee unemployment insurance for migrant workers who could be protected by agreements between the member States which have ratified the Convention. ***The Committee invites the Government to provide information on the Employment Promotion and Unemployment Protection Fund, including all the data requested in the report form under Article 3 of the Convention.***

### **Employment Service Convention, 1948 (No. 88) (ratification: 1967)**

*Contribution of the employment service to employment promotion.* In the report received in August 2010, the Government provided detailed information on the applications for employment received and the number of persons placed in employment between 2005 and 2010 by the 33 offices of the National Employment Service (SNE) of the National Apprenticeship Service (SENA). The Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC) referred in their comments, which were forwarded to the Government in September 2010, to *Articles 2, 3, 6 and 7 of the Convention* and indicated that the number of offices is inadequate, there is no effective coordination between the various regions and there are no specialized employment offices. They reiterated their comments in a communication forwarded to the Government in September 2011. They added that there is also a mismatch between the training provided by the State through the SENA and the training required by enterprises, many of which do not make use of the employment service provided by the State. In another report received in August 2011, the Government enumerates its policies for the generation of new jobs in the formal economy, the strengthening of labour market institutions, the design and implementation of active and passive employment policies, the strengthening of the labour inspection system and the system for the training of human capital. The Committee refers to the comments that it has made in relation to the Unemployment Convention, 1919 (No. 2), in which it emphasizes the role played by public employment services and private agencies in ensuring the optimal operation of the labour market. The application of Conventions Nos 2 and 88, ratified by Colombia, would give effect to the right to work and would help to achieve full employment (*Article 1(2) of Convention No. 88*). In the 2010 General Survey concerning employment instruments, the Committee emphasized that the public employment service is one of the institutions that is necessary to achieve full employment. Together with the Employment Policy Convention, 1964 (No. 122), and the Private Employment Agencies Convention, 1997 (No. 181), Convention No. 88 forms part of a structure that is necessary to sustain employment growth (see paragraphs 785–790 of the 2010 General Survey). ***The Committee invites the Government to provide more detailed information in its next report on the manner in which the public employment service contributes to achieving the best possible organization of the labour market, with an indication of the manner in which employment offices have been able to meet the needs of employers and workers in each of the regions of the country. The Committee invites the Government to provide information in its report on the new measures adopted for the establishment of institutions with a view to achieving full employment and it encourages the social partners to take into account the Employment Policy Convention, 1964 (No. 122), the ratification and application of which are important for governance.***

*Cooperation with the social partners.* In reply to the previous comments, the Government indicated in the report received in August 2010 that consultations have not been held with the regional employment councils concerning the organization and operation of the employment service. The Government refers to information for 2003 concerning a survey carried out among employers on the employment generation achieved by Act No. 789 of December 2002, establishing measures to support employment and extend social protection. The trade union organizations, however, indicate that they are excluded and do not participate in the determination of general employment policies. In the report received in August 2011, the Government expresses its intention of involving public and private actors, as well as the permanent participation of partners such as trade unions and community organizations which are directly involved in fields relating to employment with a view of articulating and promoting the efficiency of employment services. The Committee emphasized in its 2010 General Survey that member States should promote genuine tripartite consultation on the subjects covered by the employment instruments. Priority needs to be given to consultations with the social partners in the formulation and implementation of labour market policies. ***The Committee requests the Government to provide tangible examples in its next report of the consultations held with representatives of employers and workers in relation to the organization and operation of the employment service (Articles 4 and 5).***

*Promotion of the voluntary use of the employment service.* The trade union organizations indicate that the use of the National Employment Service does not provide or imply any benefit or incentive for enterprises making use of such instruments. The sole difference is the prejudice to the conditions of employment of those registered in SENA training programmes, as workers attached to the SENA receive lower wages than the others. In its 2010 report, the Government provided information on the number of unemployed persons who received guidance and additional training from the services of the SENA, as well as on the general labour market information made available to the public through the SENA employment observatory. ***Taking into account the policy orientations outlined in the new National Development Plan, 2010–14, the Committee requests the Government to indicate in its next report the national or local measures adopted in collaboration with employers' and workers' organizations to promote the widest possible voluntary use of the***

*employment service, including an evaluation of the manner in which beneficiaries of SENA apprenticeship contracts have succeeded in obtaining suitable employment on the labour market.*

*Employment service and workers in the informal economy.* In reply to the previous comments, the Government indicates that the National Employment Service contributes to the decrease in informality by providing incentives for the participation of legally constituted employers in the process of employment mediation. However, the trade union organizations expressed their doubts concerning the benefits deriving from the application of Act No. 1429 of December 2010, which proposes incentives for formalization during the initial stages of enterprise creation. ***The Committee invites the Government to include an evaluation in its next report of the impact of Act No. 1429 in promoting the integration of informal workers into the formal labour market. The Committee once again requests the Government to indicate the manner in which the public employment service ensures the effective discharge of the functions set out in Article 6 of the Convention in relation to workers in the informal economy in the main cities of the country, as well as in rural areas.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1989)**

*Application of a national policy.* In its direct request in 2010, the Committee invited the Government to provide its comments on the observations made by the Single Confederation of Workers (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT), which were forwarded to it in September 2010. The CUT and CTC indicate that, according to specialized studies, 85 out of every 100 Colombian nationals with a permanent disability do not receive the rehabilitation that they need, in most cases due to lack of resources. Furthermore, a policy has not been formulated for the integration into work of persons with disabilities which combines elements for the harmonization of employment policy with access to employment opportunities under equality of conditions for persons with disabilities. The CUT and CTC emphasize the important role played by the case law of the Constitutional Court in protecting the labour rights of workers with disabilities, even though court decisions have not succeeded in promoting employability, but only in guaranteeing the employment stability of persons with disabilities. The CGT also comments on the failure to give effect to the existing legislation and indicates that broader awareness-raising measures are required in accordance with the needs of persons with disabilities. In the report received in August 2010, the Government provided full documentation on the comprehensive standards for the protection of disability, the methodological guide for the implementation of a comprehensive socio-employment model for persons with disabilities and a detailed table of the forums of enterprises established to facilitate intermediation between enterprises and persons with disabilities. In the reply received in May 2011, the Government indicates that it is endeavouring to include the theme of disability in its various programmes in a transversal manner, and particularly in the framework of the National Disability System. The Committee also notes a further report by the Government received in July 2011 in which it emphasizes the role played by the Ministry of Social Protection in coordinating public policy on disability and as the body responsible for the National Disability System. The report includes a review of the case law on the strengthening of employment stability to protect persons in a situation of vulnerability or who suffer from a serious health problem. The CUT and CTC, in further observations which were forwarded to the Government in September 2011, reiterate their concern regarding the application of the Convention. The trade unions called on employers to generate employment and provide stability for men and women workers with disabilities. The Government should also afford greater accessibility to workers with disabilities at the national, departmental and local levels. ***The Committee invites the Government to provide updated information in its next report on the results achieved by the national policy of vocational rehabilitation and employment for persons with disabilities in terms of their entry into the free labour market (Articles 2 and 3 of the Convention). In particular, the Committee requests the Government to indicate in its report the manner in which the representative organizations of employers and workers, as well as the representative organizations of persons with disabilities, are consulted on the matters covered by the Convention (Article 5). The Committee further requests the Government to provide with the report data disaggregated, in so far as possible, by age and gender, and taking into account the nature of the disability, as well as extracts from reports and summaries of inquiries as a basis for examining the manner in which the Convention is applied in practice (Part V of the report form for the Convention).***

## **Comoros**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1978)**

*Implementation of an active employment policy. Youth employment. Article 1 of the Convention.* The Committee notes the Government's brief report received in October 2011. In reply to its 2009 observation, the Government indicates that the framework document on the national employment policy was approved by the Council of Ministers and that a Bill issuing the national employment policy has been prepared and submitted to the National Assembly. The Committee also notes the comments made by the Workers' Confederation of Comoros (CTC) in September 2011. The CTC confirms that, despite the approval of the framework document on the national employment policy, no legislation has yet been approved by the National Assembly on this subject. The CTC acknowledges that it was consulted on the national Poverty Reduction and Growth Strategy Paper (PRGSP) and the ILO Decent Work Country Programme (DWCP). The Government indicates that the support project for peace-building in Comoros through

employment promotion for youth and women (APROJEC) has launched several activities to promote youth employment in the islands. The CTC calls for a mid-term re-evaluation of the results of the APROJEC project. The Government also refers to the lack of the necessary financial resources to continue surveys of young unemployed graduates and requests financial support from the ILO with a view to the general application of these surveys in other islands. *The Committee requests the Government to indicate in its next report whether the Act issuing the national employment policy has been adopted and to indicate whether specific difficulties have been encountered in achieving the objectives set out in the PRGSP. It also invites the Government to provide information on the resources used to achieve the employment priorities established in the context of the DWCP, 2009–12, and on the impact of measures and programmes, such as the APROJEC project, which are designed to facilitate the access of youth to decent work.*

*Collection and use of employment data. The Committee invites the Government to supplement its next report with detailed information on the progress achieved in the collection of labour market data and on the manner in which such data are taken into account in the formulation and implementation of the employment policy (Article 2).*

*Participation of the social partners. The Committee invites the Government to provide full information on the consultations envisaged in Article 3 of the Convention, which requires the participation of all of the persons affected, and particularly employers' and workers' representatives, in the formulation and implementation of employment policies.*

The Committee hopes that the preparation of a detailed report, containing all of the indications requested in the present observation, will provide the Government and the social partners with the possibility to evaluate the achievement of the objectives of full and productive employment, in accordance with the Convention.

## Costa Rica

### **Employment Service Convention, 1948 (No. 88) (ratification: 1960)**

*Modernization of the employment service.* The Committee notes the report for the period ending May 2010. The Government attached to the report Decree No. 3436-MTSS published in December 2008 revising the national system of employment mediation, guidance and information and re-establishing a National Employment Mediation Council. The Government adds that in August 2009 the electronic employment mediation platform was launched. The Committee emphasizes that the implementation of Conventions Nos 88 and 122, ratified by Costa Rica, would give effect to the right to work and would assist in achieving full employment (*Article 1(2) of the Convention*). In the 2010 General Survey concerning employment instruments, the Committee emphasized that the public employment service is one of the institutions necessary to achieve full employment. The conjunction of Conventions Nos 88 and 122 forms part of a structure that is necessary for employment growth (see paragraphs 785–790 of the 2010 General Survey). *The Committee refers to the comments that it has been making for many years and requests the Government to provide information so that it can examine the efficient operation of the free public employment service, with the participation of the social partners and comprising a network of employment offices sufficient in number to meet the needs of employers and workers throughout the country (Articles 1 to 5 of the Convention).*

*Part IV of the report form. Application in practice. The Committee requests the Government to provide statistical information on the number of employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by the national employment mediation, guidance and information system.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Adoption and implementation of an active employment policy. Participation of the social partners.* The Committee notes the Government's report for the period ending May 2011. In reply to its previous comments, the Government indicates that the Higher Labour Council did not approve the National Employment Plan. The Government adds that in February 2011 a proposal was made to the National Labour Council to develop a national youth employment plan and the proposal was received positively by the three social partners. With a view to promoting productive employment, the Government emphasizes that an electronic tool has been established (buscoempleocr.com) through which employment vacancies are found and where employers identify the personnel required for their enterprises. In a communication forwarded to the Government in September 2011, the Confederation of Workers Rerum Novarum (CTRN) expresses concern at the lack of a long-term employment policy with a vision of the State. According to the workers' organization, an employment policy should have the fundamental objective of generating high-quality jobs. The Committee emphasized in its 2010 General Survey concerning employment instruments that the first fundamental step for achieving full employment consists of a political commitment reflected in national legislation or the Government's main strategic documents.

The Committee also emphasized the importance of holding continuous and genuine tripartite consultations to address and mitigate the consequences of the global economic crisis (paragraph 513 and also its concluding remarks, paragraphs 785–790). *The Committee requests the Government to provide detailed information in its next report on the progress achieved in the adoption and implementation of an active employment policy, as required by the Convention.*

*The Committee invites the Government to describe the manner in which the discussions held in the National Labour Council have been used to declare and pursue an active employment policy. In this respect, the Committee requests the Government to include examples of the manner in which full account has been taken of the opinions and experiences of the persons affected by employment policy measures, with particular reference to those working in the rural sector and the informal economy. The report should also describe the measures that have been taken to compile and analyse statistical information on the labour market and provide updated data on the size and distribution of the labour force, and the nature, extent and trends of unemployment and underemployment.*

*Coordination of education and training policies with employment opportunities.* The Committee notes the action taken by the National Training Institute (INA) to improve the skills and provide vocational training to the population, and particularly to women and young persons. The Government emphasizes the gender perspective promoted by the INA. The Committee notes that the INA provided training for more women than men through vocational skills and training modules and programmes, while the skills certification services catered for more men than women. More women have chosen to train in the commerce and services sectors, as well as in the food industry. The INA collaborates with municipal authorities to promote the access to employment of young persons and persons with disabilities, as well as with the National Programme to Support Micro-enterprises (PRONAMYPE). *The Committee invites the Government to provide data in its next report as a basis for assessing the manner in which the beneficiaries of the action taken by the INA have found lasting employment. The Committee also requests the Government to provide more detailed information on the coordination of education and vocational training policies with employment policy.*

*Women's employment.* The Committee notes that in May 2010 it was declared of public interest to establish and develop the National Childcare and Development Network. The National Development Plan 2011–14 includes among its objectives improving the employability of the workforce, and particularly of women and vulnerable groups. *The Committee invites the Government to indicate in its next report the manner in which the measures adopted have facilitated the achievement by women of greater participation in the labour market.*

*Youth employment.* The Government recalls in its report that a plan is being promoted to improve the vocational skills of young persons living in poverty and who are at social risk, particularly through a subsidy allowing them to follow training modules in private institutions. The Government adds that programmes have been developed for the employability, employment and entrepreneurship of young persons (the programme known as the *Ventanilla Única*). *The Committee reiterates its request for the inclusion of information on the measures adopted for the development of the National Youth Employment Plan and to ensure lasting employment for young persons who enter the labour market.*

*Micro-enterprises and cooperatives. The informal economy.* The Government indicates that microfinance is used to promote self-employment and ensure that households have a sustainable income. The Committee notes that the credits provided in 2010 by PRONAMYPE amounted to a little over US\$3 million. *The Committee once again invites the Government to indicate the manner in which the loans provided by PRONAMYPE have been converted into sources of sustainable employment. The Committee requests the Government to indicate the manner in which the initiatives to promote micro-enterprises and cooperatives have had an impact on improving the working conditions of the those engaged in the informal economy.*

*Export processing zones.* The Government's report contains the information provided by the Costa Rican Coalition for Development Initiatives indicating that in 2010 some 7,432 new jobs were created in export processing zones. *The Committee hopes that in its next report the Government will provide updated information on the contribution of these zones to the creation of sustainable and high-quality employment.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Cyprus

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Employment trends and active labour market measures.* The Committee notes the Government's report received in September 2011 containing detailed information in reply to the points raised in the 2009 observation. The Committee notes the data concerning employment and unemployment rates, as well as the employment situation of beneficiaries of the Special Prevention Action Plan 2009–10. The Government indicates that the economy was not directly affected by the global financial crisis due to the negligible exposure of the financial sector to toxic financial products. However, the economy was affected in an indirect manner due to its small size and open nature, resulting in a 1.7 per cent contraction in GDP in 2009 before rebounding by 0.9 per cent in 2010. The unemployment rate between 2008 and 2010 rose from 3.6 per cent to 6.5 per cent. The Government reports that the substantial increase in unemployment is a new and unfamiliar phenomenon for the country, which has traditionally enjoyed conditions of almost full employment. In 2009, the economic downturn primarily affected male-dominated sectors such as construction, real estate and tourism, which has led to more male than female workers losing their jobs. According to ILO data, the unemployment rate reached 7.1 per cent in the second quarter of 2011. The Government further reports that the National Reform Programme (NRP) for Europe 2020 presents structural reforms that aim to boost growth, employment and social cohesion. In particular, increasing labour market participation and creating employment opportunities for the highly skilled workforce by restructuring the economy remain top priorities. Along these lines, the NRP presents

five national quantitative targets that are interrelated with employment, three of them directly related (employment: 75–77 per cent level of the population aged 20–64 should be employed by 2020; education: 46 per cent of the population aged 30–54 should have completed tertiary education by 2020 and the share of early school leavers should be 10 per cent; and social inclusion: reduction of the number of people at risk of poverty and social exclusion by 27,000 or to 19 per cent by 2020), while the innovation and the climate/energy targets are indirectly related, leading to increased competitiveness, more efficient use of resources and green growth. Furthermore, a National Action Plan for reducing the gender pay gap covering the period 2010–15 has been laid out and schemes aimed at improving the productivity of small and medium-sized enterprises (SMEs) and the enhancement of the competitiveness of micro-enterprises have been implemented by the Human Resource Development Authority (HRDA) for the period 2010–14. ***The Committee invites the Government to provide information in its next report on how the measures adopted have succeeded in mitigating the impact of the debt crisis on the labour market and have translated into the generation of productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers.***

***Education and training policies.*** The Government indicates that the HRDA has put forward a Special Prevention Action Plan 2009–10 which comprises the following main features: in-company/on-the-job training programmes for employees facing layoffs, training programmes for upgrading the skills of unemployed persons, job placement and training for unemployed tertiary education graduates, and accelerated initial training programmes for newcomers and other unemployed persons in occupations which are in demand. The Government reports that the strategic objectives set forth in the National Strategic Plan 2007–13 are being pursued by the promotion of targeted actions which may be classified under the following five priority pillars: (1) training and development of human resources; (2) support of enterprises for upgrading their human resources; (3) human resource development and infrastructure systems; (4) research and development; and (5) effective governance. In order to meet this wide range of training and development needs, the HRDA promotes specific schemes, each with their own aims and targets, such as: initial training programmes, continuing training programmes and other developmental activities. The Government further reports the launch of a Lifelong Learning Strategy 2007–13 (CyLLS) in order to promote lifelong learning in a systemic and integrated basis. As a result of this initiative, the rate of lifelong learning has improved from 5.6 per cent in 2005 to 7.8 per cent in 2009. The Committee notes with ***interest*** the Government's indication that the CyLLS is in line with *Article 2(a)* of the Convention which provides for a coordinated policy that will be kept under review. ***The Committee invites the Government to provide information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities.***

***Article 3. Participation of social partners.*** The Government reports that several evaluation studies conducted by independent consultants have been presented to the Board of Governors of the HRDA, which is made up of representatives of the Government, the employers' organizations and trade unions. Based on the evaluation studies results, the Board will make policy decisions for modifying and enriching the HRDA's training and development activities and thus improving the efficiency and effectiveness of vocational training in Cyprus. ***The Committee invites the Government to supply information on the policy decisions made by the Board, including concrete examples on the manner in which the views of the social partners are taken into account in the development, implementation and review of employment policies and programmes.***

## Czech Republic

### ***Employment Service Convention, 1948 (No. 88) (ratification: 1993)***

The Committee notes the report provided by the Government in November 2010, including comments from the Czech–Moravian Confederation of Trade Unions (CMKOS) and the Confederation of Industry and Transport (CIT). The Government indicates that, as a consequence of the global economic crisis, the number of jobseekers has increased due to, in part, a fall in production. The Government further reports “made-to-measure” projects for specific target groups of jobseekers at the regional and national levels. The Government states that jobseekers are placed in motivational activities, are provided with consultancy on how to successfully enter the job market and requalification leading to an increase or change in their current qualifications, and are placed in jobs created and supported with wage contributions.

***Articles 4 and 5 of the Convention. Cooperation of the social partners.*** The CMKOS indicates that some advisory committees work better than others. The Government indicates that it very much depends on local economic, social and other conditions and circumstances. ***The Committee invites the Government to include in its next report further information on the effective involvement of the social partners in the organization and operation of advisory committees and in the development of an employment service policy.***

***Article 8. Special arrangements for young persons.*** The CMKOS reports concern with the 2008 amendment of the Employment Act, more specifically with regard to the abolishment of assistance provided by the labour offices to university graduates for a period of up to two years after successfully completing their studies (for persons up to 30 years of age). The CMKOS regards this group to be in constant danger and should therefore enjoy attention through the stability of legislation. According to the Government, the situation of the labour market did not further justify special care for this group in comparison to, for example, persons with disabilities or people over 50 years of age. However, young persons are continuously considered as one of the most vulnerable groups in the labour market and are therefore subject to special

attention by the local and regional labour offices within the active labour market policies. The Committee refers to its General Survey of 2010 concerning employment instruments, paragraph 800, and encourages governments to develop job-creation and career guidance policies targeted at educated unemployed young persons, as unemployment among educated workers, particularly young university graduates, is now an issue for the advanced market economies as well as developing countries. *The Committee invites the Government to continue to provide information on the special measures taken to meet the needs of young workers, within the framework of the employment and vocational guidance services, allowing them to integrate or reintegrate into the labour market.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1993)**

*Articles 1, 2 and 3 of the Convention. Employment policy measures. Consultations with social partners.* The Committee notes the Government's detailed reports received in October 2010 and 2011, including comments from the Czech-Moravian Confederation of Trade Unions (CMKOS) and the Confederation of Industry and Transport (CIT). The Government summarizes the discussion that took place on 18 October 2010 at the Council of Economic and Social Agreement of the Czech Republic (CESA CR). CMKOS and CIT both claimed that social partners jointly proposed the possibility to introduce measures that had been adopted in other European Union countries and had a positive impact on keeping jobs, production and overall employment. The social partners noted that unfortunately, these proposals were not further developed by the Government. CMKOS indicated, in its 2010 comments, that measures which promote greater labour market flexibility and reduce labour costs for entrepreneurs are one of the factors which contributed to the development of the crisis, worsened conditions of employees and did not necessarily bring the expected benefits in terms of raising entrepreneurial activity and a greater willingness of entrepreneurs to create more jobs. CMKOS believes that in evaluating the implementation of the Convention, the decisive factor should ultimately be the situation in the labour market and not formal reporting of government measures. The Government recalled in its 2010 report several employment policy measures taken during the economic crisis, mainly the vocational training and retraining programmes for workers, financed by the European Social Fund. The Committee notes the Government's expectations in the sense that the social partners will take an active role in the future when it will bring forward further reforms regarding the competitiveness of the Czech economy and its labour market. CMKOS indicated, in its 2011 comments, that it is dissatisfied with the application of *Article 3* of the Convention because no consideration is afforded to the positions and opinions of social partners and trade unions, in particular, when adopting new labour legislation. CMKOS is also concerned with the Government's budgetary cuts in the implementation of an active labour market policy. In response, the Government reports that tripartite consultations have been regularly held and the mere fact of not reaching an agreement favourable to all does not constitute a violation of the Convention. *The Committee invites the Government to provide information in its next report on the impact and results achieved in terms of productive jobs creation by new labour market regulations. It also invites the Government to include information on the involvement of the social partners, in accordance with Article 3 of the Convention, which requires that their views and experiences are fully taken into account when designing and implementing an active employment policy.*

*Employment trends and active labour market policies.* The Government recalls that its economic situation during the 2008–10 period was strongly affected by the global financial and economic crisis, and reports that, starting in the mid fourth quarter of 2008, there were repeated monthly declines in industrial production amounting to nearly 10 per cent, whereas in January of 2009, the industrial production was down by 23.3 per cent as compared to 2008. However, the economy did show some signs of revitalization in 2010 as industrial production increased by 10.3 per cent and continued to rise through the first quarter of 2011, during which production increased by 12.7 per cent. Furthermore, the foreign trade turnover recorded the highest ever decline in the history of the Czech Republic in the first half of 2009, a decline calculated at 20.3 per cent when compared with the first half of 2008. The Government indicates that the implications of the recession were immediately apparent in the labour market through the gradual increase in unemployment and the reduction in the number of vacancies. Starting in December 2008, the reported instances of mass lay-offs started to increase with the highest number of reported instances recorded in January 2009. In June 2009, the registered unemployment rate reached 8 per cent and, in 2010, it further increased to 9 per cent and attained an estimated rate of 9.6 per cent in the first quarter of 2011. The Committee notes that, from January to June 2009, the total number of foreign workers decreased by more than 11 per cent, from approximately 285,000 to less than 252,000. The Government indicates that in 2008 the Ministry of Labour and Social Affairs granted investment incentives to 45 investors who subsequently undertook to create 5,563 new jobs and train or retrain up to 6,132 new employees. In terms of regional distribution of this support, the most financial funds went to Ústí nad Labem Region (64.1 per cent), followed by the Moravian-Silesian Region (13.0 per cent). The Committee notes that the Government grants financial support in order to create new jobs in regions most affected by unemployment. Funds were attributed to investors who undertook to support and create employment, and to provide training and retraining. *The Committee invites the Government to continue to provide in its next report data concerning the size and distribution of the labour force, the nature and extent of unemployment and underemployment and trends therein, as a basis for deciding on employment policy measures, especially in regions most affected by unemployment.*

*Education and training policies.* The Government recalls that, in December 2008, the action plan for the support of specialized education was adopted which focuses on the support of cooperation with employers, and accentuates certain

measures such as the transition and success of graduates of specialized schools in practice. The Government further states that the national individual project involves practical training for young people up to 29 years of age registered by labour offices for at least five months, for the purpose of acquiring, improving and refreshing specialized skills. It further indicates that the practical training should comprise counselling activities as well as the hands-on training itself for the period of 6–12 months, during which time the labour office provides salary grants to the employer. In 2011, the Ministry of Industry and Trade prepared the International Competitiveness Strategy for Czech Republic 2012–20 (ICS). The ICS aims at increasing the employment of certain population groups, such as older workers, women, people with low qualifications and young people. As part of the ICS, the Changes in the Content of Education programme was implemented to change the educational system in order to help young persons acquire a wider range of skills and to motivate them to take part in lifelong learning. ***The Committee invites the Government to continue to provide information regarding policies and programmes for lasting employment opportunities for young people and older workers. The Committee invites the Government to provide further information on the ICS and its impact in overcoming the difficulties in finding lasting employment for workers affected by the crisis.***

***Business development.*** The Government indicates that the Operational Programme Enterprise and Innovation (OPEI) for the period of 2007–13 is intended to support business activities, namely in the area of small and medium-sized enterprises (SMEs), and to increase the competitiveness of enterprises. The OPEI grants support for the development of business activities and monitors the impacts of the measures on the creation of jobs via a newly created jobs indicator. The Government indicates further measures to create a favourable business environment necessary for the development of business thinking and to promote competitiveness of SMEs. These measures include the simplification of tax legislation and less administration as factors affecting the creation of a more favourable business environment. ***The Committee invites the Government to continue to include information in its next report on the effects of these measures on employment creation and its impact to improve the success of young entrepreneurs. Please also indicate how the social partners were involved in informing SMEs of key labour market concerns and opportunities.***

## Democratic Republic of the Congo

### ***Employment Service Convention, 1948 (No. 88) (ratification: 1969)***

***Article 1 of the Convention. Contribution of the National Employment Office to employment promotion.*** The Committee notes the information provided in the report received in June 2011 in reply to the points raised in its 2007 observation. The Government indicates that the National Employment Office (ONEM), established in 2002, operates in five provinces out of 11 and that the extension of the ONEM to the remaining six provinces is being undertaken progressively. It adds that, in collaboration with private agencies, the ONEM organizes the employment market in terms of information, guidance, jobsearches, training and the placement of jobseekers. ***The Committee invites the Government to indicate in its next report the progress achieved by the ONEM in ensuring the effective operation of a free public employment service. It hopes that the Government will be in a position to provide the data requested in Part IV of the report form on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices.***

***Article 3. Establishment of regional offices.*** The Government indicates that the delay that has occurred in the extension of the ONEM over the whole of the territory is related to the financial difficulties arising in its operation, but that other means of registration have been established to enable jobseekers to have access to placement services. ***The Committee invites the Government to provide information in its next report on the establishment of a sufficient number of provincial directorates of the ONEM and on the other means of registration referred to by the Government to respond to the needs of employers and workers in each of the geographical regions of the country.***

***Articles 4 and 5. Consultation and cooperation with the social partners.*** The Government recalls that the decree establishing the ONEM provides for the participation of employers and workers on its administrative board. Although the board is not yet operational, the ONEM has concluded partnership agreements with the Enterprise Federation of the Congo (FEC), the National Association of Investment Enterprises (ANEP) and the Confederation of Congolese Small and Medium-sized Enterprises (COPEMECO). ***The Committee invites the Government to report on the measures adopted to ensure that the partnership agreements between the ONEM, FEC, ANEP and COPEMECO result in effective cooperation with employers and workers in the organization and operation of the employment service and in the development of employment service policy.***

***Article 11. Cooperation with private agencies.*** With reference to its previous comments, the Committee notes with ***interest*** that Ministerial Order No. 12/CAB.MIN/ETPS/062/08 of 18 September 2008 establishes the conditions for the opening, approval and operation of private employment agencies. The Government indicates that this Order gives effect to its commitment to ensure effective cooperation between the ONEM and private employment agencies. Under the terms of the Order, the ONEM has authorized the operation of approximately 20 private agencies, with which it holds periodic meetings to assess the level of placement carried out and to remedy weaknesses. The Committee observes that the Order is closely inspired by the provisions of the Private Employment Agencies Convention, 1997 (No. 181). It draws the Government's attention to the fact that Conventions Nos 88 and 181 are mutually complementary. In its 2010 General Survey concerning employment instruments, the Committee emphasized that cooperation between public employment

services and private employment agencies was necessary for the operation of the labour market and the achievement of full employment. Together with the Employment Policy Convention, 1964 (No. 122), and Convention No. 181, the institutions envisaged by Convention No. 88 form a necessary building block for employment growth (see paragraphs 785–790 of the General Survey). *The Committee invites the Government to provide information in its next report on the collaboration between the ONEM and private employment agencies. It also invites the Government to include information on the measures adopted to strengthen the institutions necessary for the achievement of full employment.*

## Djibouti

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1978)**

The Committee notes with *regret* that the Government has not sent a reply to its 2007 observation. Nevertheless, noting the information provided by the Government in its reports received in May 2008 on the application of Conventions Nos 88, 122 and 144, and with reference to its previous comments on Convention No. 96, the Committee requests the Government to provide a report containing information in response to the following questions:

*Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.* Previous observations reveal that the proliferation of private employment agencies following the liberalization of employment under Decree No. 11/PRE/97 has resulted in a reduction of the activities of the public employment service. According to previous observations from the General Union of Djibouti Workers (UGTD) and the Labour Union of Djibouti (UGT), fee-charging employment agencies have been legalized in Djibouti and are acting as filters for recruitment. Furthermore, the unions alleged that these agencies charge jobseekers and even deduct sums illegally from workers' wages. The Committee notes that section 7 of Decree No. 2004-0054/PR/MESN of 1 April 2004 concerning private employment agencies expressly prohibits the latter from imposing charges or fees on workers. Moreover, section 14 of the same Decree provides that private employment agencies are required to send the labour inspector and the National Employment Service (SNE) a monthly summary of contracts concluded. The Committee notes that, under section 31 of Act 203/AN/07/5th L of 22 December 2007 establishing the National Agency for Employment, Training and Vocational Placement (ANEFIP), one of the tasks of the latter is to monitor the application of the provisions of Decree No. 2004-0054/PR/MESN concerning private employment agencies. *The Committee requests the Government to state the specific measures taken to monitor the activities of agencies covered by the Convention, providing a summary of the reports of the inspection services, information on the number and nature of infringements reported and also any other available information, particularly with regard to the recruitment and placement of workers abroad.*

*Revision of Convention No. 96.* The Committee recalls that one of the objectives of the Private Employment Agencies Convention, 1997 (No. 181), is to allow the operation of private employment agencies as well as to protect workers using their services. The ILO Governing Body, during its 273rd Session in November 1998, invited the State parties to Convention No. 96 to contemplate the possibility of ratifying, if appropriate, the Private Employment Agencies Convention, 1997 (No. 181). Such ratification would entail the immediate denunciation of Convention No. 96. Consequently, as long as Convention No. 181 has not been ratified by Djibouti, Convention No. 96 remains in force in the country, and the Committee will continue to examine the application of Part II of the Convention in national law and practice. *In this regard, the Committee refers to its comment on Convention No. 144 and requests the Government to indicate whether tripartite consultations have been held within the National Council for Labour, Employment and Vocational Training with a view to the ratification of Convention No. 181.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its 2008 observation, which read as follows:

*Article 1 of the Convention. Coordination of employment policy with poverty reduction.* The Committee notes the Government's report received in May 2008 in reply to the 2007 observation. The Government indicates in particular that, for the first time since the country's independence, structures have been established in Djibouti in 2008 for the organization and development of the employment market. The Committee notes the creation of the National Employment, Training and Vocational Integration Agency (ANEFIP), which is responsible for implementing national policies and programmes relating to employment, vocational training and vocational integration. The Committee also notes the establishment of the Djibouti Social Development Agency (ADDS), which has the task of contributing to the eradication of poverty among vulnerable groups and reducing disparities between regions. With regard to the employment situation, the unemployment rate is estimated at 60 per cent of the active population and young people are particularly affected. Furthermore, 75 per cent of workers are employed in the informal economy. The Government intends, in the context of the implementation of the poverty reduction strategy, to promote labour-intensive activities, vocational training, the development of small and medium-sized enterprises and microfinance. With regard to microfinance, funding given to women's organizations seems to have met with some success. *The Committee hopes that the Government will provide information in its next report on the results achieved by the ANEFIP and ADDS to implement an employment promotion and poverty reduction strategy, including updated quantitative information on the development of the programmes put in place to promote the objectives of the Convention.*

*Article 2. Collection and use of employment data.* The Government indicates that the development of information on employment is one of the tasks of the ANEFIP. To that end, section 32 of Act No. 203/AN/07/5thL provides for the creation of an Employment and Qualifications Observatory. The Observatory will be responsible in particular for establishing an employment database and carrying out specific surveys in this field. *The Committee trusts that the Government will provide information in its next report on the progress made by the Employment and Qualifications Observatory in collecting data on employment as well as on the employment policy measures adopted following the establishment of the new labour market information systems.*

*Article 3. Participation of the social partners. The Committee requests the Government to provide information in its next report on any consultations held on employment policies in the National Labour, Employment and Vocational Training Council.*

*Part V of the report form. ILO technical assistance.* The Committee notes that, under the ILO's Decent Work Country Programme (DWCP) in Djibouti for 2008–12, priority is given to job creation, with particular emphasis on women and young people, and to access to employment through vocational training. *The Committee requests the Government to indicate in its next report the results achieved during the implementation of the DWCP in terms of job creation.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Ethiopia

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)**

The Committee notes the Government's report received in February 2011 in reply to points raised in its previous observations. The Committee notes the adoption of the Employment Exchange Services Proclamation No. 632/2009, which replaces the Employment Agency Proclamation No. 104/1998. The Government reports that the Proclamation was discussed and enriched in a tripartite workshop before its adoption. The Government indicates in its report, as also provided in the preamble to the Employment Exchange Services Proclamation, that the legislation was revised as it became necessary: to clearly define the role of public and private employment agencies in employment exchange; to further promote the rights, safety and dignity of Ethiopians going abroad for employment in pursuance of their qualification and ability; and to strengthen the mechanism for monitoring and regulating domestic and overseas employment exchange services.

*Article 8 of the Convention. Protection of migrant workers.* In reply to previous comments, the Government indicates that it has devised different mechanisms in order to protect the rights of Ethiopians seeking employment opportunities abroad, such as: verification, approval and registration of contractual agreements against pre-set model working conditions; providing pre-departure orientation and counselling services; and providing employment information to potential migrant workers. The Committee notes section 16(4) of the Employment Exchange Services Proclamation, which provides that a private employment agency shall submit the employment contract to the competent authority for approval and registration when it makes a worker available to a third party. The Government also reports that it is establishing an inter-agency national committee comprised of representatives of different ministries and of the Confederation of Ethiopian Trade Unions and the Ethiopian Employers Federation. The Committee notes that one of the listed powers and duties of the national committee, as provided in section 39(2)(c) of the Employment Exchange Services Proclamation, is to conduct studies with a view to concluding bilateral agreements with receiving countries on issues related to employment. The Government indicates that bilateral agreements have been concluded with different countries. The Committee also notes section 31(7) of the Employment Exchange Services Proclamation which provides that the functions of the public employment service shall include monitoring, through the Ethiopian embassies or consular offices, the overseas employment opportunities and protecting the rights, safety and dignity of citizens deployed abroad. *The Committee invites the Government to report on the application of the new legislation. The Committee also asks the Government to provide particulars of cases when section 598 of the Criminal Code has been applied to abusive recruiters. It also again requests the Government to provide information on bilateral labour agreements concluded to prevent abuses and fraudulent practices in the recruitment, placement and employment of Ethiopian migrant workers abroad.*

*Article 9. Trafficking of children.* The Government indicates in its report that the legislation clearly stipulates that recruitment of children by private employment agencies is prohibited and this provision is ensured by inspectors. The Committee notes in this regard section 16(2)(a) of the Employment Exchange Services Proclamation which provides that a private employment agency which sends workers for employment abroad shall not recruit a job seeker below the age of 18 years. *The Committee invites the Government to provide information on the measures taken by inspectors to ensure the application of section 16(2)(a) of the Employment Exchange Services Proclamation in practice.*

*Articles 11 and 12. Allocation of responsibilities in regard to the protection of migrant workers.* The Committee notes section 16(2)(1) of the Employment Exchange Services Proclamation which provides that private employment agencies sending workers for employment abroad have the obligation, among others, to ensure that the worker has acquired the necessary skill for the intended employment abroad and to produce evidence to prove such fact. It also notes section 20(1) of the Employment Exchange Services Proclamation which provides that an employment contract concluded between a private employment agency, which sends workers abroad, and a worker shall fulfil the minimum working conditions laid down in the laws of Ethiopia and shall in no circumstance be less favourable than the rights and benefits of those who work in a similar type and level of work in the country of employment. Section 20(2) of the Proclamation provides that private employment agencies shall be responsible to ensure the rights, safety and dignity of the worker, and section 22 provides that the private employment agency and the third party, the user enterprise or person, shall jointly and severally be liable for violation of the employment contract which makes a worker available locally or abroad to a user enterprise. Furthermore, section 23 provides that any employment agency which deploys workers abroad in accordance with the Proclamation shall, for the purpose of protecting the rights of the workers, deposit a specified fixed amount, depending on the number of workers, as a guarantee. The Proclamation further states that the Government may release the

funds provided as guarantee after six months from the termination of the employment contract of the workers sent abroad, unless there is a claim pending connected with the workers' rights and benefits. ***The Committee asks the Government to report on the operation of the abovementioned provisions of the Employment Exchange Services Proclamation.***

*Articles 10 and 14 and Part V of the report form. Complaint procedures, supervision by the competent authorities and statistics.* The Government reports that the Ministry of Labour and Social Affairs has established procedures and mechanisms to receive complaints, alleged abuses and fraudulent practices (sections 35(1) and 35(2)(e) of the Employment Exchange Services Proclamation). ***The Committee requests the Government to report on the type and volume of complaints received, as well as how they are resolved, the number of workers covered by the Convention and the number and nature of infringements reported.***

***The Committee reiterates its interest in receiving detailed information in the Government's next report on the measures adopted to apply the provisions of the Convention which are referred to specifically in a direct request. The Committee is raising other points in a request addressed directly to the Government.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

## Finland

### ***Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)***

*Part V of the report form. Practical effect given to the Convention.* The Committee notes the Government's report received in October 2010 and the comments by the Central Organization of Finnish Trade Unions (SAK) and the Finnish Confederation of Professionals (STTK) attached to the Government's report. The Government indicates that, in 2008, approximately 18,100 companies and public bodies and some 1,400 households used the services of private employment services. In comparison to 2007, the number of companies or public bodies using private employment services decreased slightly, whereas the number of household users increased. The peak in companies using hired labour was in 2004, when nearly 21,000 companies used hired labour. The number of temporary work agencies was approximately 100,000 in 2008, with temporary agency workers representing 3.7 per cent of the entire labour force. Approximately 388,000 employment contracts for temporary agency work were concluded in 2008 and the average duration of a temporary agency worker's employment relationship was 32 days. In the same year, a total of 4,400 people were recruited through private employment agencies (direct recruitment). In 2007, the corresponding number was 7,400 people. Respectively, the number of people recruited as a result of temporary agency work was around 4,900 in 2008 and 5,800 in 2007. The Government further reports that although figures for 2009 were not available when the report was prepared, it was apparent that the activity of private employment agencies diminished significantly due to the recession. The Committee notes that the Private Employment Agencies' Association, which includes the majority of private employment agencies operating in Finland, adopted a mandatory authorisation system for its members in the beginning of 2010. The Government reports that the system is challenging. Authorisation is granted by a board of representatives of employer and worker organizations and the Ministry of Employment and the Economy. The Government further indicates that it is anticipated that this approach will further simplify the operating principles of the private employment sector and enhance the reliability of its operations. The Committee notes that a tripartite working group conducted a research on temporary agency work and, on the basis of their report, four legislative amendments were drafted and entered into force in 2009. These amendments enhance the status of temporary agency workers, as they enhanced the legislation's applicability with regards to the special characteristics of temporary agency work. In addition to legislative amendments, the tripartite working group prepared a guidebook on temporary work for temporary agency employers and workers. The Committee notes the comments by the SAK and STTK indicating that, despite the statistics maintained by the Ministry of Employment and the Economy, there is no information on whether the rights of temporary agency workers are being met. For instance, no information is available on how many temporary agency workers' employment contracts are valid indefinitely and how many are fixed-term contracts. In the opinion of the workers' organizations, information on the duration of employment contracts and other factors pertaining to the temporary agency worker would be required and would enable clarification of whether temporary agency workers are provided with sufficient protection as required by the Convention. ***The Committee would appreciate continuing to receive information relevant to the practical effect given to the Convention, including extracts from reports of the inspection services and information on the number of workers covered by the Convention.***

*Articles 11 and 12 of the Convention. Protections for workers and responsibilities of private employment agencies and user enterprises.* In reply to the previous comment, the Government lists in its report the binding collective agreements on temporary agency work concluded during the reporting period. It also reiterates that the provisions of the Occupational Safety and Health Act, the Employment Contracts Act and of the new Annual Leave Act cover hired workers on the same terms as all other workers. The Government further indicates that due to the divided nature of the employer obligations related to temporary agency work, compliance with certain employer obligations related to temporary agency work may require cooperation between the temporary agency and the user enterprise. Unless cooperation and information exchange run smoothly, problems may arise, especially in situations where compliance with employer obligations is sanctioned. In this regard, the Committee notes that a special provision was added to the Employment Contracts Act concerning the notification obligation between the temporary agency and the user enterprise.

The aim of this provision is to improve the concerned parties' right to receive information and ensure that the temporary agency can meet its obligations as an employer. ***The Committee invites the Government to specify the manner in which adequate protection is guaranteed for workers employed by private employment agencies with regard to compensation in case of insolvency and statutory social security benefits (Article 11(e) and (i)). Please also indicate the respective responsibilities of private employment agencies and user enterprises with regard to statutory social security benefits (Article 12(d)).***

***Article 13. Cooperation between the public authorities and private employment agencies.*** The Committee notes that the partnership project for finding new modes of cooperation between public and private employment services was brought to an end as a special project in 2008. This cooperation produced common principles of operation related to, for example, job advertising. The partnership project did not succeed in discovering new approaches to finding employment for jobseekers that are in a less favourable position in the labour market. However, the Government indicates that the Public Employment Services Act was amended in 2010 which allows private employment agencies to find job placements, or hire out to another employer, employees who are in a subsidised employment relationship. It further indicates that this amendment is expected to improve the employment opportunities of jobseekers when they are temporary agency workers. ***The Committee invites the Government to include in its next report information on the manner in which efficient cooperation between the public employment service and private employment agencies is promoted and reviewed periodically.***

## France

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1953)**

***Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit.*** The Committee notes the Government's report received in November 2011. The Government indicates that a meeting was held with the social partners in May 2011 to establish an assessment of the activities of *Pôle Emploi*. The Government reiterates that Act No. 2008-126 of February 2008 opened up the employment placement market to private employment agencies by bringing an end to the legal monopoly of the National Employment Agency (ANPE). The activity of private employment placement, either in a primary or secondary role, is henceforth provided by sections L.3121 to L.312-8 of the Labour Code. The Government also reiterates that the French legislation was drawn up based on the Private Employment Agencies Convention, 1997 (No. 181). According to the Government, the new legislation provides a similar framework with regard to the conditions governing the performance of private employment placement activities by private employment agencies and workers benefit from the protection provided under Convention No. 181, if not a higher level of protection, in terms of a free placement service, the prevention of discriminatory practices with regard to employment placement and protection of privacy in the processing of personal data. In its previous comments, the Committee drew the Government's attention to the fact that, like other member States which have ratified Convention No. 96, France has accepted *Part II* of the Convention, which obliges it to abolish fee-charging employment agencies conducted with a view to profit. The measures introduced in January 2005 and February 2008 opening up the employment placement market to private employment agencies do not give effect to the obligations contained in *Part II* of Convention No. 96 accepted by France at the time of its ratification in 1956. ***The Committee therefore hopes that the Government will soon be in a position to adhere to the obligations of the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which involves the immediate denunciation of Convention No. 96.***

The Committee notes the information contained in the Government's report received in September 2011 regarding the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Government indicates that the social partners have been consulted on the ratification of Convention No. 181. ***The Committee therefore invites the Government to provide information on the progress made in relation to the ratification of Convention No. 181.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

***Article 1(2) of the Convention. Implementation of an active employment policy.*** The Committee notes the detailed replies in the Government's report for the period ending in June 2011. It notes that the unemployment rate for the active population in metropolitan France was 9.3 per cent in the fourth quarter of 2010, amounting to 2.6 million unemployed persons. The Government indicates that the measures taken to improve the employment situation did contribute to an increase in the number of persons hired in the course of 2010, with more than 200,000 jobs created, amounting to annual employment growth of 0.8 per cent and an employment level almost equal to that recorded before the 2008 crisis. The Government nevertheless states that more than half of these jobs were attributable to a dynamic temporary job sector, particularly in industry. Furthermore, as the temporary job sector continued to generate employment, the proportion of persons in stable employment fell, posting a drop of 1.2 points as compared to 2009. Underemployment, affecting both part-time employees seeking more work and unemployed jobseekers (temporary layoffs and short timers), increased by 0.6 per cent over 2009. The Committee notes that with the entry into force of new subsidized contracts in 2010 – the

Employment Initiative Contract (CUE-CIE) and the Employment Support Contract (CUI-CAE) – the number of workers in assisted employment remained stable in relation to 2009. The Committee also notes that the number of jobseekers registering with *Pôle emploi* centres has continued to increase in 2011. ***The Committee accordingly invites the Government to provide an evaluation of the active employment policy measures currently implemented and to indicate how, in practice, they have affected the creation of productive employment and the objective of reducing unemployment and underemployment nationwide. Please also indicate how the recent public debt retrenchment initiatives taken by the Government will contribute to improving the employment situation.***

*Youth employment.* The Committee notes that the youth unemployment rate remains high, having reached 23.7 per cent in 2009, and that the employment rate in the 15–25 age group was around 64 per cent in 2010. In reply to the comments made by the Committee in its previous observation, the Government indicates that several measures to revive youth employment have been launched to facilitate the integration of young people in the labour market. Thus, in 2010, young people accounted for 85 per cent of all persons hired under integration contracts and support contracts in the commercial sector, and 28 per cent in the non-commercial sector, so that, in all, over 25 per cent of jobs in the under-26 age group were subsidized by the State. Work/training scheme has also been developed through fiscal incentives to hiring, such as the recruitment premium for hiring an additional employee granted to more than 55,000 enterprises, generating more than 65,000 new jobs, or the exemption from charges granted to more than 500 enterprises, enabling a further 33,000 persons to be hired. The Committee also notes the results obtained through the Social Integration Contract (CIVIS). The CIVIS has been offered to around 1 million young people since its creation in 2005, and 34 per cent of the beneficiaries, most of whom are low-skilled, have gone on to find employment. “Autonomy” contracts, of which 36,000 have been signed since they were introduced in 2008, enabled 10,000 new jobseekers to go on to employment in 2010. The introduction of “single entrepreneur” (*autoentrepreneur*) status and the creation of the *cheque emploi* service in 2009 have likewise had a positive effect on employment, generating an increase in self employment among young people in 2010. ***The Committee asks the Government to continue to provide detailed information on youth employment trends, including statistics disaggregated by age, gender and any other grounds in respect of which data is available. The Committee invites the Government to include an evaluation of the active employment policy measures implemented to minimize the impact of unemployment on young people and to encourage their sustainable integration in the labour market, in particular the most disadvantaged categories of young people.***

*Older workers.* The Committee notes that the employment rate of older workers aged from 55–64 years stood at 40 per cent at the end of 2010, with recruitment under subsidized contracts amounting to only 4 per cent in the commercial sector, and 19 per cent in the non-commercial sector. Although older workers have suffered less than youth from the repercussions the crisis has had on unemployment, the Government indicates that more than 6 per cent of this group were unemployed in 2009. The Committee notes that publicly funded retirement, arrangements, including early retirement, have had a positive effect on the activity rate of elderly workers. It also notes that in January 2010, new arrangements were introduced to encourage employers to adopt an active age management strategy. Thus, since 2010, provision has been made for the abolition of mandatory retirement at the age of 65 in the Social Security Financing Act, and the age at which an employer may order retirement has been raised from 65 to 70 years, this being the age at which the employer may terminate the contract of an older worker, citing the statutory age of entitlement to retirement benefit. In the public service too, employees may work beyond the maximum age and up to the age of 65 at the request of the worker and subject to physical fitness. The Government indicates lastly that, even though the activity rate of older workers varies according to age and declines rapidly after the age of 54, it has increased consistently in the last ten years across all occupations, and that large firms are increasingly giving consideration to employing older workers. ***The Committee requests the Government to continue to send detailed information on the situation, level and trends of employment for older workers, and to indicate the results obtained by the measures intended to remedy unemployment and underemployment among these workers.***

*Education and training policy.* The Government indicates that the Joint Career Security Fund (FPSPP), established by the 2009 Act on lifelong vocational guidance and training, has provided support for more than 100,000 jobseekers and 250,000 wage earners. The FPSPP covers various types of measures aimed at affording jobseekers easier access to labour market information and at facilitating recourse to the “validation of non-formal learning” (VAE) system. The Government further indicates that the Association for Vocational Training for Adults (AFPA) enabled 60 per cent of its trainees in 2010 to find employment within six months of completing the programme, 30 per cent of whom obtained fixed-term appointments. The Individual Training Leave (CIF) system, which enables workers on indefinite contracts, fixed-term contracts or temporary contracts to undergo training of their choice, has enabled more than 80 per cent of the beneficiaries to keep their jobs and to sit an examination on completion of training in order to validate their experience. The Committee notes that the social partners recognize the effectiveness of the CIF and consider that it plays an active part in employment policies, particularly to the benefit of underskilled employees. ***The Committee invites the Government to continue to provide information on the programmes to promote lifelong training with a view to improving the professional skills of adults, together with an evaluation of how they affect the generation of lasting and freely chosen employment.***

*Article 3. Participation of the social partners.* The Government indicates that the social partners are consulted both before employment policies are created and after they are in place, thanks in particular to the role the National Employment Council (CNE) plays in consultation. It adds that the CNE held nine meetings in the course of 2010 during

which it was consulted about a number of decrees and a law pertaining to employment policy, and about requests for approval for decisions taken by the social partners, such as agreements on the temporary cessation of activity or the 2010 National Interoccupational Agreement on social management of the consequences of the economic crisis on employment. The Committee also notes that in 2011, the social partners introduced the Occupational Security Contract (CSP) to facilitate the return to employment of workers dismissed on economic grounds. **The Committee asks the Government to include in its next report other examples of how the consultations held with social partners have had an impact on the formulation of an active policy to promote full, productive and freely chosen employment.**

## Ghana

### **Employment Service Convention, 1948 (No. 88) (ratification: 1961)**

*Articles 1, 2 and 3 of the Convention. Contribution of the employment service to employment promotion. Request for ILO technical assistance.* The Committee notes the information supplied by the Government in the report received in November 2010, including comments submitted by the Ghana Employers' Association (GEA). The Government indicates that the National Employment Service is responsible for ensuring equal access to employment for all and organizing the labour market for the creation and maintenance of employment opportunities. This operates through a network of 67 public employment centres and youth employment centres spread throughout the country. They operate hand-in-hand with private employment agencies. The GEA states that over the years it "has not fully appreciated the efforts to improve the services of the public employment centres" and indicates that services provided at these centres are unreliable and inaccessible to both employees and jobseekers. The GEA has drawn the Government's attention to improve conditions at the centres in order to promote employment in the country. The Government reports that it acknowledges the need to strengthen the public employment service and collaboration with private employment agencies to meet the new requirements of the economy and the working population. In this regard, the Committee notes that the Government requested ILO technical assistance to modernize the employment service. **The Committee invites the Government to provide in its next report information on the activities of the public employment centres and the contribution of these centres to the implementation of a national employment policy. It also invites the Government to include information on the number of public employment centres established, applications for employment received, vacancies notified and persons placed in employment by such centres (Part IV of the report form). With regard to the Government's request for technical assistance, the Committee hopes that the Office will respond favourably to the request. It further invites the Government to report on any new measures taken to build institutions for the realization of full employment and encourages its support for the ratification of the Employment Policy Convention, 1964 (No. 122).**

*Articles 4 and 5. Cooperation with the social partners.* The Government reports that the National Tripartite Committee has been used by the social partners as a platform to consensually agree on a number of issues regarding employment and other economic and social matters. **The Committee invites the Government to provide specific information on the participation of representatives of employers and workers in the operation of the employment service.**

*Article 8. Special arrangements for young people.* The Government indicates that youth employment centres have been established to cater to the needs of the youth by providing vocational guidance to persons not above 20 years of age. Youth employment services are rendered at public employment centres in areas of the country without youth employment offices. **The Committee requests the Government to provide detailed information on special arrangements for young people initiated and developed within the framework of the employment and vocational guidance services.**

*Article 11. Cooperation with private employment agencies.* The Government indicates that there are 75 private employment agencies operating in Ghana. These agencies are licensed and monitored by the Labour Department and are required to submit periodic reports on their activities. The Committee refers to its 2010 observation on the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), with regard to the steps agreed, in consultation with the social partners, to ratify the Private Employment Agencies Convention, 1997 (No. 181). **The Committee requests the Government to indicate in its next report on Convention No. 88 the measures taken to ensure effective cooperation between the public employment service and private employment agencies, including information on steps taken in consultation with the social partners to ratify Convention No. 181.**

## Greece

### **Employment Service Convention, 1948 (No. 88) (ratification: 1955)**

*Contribution of the employment service to employment promotion.* The Committee notes the report provided by the Government in December 2010 for the period ending in May 2010. The Government refers to the provisions introduced in May 2010 promoting the operation of temporary employment agencies. It also indicates that it has implemented a merger of services in 2008 between local services of the Employment and Labour Organization (OAED) and Employment Promotion Centres (KPA) in districts and cities where both operated. This consolidated employment service unit (KPA2) operates under the auspices of the OAED. The Government further indicates that the OAED seeks maximum cooperation with the social partners, local government bodies and vocational training organizations in order to improve the

effectiveness of employment measures taken. The Committee noted in its comments on the Employment Policy Convention, 1964 (No. 122), a serious deterioration in the employment situation. It stresses the need to ensure the essential function of a public employment service to achieve the best possible organization of the employment market, adapting its operation to meet the new needs of the economy and the active population (*Articles 1 and 3 of the Convention*). **The Committee requests the Government to provide available data on the number of public employment offices established by the OAED, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by the offices (Part IV of the report form).**

*Article 11. Cooperation with private employment agencies.* The Government referred in its report to the legislative amendments introduced in May 2010 promoting the operation of temporary employment agencies. **The Committee invites the Government to supply information on the arrangements made to secure effective cooperation between the public employment service and private employment agencies including data enabling a quantitative and qualitative examination of the placement provided by the private employment agencies.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1984)**

The Committee notes the replies provided by the Government in May 2011 to the observations on Convention No. 122 of the Greek General Confederation of Labour (GSEE) forwarded to the Government in August 2010. The GSEE provided new remarks that were forwarded to the Government in September 2011. Furthermore, the Committee takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the Conference (June 2011) with regard to the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It notes that the Conference Committee welcomed the Government's indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments concerning the application of 12 Conventions ratified by Greece including the present Convention. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the Mission in its understanding of the situation (*Provisional Record* No. 18, Part II, pages 68–72). The Committee takes note of the report of the high-level mission which visited the country from 19–23 September 2011 and held further meetings with the EU and the IMF in Brussels and Washington, DC, in October 2011, on the basis of the request made by the Committee on the Application of Standards.

*Articles 1 and 2 of the Convention. Employment policy measures implemented under the adjustment programme.* The Government indicates in its May 2011 report that the economic downturn has negatively impacted the labour market and, in particular, the most vulnerable categories of workers such as low-skilled workers, people with low education levels, temporary workers and migrant workers. The economic downturn primarily affected the construction, manufacturing, tourism, financial and trade industries. The Government further indicates that, since the beginning of 2009, the ever-increasing loan cost of Greece and the downgrading of the country's creditworthiness by international rating agencies in combination with its ever-growing deficit caused the country's inability to meet its debt obligations. The Committee notes that the EU Council indicated in July 2011 that the 2008–2009 global economic crisis exposed vulnerabilities in the Greek economy, including: unsustainable fiscal policies, partly hidden by unreliable statistics and temporarily high revenues; rigid labour and product markets; and loss of competitiveness and rising external debt. The high-level mission to Greece was informed in September 2011 that the overall unemployment rate has risen to 16.5 per cent and youth unemployment stands at staggering 43.3 per cent. Although female unemployment officially stands at 19.9 per cent, a large proportion of women have joined the ranks of the "discouraged" jobseekers who are not accounted for in the statistics. The GSEE estimates that the projected unemployment rate will be approximately 17–18 per cent at the end of 2011. The Government reports that programmes have been implemented to increase labour market participation and to foster greater labour market mobility. Incentives include: subsidies for enterprises creating new jobs, subsidies for the unemployed starting up their own business, and support for small and medium-sized enterprises (SMEs). The Committee recalls that in May 2010 the Government accepted a Memorandum of Understanding on specific economic policy conditionality which included economic policy conditions on the basis of which financial assistance is disbursed. In this regard, the Government intends: (i) to extend the probationary period for new jobs to one year; (ii) to reduce the overall level of severance payments; (iii) to raise the minimum threshold for activating rules on collective dismissals, especially for larger companies; and (iv) to facilitate the use of temporary contracts and part-time workers. In its May 2011 communication, in reply to the GSEE's concerns regarding collective redundancies, the Government indicated that Greek legislation was in compliance with EU Directives. **With regard to the choice of the economic policy objectives and the deterioration that took place in the employment situation since 2009, the Committee invites the Government to specify in its next report how, pursuant to Article 2 of the Convention, it keeps under review the policies and measures adopted to achieve the objectives of full, productive and freely chosen employment. It further invites the Government to include information on how the measures adopted have succeeded in mitigating the impact of the debt crisis on the labour market.**

*Promotion of small and medium-sized enterprises.* The Committee notes the measures implemented by the Government to simplify and accelerate the process of establishing, licensing and operating SMEs. It also notes the establishment of regional one-stop shops to promote entrepreneurship and support SMEs. The high-level mission to

Greece was informed that approximately 90 per cent of all workers were employed in enterprises with less than 20 workers, and only 6 per cent worked in companies employing more than 50 workers. Some 75 per cent of employed persons were working in SMEs with less than ten employees. According to the data gathered by the mission, 150,000 SMEs had closed down since the crisis began (one in four SMEs) and 100,000 were expected to close in 2011. ***The Committee asks the Government to provide information on the measures taken to improve the business environment in order to promote the development of SMEs and create employment opportunities for the unemployed.***

***Modernization of labour market institutions.*** The Committee notes that the Government has underscored the need to give priority to the modernization of labour market institutions. The Government has implemented a merger of services in 2008 between local services of the Employment and Labour Organization (OAED) and Employment Promotion Centres (KPA) in districts and cities where both operated. The public employment service will design and implement integrated regional and local employment measures aimed at promoting entrepreneurship for young persons and women. ***The Committee refers to its observation on the Employment Service Convention, 1948 (No. 88), and invites the Government to provide in its next report on Convention No. 122 further information on the effectiveness of the reorganization of its labour market institutions.***

***Vulnerable categories of workers.*** The Government states that greater emphasis has been placed on active employment policies targeting young people, women and older workers. Different programmes have been implemented to improve professional qualifications of unemployed women in order to facilitate their integration in the labour market. The Committee notes that the employment policies targeting women aim at increasing their employment rate to 52 per cent in 2013. With regards to young persons, the Government reports that different programmes have been implemented including: “One Start, One Chance” to support 40,000 unemployed young persons who did not pursue higher education; “New Jobs” for 10,000 unemployed high-school graduates under the age of 30; and lastly, a programme to promote youth business initiatives. In its May 2011 communication, the Government also describes additional measures aimed at promoting youth employment. ***The Committee invites the Government to provide information on the impact of measures taken to ensure lasting employment for vulnerable categories of workers.***

***Education and training policies.*** The Committee notes that continuous vocational training schemes will be gradually transformed to articulate apprenticeship systems combining classroom education, on-the-job training and in-work practice. The Government also intends to encourage employers, particularly SMEs, to employ more apprentices. The Committee further notes the information provided by the Government to the high-level mission to Greece indicating that a programme, essentially an internship programme, was established under the auspices of the OAED which aims to help young persons enter the labour market through contracts to obtain work experience. The Government indicated that the programme’s initial results were disappointing and legislation was modified in July 2011. The Committee further notes the Government’s efforts in identifying the needs of the labour market and linking vocational training to employment, as well as its plan to establish 15 life-long learning institutes. The Government reports on the creation of a specialized body to promote continuous vocational training and increase the participation of employers and workers. ***The Committee invites the Government to include in its next report information on progress made to activate the National System for Linking Vocational Education and Training with Employment (ESSEEKA). Please also provide information regarding the progress made in investing in workers’ skills development.***

***Article 3. Participation of the social partners.*** The Committee notes the strong concerns expressed by the GSEE that social dialogue degenerated into a summary, informative and superficial procedure. In the report received in May 2011, the Government indicates that consultation with the social partners is pursued to the greatest extent when reviewing employment legislation. The high-level mission to Greece noted that, in the field of employment, there appears to be a strong desire from all social partners for the promotion and development of sustainable SMEs, skills development and active labour market policies. The Committee recalls the role to be played by active labour market policies in addressing the human dimension of the financial and economic crisis. In its concluding remarks of the 2010 General Survey concerning employment instruments, the Committee emphasized that social dialogue is essential in normal times and becomes even more so in times of crisis (paragraph 794 of the 2010 General Survey). ***The Committee invites the Government to indicate in its next report the manner in which account is taken of the opinions and experience of the representatives of employers’ and workers’ organizations in the formulation and implementation of the labour market measures included in the adjustment programme.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Guinea

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in February 2004. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information in reply to the points raised in the Committee’s 2004 observation, which set forth the following matters:

***Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.*** In its report received in February 2004, the Government provided information on the establishment of the “employment” component of the poverty

reduction strategy approved in 2002, including its plans to enhance the range of vocational and technical training available, promote small and medium-sized enterprises, promote labour-intensive work and improve access to employment for women. The Committee also noted the objectives of the Labour and Employment Statistical Information Network (RISET), the establishment of which was already noted in its previous comments. ***The Committee requests the Government to provide up to date information on the measures taken to guarantee that employment, as a key component in poverty reduction, is at the heart of macroeconomic and social policies. It asks the Government in particular to provide information on the results achieved by group, such as for young people and for women, by the measures taken to improve the range of vocational and technical training available, on the promotion of small and micro-enterprises and on the jobs created by labour-intensive programmes.***

***Article 3. Participation of the social partners in the formulation and application of policies.*** The Committee recalled in 2008 that ***Article 3*** of the Convention requires consultations with all interested parties – in particular, representatives of employers and workers – in the establishment and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries. ***The Committee trusts that the Government will include detailed information in this regard.***

***Part V of the report form. ILO technical assistance.*** ***The Committee once again asks the Government to indicate the actions taken to implement an active employment policy within the meaning of the Convention, further to the technical assistance received from the ILO.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1995)**

The Committee notes with ***regret*** that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments, which read as follows:

***Articles 2 and 3 of the Convention.*** The Committee recalls that the Community-Based National Rehabilitation Programme (PNRBC), initiated by the Ministry for Social Affairs and the Advancement of Women and Children, provides for vocational rehabilitation measures, including the integration of children with disabilities in schools, vocational training and promotion of the employment of persons with disabilities. ***The Committee requests the Government to provide information on the application in practice of the measures adopted in the context of the PNRBC and a copy of the annual report referred to in its previous reports. Please also provide any other document containing statistics, studies or surveys on the matters covered by the Convention (Part V of the report form).***

***Article 4.*** The Committee notes that rules are applied to guarantee equality of opportunity and that a bill has been prepared on the protection and advancement of persons with disabilities. ***Please provide information on the content of the acts and to send a copy of the abovementioned text when it has been adopted.***

***Article 7.*** The Committee notes the existence of a department responsible for the occupational integration of persons with disabilities in the National Directorate of Technical Education and Vocational Training and that the National Office for Vocational Training and Further Training has established a special section responsible for the training of young persons with disabilities. ***The Committee requests the Government to provide information on the action taken in practice by these services for securing, retaining and advancing persons with disabilities in employment.***

***Article 8.*** The Committee notes that vocational rehabilitation and employment of persons with disabilities at their place of origin (rural areas and remote communities) is an essential objective of the PNRBC in collaboration with the Guinea Federation of Disabled Persons (FE.GUI.PAH). Furthermore, some measures have been taken, such as the establishment of branches of the National Orthopaedic Centre in the interior of the country (Mamou and N'Zérékoré) and the granting of tax and duty exemptions for any enterprise of persons with disabilities. ***The Committee requests the Government to continue providing information on the development of services for persons with disabilities in rural areas and remote communities.***

***Article 9.*** The Government indicated previously that a National Orthopaedic Centre has existed since 1973 for the rehabilitation and apprenticeship of persons with disabilities of all ages. ***The Committee requests the Government to indicate the number of persons trained and made available to persons with disabilities.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **Honduras**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1980)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

The Committee notes the discussion that took place in June 2011. At the conclusion of the tripartite discussions, the Conference Committee invited the Government to update the information provided on new employment policy programmes, recent data on the size and distribution of the workforce, and specific information on the effectiveness of the measures implemented in reducing unemployment and achieving the objectives of the Convention. In particular, the Conference Committee requested detailed information on how tripartite mechanisms contribute to the formulation of employment programmes and to the monitoring and implementation of active labour market measures in order to overcome the current crisis and to ensure a sustainable recovery. The Committee also takes note of the observations made by the Unitary Confederation of Honduran Workers (CUTH), the General Confederation of Workers and the Honduran Workers' Confederation, in March 2011 and September 2011, as well as a communication submitted by the CUTH in

September 2011. The Committee takes note of a new and very informative report from the Government received in September 2011, as well as supplementary data provided in November 2011.

*Articles 1, 2 and 3 of the Convention. Labour market trends.* The Committee notes the trends in labour market indicators between 2008 and 2010. In 2010, unemployment affected 158,813 workers (nearly 90,000 men and 70,000 women), and 45 per cent of the population was unemployed. The Committee notes that “Vision of the Country 2010–48” includes employment objectives. Goals to be achieved by 2013 include reducing the number of households living in extreme poverty from 36 to 32 per cent, reducing underemployment to 30 per cent and affiliating 23 per cent of wage earners to the social welfare systems. The Government also indicates in its report that it signed an agreement with the International Monetary Fund for the financial year 2010–11, the main aim of which is to restore macroeconomic stability, improve public finances and support the creation of conditions for sustainable economic growth and public investment. The Committee observes that studies by the Central Bank of Honduras confirm the importance of remittance flows (which in 2010 accounted for 16.4 per cent of the country’s gross domestic product) to encouraging initiatives for job creation. The amount of remittances in 2010 showed an increase of 5 per cent over 2009. ***The Committee invites the Government to continue to provide information allowing it to ascertain the manner in which the employment objectives in government programmes have been reached. It also asks the Government to include data on the size and distribution of the workforce, and the nature and extent of unemployment and underemployment. Please also continue to provide information on the manner in which remittances from migrant workers contributed to generating productive employment.***

*Participation of social partners.* In their communication of March 2011 the trade union organizations reported that they were not consulted in November 2010 when the National Congress approved the National Hourly Employment Programme. According to the organizations, the programme proposes to deregulate the labour market, which will deepen precarious employment. The labour market is saturated with temporary and contract workers, and the organizations make the point that abusive employers have no need of a specific programme in order to hire temporary workers. The CUTH indicates that there is no State employment policy for the creation of meaningful and decent jobs. The Committee notes the detailed documentation submitted by the Government to the Conference Committee and the additional information in the reports received in September and November 2011 on the consultations held in the National Congress for discussion and approval of the programme. The President of the National Congress and the Secretary of State for Labour signed a framework agreement on inter-institutional cooperation to facilitate exchanges on measures adopted. The Government plans to strengthen the Labour Market Observatory and in the future to set up a National Employment Service to implement and coordinate all the country’s employment programmes. The Government confirms that the National Hourly Employment Programme registered only 193 work contracts (73 women and 120 men) in Tegucigalpa, San Pedro Sula, Comayagua, Choluteca and La Esperanza. Most of the contracts were for two months with four-hour working days. Some of them were up to 30 months in length. Seventy-one enterprises have applied to the authorities for further information on the programme. In November 2011, the Government reported that 311 firms were registered as users of the programme at the national level. ***The Committee invites the Government to continue to send information on efforts made to hold consultations with the social partners in order to design and implement an active employment policy. The Committee stresses that it is important to take account of the social partners’ views and obtain their support in order to ascertain that the programmes implemented have generated decent jobs. The Committee would like to continue to examine up-to-date information on the supervision and follow-up of the National Hourly Employment Programme and the extent to which its beneficiaries have found productive employment, including details on their age, sex, residence, training and other particulars allowing a quantitative and qualitative assessment of the employment generated.***

*Coordination of policies.* ***The Committee refers the Government to its observation of 2010 and asks in its next report to provide information on the programmes implemented by the National Education for Work Centre and the National Vocational Training Institute with a view of aligning the workforce and the labour market. The Committee would appreciate receiving more detailed information on measures actually adopted to coordinate education and vocational training policies with prospective employment opportunities and to improve the country’s competitiveness.***

*Impact of trade agreements. Export processing zones.* The Government indicates that the main destination for exports is the United States (39.8 per cent in 2009). The United States is also the largest investor in terms of source of capital. The Government also indicates that the *maquila* industry (manufacturers established in the export processing zones) helped to reduce pressure on the labour market. The Government suggests in its report that most of the income earned by *maquila* workers appears to be spent in the informal economy. The Committee notes that some *maquila* enterprises run training programmes. ***The Committee invites the Government to include information on the results obtained in improving employment opportunities for workers under the Comprehensive Training Programme for the Garment and Textile Industry. It also asks the Government to provide particulars of any effects trade agreements have had on the generation of productive employment.***

*Micro, small and medium-sized enterprises (Micro and SMEs).* The Government points out that an Micro and SMEs development fund is being created to meet the sector’s financial needs. The Committee notes that efforts are still under way to produce enabling regulations for the legislation adopted in 2008 to develop Micro and SMEs. ***It invites the Government in its next report to provide updated information on the impact of the new legal framework for Micro and***

**SMEs on employment creation and poverty reduction, together with data on the running of the fund planned for Micro and SMEs.**

*Youth employment.* The Committee notes that in 2010 the National Youth Policy was launched. The Government intends to submit to the Economic and Social Council an Action Plan for Youth Employment, based on strategic objectives that include social dialogue, technical education for employability and the promotion of business development. **The Committee again urges the Government to step up its efforts to ensure that young people are integrated in the labour market and have the opportunity to find decent jobs. The Committee again underlines the importance of enlisting the support of the social partners and representatives of the persons concerned to the successful implementation of employment policy measures. It again invites the Government in its next report to include information on concrete results obtained by the National Youth Policy and the Action Plan for Youth Employment 2009–11.**

## Iceland

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1990)**

*Promotion of employment for persons with disabilities.* The Committee notes the Government's report received in November 2010. In reply to previous comments, the Government indicates that collective agreements were concluded in 2008 to set up a vocational rehabilitation fund (VIRK) following a tripartite agreement between employers' and workers' organizations and the state. According to its charter, the role of the VIRK is to systematically reduce the likelihood that workers will be forced to withdraw from the labour market due to permanent disability by enabling workers with disabilities to be more active, upgrading rehabilitation and offering other services. The Committee notes with *interest* that the VIRK began its operations in August 2008 and, when the report was prepared, 22 counsellors were providing vocational rehabilitation services with the aim to assist the individual to continue in employment or return to employment. Close to 1,400 persons received assistance from the counsellors and the demand for their services is continuously rising. The Committee also notes the variety of employment and training measures to assist persons with disabilities which are offered by the municipalities. **The Committee invites the Government to continue providing information on the measures adopted to promote employment opportunities for persons with disabilities. Please also include practical information, including statistics (disaggregated as much as possible by age, gender and the nature of the disability), extracts from reports, studies or inquiries on the matters covered by the Convention (Part V of the report form).**

## India

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1998)**

*Articles 1 and 2 of the Convention. General economic policies.* The Committee notes the Government's report provided in August 2011 including detailed information in reply to the 2010 observation. The Government indicates that it is implementing various employment generation and poverty alleviation programmes under the 11th Five Year Plan 2007–12 to increase employment opportunities in both rural and urban areas. The Committee notes that these programmes have not only generated employment opportunities but have also provided financial cushions for the workers and their families affected by the slowdown. The Government also recalls that the economic growth of 6–8 per cent per annum during the first half of the past decade has significantly increased the demand for labour and, hence, employment growth. The Government recognizes that employment growth has not been uniform across various population segments. Employment growth was much higher in urban areas than in rural areas and was significantly higher for urban females than for the rural males, rural females and urban males. The Government also states that addressing underemployment along with open unemployment is important for policy initiatives, particularly, from the point of view of inclusive growth. Youth were particularly affected by unemployment (for the period 2004–05, the unemployment rate was almost 30 per cent for young people aged 20–24 years). According to the Employment–Unemployment Survey conducted by the Labour Bureau, the unemployment rate for 2009–10 was 9.4 per cent nationwide, rising to 10.1 per cent in rural areas. The unemployment rate was 14.6 per cent for women compared to 8 per cent for men. As indicated by the ILO in the technical advice provided to the Government in recent years, the Committee notes that for an employment strategy to be effective, it is important to mainstream employment in the country's development strategy. The Government might consider going beyond special programmes and integrating employment concerns into policy-making at the macroeconomic as well as sectoral level. The Government and the social partners might wish to identify sectors that are more employment-friendly and pursue policies and programmes conducive to their growth based on an analysis of the employment impact of growth of such sectors. **The Committee therefore invites the Government to indicate in its next report to which extent measures implemented under the Five Year Plan 2007–12 have managed to improve the quality of the employment generated and alleviate both unemployment and underemployment. Please also provide information on the efforts made to improve the employment situation for young persons and workers in the unorganized sector and the results achieved in terms of designing targeted programmes and incentives for promotion of sustainable job creation for the youth and for those working in the informal economy. The Committee would welcome continuing to receive relevant data on the situation**

*and trends of the labour market disaggregated by state, sector, age, gender and skills, in particular for socially vulnerable groups such as young persons, women jobseekers, scheduled castes and scheduled tribes, ethnic minorities and persons with disabilities (Article 1(2) and Article 2(a)).*

*Promotion of employment for poor workers in the rural sector.* The Committee notes the information provided on the various important programmes implemented to provide job opportunities in the rural sector. The programme Swarnajayanti Gram Swarozgar Yojana has been providing self-employment to villagers through the establishment of self-help groups since its launching in 1999. Thus, in 2010–11, 322,093 self-help groups received assistance under that programme. The Committee notes that the national policy designed for the creation of sustainable employment in the rural sector was renamed as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) in October 2009. According to the data supplied by the Government, MNREGA provided 52.58 million households with sustainable employment in 2009–10. The total number of jobseekers that were provided with sustainable employment has been increasing steadily over the last four years. It was suggested to increase providing work for 100 days to 200 days and that special emphasis be put on fostering small industries. The impact of the MNREGA on the improvement of rural workers' wages was also significant in numerous states. ***The Committee invites the Government to continue to supply information on the impact of MNREGA and other major employment generation programmes in enhancing job growth and sustainable employment for poor workers in the rural sector.***

*Consultation of the representatives of the persons affected.* The Committee notes that the 43rd India Labour Conference held on November 2011 included tripartite consultations and discussions on employment generation and skill development. The representatives of trade unions, employers' organizations and States and Union Territories proposed various measures to generate employment and sustain economic growth. The Committee also notes that the social partners have been actively involved in the skills development system and that they actively contributed to the elaboration of employment policies. ***The Committee invites the Government to continue to provide examples of questions addressed and decisions reached on employment policy through tripartite bodies. It would also appreciate continuing to receive information on the involvement of the social partners in the implementation of the major employment generation programmes.***

*Part V of the report form. ILO technical assistance.* The Government indicates that a National Employment Policy has been drafted in association with the ILO and is still awaiting final approval. Its objective is to accelerate employment growth, particularly in the organized sector, and to improve the quality of jobs in terms of productivity, incomes and protection of workers, especially in the unorganized sector. The Committee also notes that a Decent Work Country Programme – India Document (DWCP-ID) was launched in February 2010 in close cooperation with the ILO supporting the implementation of a national employment policy. ***The Committee invites the Government to indicate in its next report the action taken as a result of the advice received from the ILO in the matters covered by the Convention.***

## Islamic Republic of Iran

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1972)**

The Committee notes the Government's report received in September 2011 which includes indications related to the 2010 observation, as well as replies to the comments raised by the International Trade Union Confederation (ITUC). The ITUC noted that the unemployment rate was very high and job cuts operated in large industrial enterprises in Asalouyeh and leather factories in north-eastern Iran affected the employment situation in those regions. The ITUC further indicated that the job market struggles to absorb the influx of young educated people and pointed out the difficulties for women to be fully integrated in the labour market. It finally expressed concern at the lack of effective consultations with the social partners on employment policy issues.

*Articles 1 and 2 of the Convention. Application and implementation of an active employment policy.* The Government provided in its report the document on general policies of employment adopted by the Supreme Leader, which contains policy orientations for the state authorities listed in 13 points. Its objective for 2010 was creating 1,100,000 jobs and a survey is being carried out to assess the achievement of that goal. The Government also reports that a database for assessing job creation is being completed and that the "Plan for development of fast growth and entrepreneurial enterprises", which started in 2006 with the aim of promoting small and medium-sized enterprises (SMEs), is planned to continue. Moreover, various "Entrepreneurship plans" were developed. In 2010, a Plan for Rural Jobs was adopted. In October 2010, as many as 44,271 persons were employed in Asalouyeh. The Government indicates that supportive policies were adopted to create alternative opportunities for addressing the employment gap in the Khorasan province. ***The Committee invites the Government to provide in its next report further information on the procedures and mechanisms established to review and assess the results of its employment policy measures. The Committee also asks the Government to include information on the policies that promote full, productive and lasting employment opportunities to the unemployed and other categories of workers affected by the difficult employment situation in different regions.***

*Labour market information and employment trends.* The Government states that statistics released by the Statistics Centre of Iran (SCI) are based on the ILO definitions. It further indicates that a comprehensive Labour Market Information System (LMIS) needs to be completed and staff in charge of collecting statistical data should be trained. The

Government reiterates that differences in economic participation between women and men are due to social and cultural reasons. The real share of women in employment may be underestimated. Notwithstanding, the Government intends to take measures to address this issue through a plan aiming to increase job opportunities for women and promoting a legal and administrative framework for home-based work. The Committee notes that the Government's objective is to move women's work from the informal to the formal economy. It further notes that in 2010 the labour force participation rate was 39 per cent, being 61.7 per cent among men and 16 per cent among women. The unemployment rate was measured at 14.6 per cent, accounting for 11.9 per cent among men and 25 per cent among women. ***The Committee requests the Government to provide in its next report data assessing the effectiveness of the measures implemented to promote productive employment opportunities for women. It also invites the Government to provide information on any developments towards the establishment of the LMIS.***

***Labour market measures.*** The Committee notes the data provided by the Government on the operation of the Workers' Unemployment Prevention Fund. The Government indicates that efforts have been made to reduce the term of payment of unemployment benefits and extend their scope of coverage. The Committee notes the data supplied by the Government on job opportunities advertised at public employment centres and private employment agencies. The Government indicates that only a small percentage of jobseekers register at employment offices, whether public or private. ***The Committee invites the Government to provide information on the impact of measures taken under the Workers' Unemployment Prevention Fund. It also requests the Government to provide information on the measures taken or envisaged to strengthen labour market institutions.***

***Integration of Afghan workers in the labour market.*** The Government reports that efforts have been made to provide Afghan workers with proper training and ensure that they and their families are residing legally in the country. The implementation of the plan to redevelop job opportunities in line with the national labour market needs is expected to increase job opportunities for Afghan and other foreign citizens. ***The Committee would appreciate receiving further information on the integration of Afghan workers and other foreign workers in the local labour market including information on the nature of the jobs available for those workers (see Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

***Youth employment.*** The Government indicates that the policies established in recent years have been directed at increasing job opportunities for the youth through technical and vocational training and support for entrepreneurship, as well as addressing the issue of graduates' unemployment. The Committee notes that the internship project provides for incentives for employers who sign internship contracts with graduates, and further incentives for those who employ such graduates. The Government indicates that, in 2009, 70,000 young persons benefited from the project and it is forecast that by the end of 2011 another 100,000 will be covered. More than 50 per cent of trainees were women and in some provinces this ratio reached 60 to 70 per cent. Both the Parliament and the private sector supported the continuation of the project. The Government also indicates that, in order to improve the performance of the State Technical and Vocation Organization (TVTO), it has designed the National System of Skill and Technology, which orients technical and vocational training towards the system of skills and technology and pursues, inter alia, the objective of linking skills training with labour market needs. The Committee notes that, according to 2010 data provided by the Government, the youth unemployment rate reached 29.6 per cent in 2010, reaching 46.5 per cent among young women. ***Referring to its comments on Convention No. 142, the Committee invites the Government to supply disaggregated data on young persons obtaining lasting employment following their participation in vocational guidance and vocational training programmes. The Government might also wish to hold appropriate consultation with the social partners and others stakeholders concerned on the difficulties encountered to obtain lasting employment for young people.***

***Article 3. Participation of the social partners.*** The Government indicates that the Supreme Council of Employment, which is composed of government officials, and delegates of employers' and employees' organizations, decides on the monitoring and following-up of the fulfilment of quantitative and qualitative objectives of employment in the programmes approved by the same Council. The Council participated in the development of the Fifth Development Plan with regards to the labour market component. The ITUC pointed out that consultations with social partners have so far failed to address employment-related issues. Independent unions must be allowed in order to create an environment that enables real social dialogue, through which problems related to employment policy can be addressed. ***The Committee invites the Government to provide information in its next report on how consultations with the social partners have been used in the formulation and implementation of the employment policy. In this regard, the Committee asks the Government to focus on the points raised in this observation and the procedures which enable to take fully into account the views and experiences of persons affected by employment policy measures so as to secure their full cooperation in formulating and enlisting support for such measures.***

## Ireland

### ***Employment Service Convention, 1948 (No. 88) (ratification: 1969)***

The Committee notes that the Government's last report was provided in October 2005. ***Following the deterioration that took place in the employment situation since 2008, the Committee invites the Government to provide information on the measures adopted by the public employment service to achieve the best possible organization of the employment***

market and to meet the needs of the economy and the active population (Articles 1 and 3 of the Convention). It also invites the Government to provide relevant information concerning the number of public employment offices established, the number of applications for employment received, the number of vacancies notified, and the number of persons placed in employment by such offices in each region of the country (Part IV of the report form).

[The Government is asked to reply in detail to the present comments in 2012.]

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

The Committee notes with *serious concern* that the Government's report has not been received since 2005. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information on the following matters:

*Articles 1 and 2 of the Convention. Employment trends and labour market policies. Following the deterioration that took place in the employment situation since 2008, the Committee asks the Government to provide an assessment of the impact of its active labour market measures adopted in order to overcome the negative effects of the global economic crisis on the labour market. It also invites the Government to include information on how the measures to promote full and productive employment are decided on within a "framework of a coordinated economic and social policy".*

*Article 3. Participation of the social partners. The Committee asks the Government to provide information on the consultations held with the social partners, both at the formulation and implementation stages of employment policies.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Italy**

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 2000)**

*Promotion of employment opportunities for workers with disabilities.* The Committee notes the Government's detailed report received in October 2010, which includes replies to its 2006 direct request and comments by the Italian General Confederation of Labour (CGIL). The Government indicates that as a result of the implementation of Act No. 68/99 on the right to work of persons with disabilities, in 2008, 28,306 out of 99,515 persons with disabilities figuring on the mandatory employment list were placed in employment and, in 2009, 20,830 out of 83,148 were placed in employment. In its comments, the CGIL indicates that persons with disabilities are mostly concentrated in the 50–57 years age group, which makes their placement more difficult. It further indicates that public employment centres in Northern and Central regions are more efficient in promoting the employment of persons with disabilities. However, Southern employment centres improved their performance, which resulted in an increased number of persons with disabilities placed in employment. In some Central and Northern regions, persons with disabilities were employed in enterprises with less than 15 employees, although the employers were not bound to employ persons with disabilities. The CGIL stresses that more rigorous inspections should be carried out in order to detect enterprises which do not comply with their legal obligations towards the employment of persons with disabilities and punitive measures taken. In this regard, the Government indicates that in 2008 the labour inspectorate found 1,259 administrative violations of the legislation on the employment of persons with disabilities. In the 2010 inspection planning, persons with disabilities have been included among the labour market groups at risk. *The Committee encourages the Government to strengthen its efforts to promote employment opportunities for persons with disabilities in the open labour market so as to ensure that they secure, retain and advance in employment. It requests the Government to provide an assessment supported by statistics disaggregated by sex, where available, of the impact of the national policy on vocational rehabilitation and employment of persons with disabilities on effectively increasing labour market participation for the persons concerned (Articles 3 and 7 of the Convention).*

*Practical application.* The CGIL recognizes in its comments that Act No. 68/99 is a valuable instrument to create employment also in times of crisis, but regrets that its application is hindered by measures such as the suspension of the obligation to employ persons with disabilities and the hiring freeze in the public sector. Moreover, regulations implementing the legislation on the employment of persons with disabilities are still lacking. The Government indicates that the suspension of the obligation to employ persons with disabilities provided by Circular of the Ministry of Labour No. 2/2010 only concerns employers in the private sector who experience difficulties due to the financial and economic crisis. It further points out that, as clarified by Circular No. 6/2009 of the Civil Service Department, persons with disabilities are excluded from the hiring freeze in the public sector within the limits of the mandatory quota. The Government stresses that the adoption of legislation which would, in the CGIL's view, improve the application of Act No. 68/99, is under way. *The Committee requests the Government to provide in its next report information on the measures taken to ensure a better application of the existing legal framework on the employment of persons with disabilities. It also asks the Government to supply statistics disaggregated by sex, extracts of reports, studies and inquiries concerning the matters covered by the Convention, and particularly information on the number of persons with disabilities employed, including details on the type and duration of their employment arrangements, as well as on education and training opportunities offered to persons with disabilities (Part V of the report form).*

[The Government is asked to reply in detail to the present comments in 2013.]

### ***Private Employment Agencies Convention, 1997 (No. 181) (ratification: 2000)***

*Formulating labour market policy.* The Committee notes the Government's report received in November 2010, which includes comments by the Italian General Confederation of Labour (CGIL). In its 2006 observation, the Committee requested information on cooperation between the national and regional employment services and private employment agencies with regard to the placement of underprivileged workers. It also requested the Government to report on the manner in which public authorities retain final authority for formulating labour market policy. The Government indicates that in 2008, 726 private employment agencies were authorized and registered, i.e. 28 more than in 2007. Some 600 agencies performed research and selection activities and 90 were acting as temporary work agencies. Outplacement activities were performed by 20 agencies, while those acting as employment mediators were only 13. Most agencies were located in Northern regions, especially in Lombardia, while only a few operated in the South. The results of research undertaken in 2007 on the cooperation between public employment centres and other labour market operators indicate that a significant number of private employment agencies cooperated with the public employment centres between 2000 and 2007. The Government indicates that labour market services have the potential to be further developed through mutual collaboration between the public and private sectors.

The CGIL indicates that new regulations under the 2010 Finance Act expand the role played by private employment agencies. Among other measures, the 2010 Finance Act reintroduced staff leasing, that was abolished by previous legislation; temporary work agencies to supply to allowed user enterprises employees benefiting from income support mechanisms in breach of the requirements established by the collective agreements applicable to those enterprises; and introduced incentives for temporary work agencies that place workers benefiting from income support mechanisms. The CGIL expresses concern that, following the adoption of the new legislation, private employment agencies are likely to focus on two objectives, i.e. the externalization of the enterprise activity and the use of workers benefiting from income-support mechanisms, which undermine social inclusion. Considering that only part of the workforce benefits from income-support mechanisms (1.6 million workers are excluded from any benefits according to Bank of Italy statistics), the Government appears to use public resources in a way that directs private employment agencies towards activities which increase labour market segmentation. The CGIL also observes that flexibility in the labour market is not the best approach to create jobs in times of crisis, as shown by the negative employment trends during the last years. Temporary workers, including workers employed by temporary work agencies, were most affected by the crisis. Private employment agencies were used for replacing workers with permanent employment. In the CGIL's view, providing further employment security should be reconsidered as a means to enhance economic productivity growth and achieve further social cohesion. In order to increase Italian productivity, long-term investments as well as better conditions for training and retraining workers should be promoted. Productivity and competitiveness will not be achieved by increasing the use in the workforce of individuals who are always available and easy to lay off. In its reply to the CGIL's comments, the Government clarifies that measures contained in the 2010 Finance Act were conceived in the crisis context and thus are intended to be experimental and of a temporary nature. Placement by the private employment agencies of persons benefiting from income support mechanisms was already provided by the legislation since 1991. With regard to staff leasing, which was introduced by Legislative Decree No. 276/03, the Government indicates that the possibility of supplying employees to user enterprises under contracts of indefinite duration is only allowed in a specific list of cases identified by the Decree. It further specifies that Italia Lavoro, which is entrusted with managing the active labour market measures provided for by the 2010 Financial Act, operates under the authority of the Ministry of Labour and Social Protection. The Committee recalls that Convention No. 181 allows for an improved functioning of private employment agencies by recognizing their role in the well-functioning of the labour market. It also stresses the need to protect workers against abuses. As stated in the Global Jobs Pact, full and productive employment and decent work are at the heart of the crisis responses. This includes enhancing the competence and increasing resources available to public employment services so that jobseekers receive adequate support and, where they are working with private employment agencies, ensuring that quality services are provided and rights respected (paragraph 11(2)(ii) of the Global Jobs Pact). The matters raised by the CGIL reflect concern that fair treatment for agency workers is not ensured with regard to their working and employment conditions. ***The Committee therefore invites the Government to provide a report indicating how the measures adopted under the 2010 Financial Act and subsequent legislation have ensured adequate protection for workers in temporary work agencies working for user enterprises (Articles 11 and 12 of the Convention). It also invites the Government to provide information demonstrating that the views of the social partners have been taken into account concerning the measures taken to promote cooperation between public employment centres and private employment agencies (Article 13). The Government is also requested to indicate the number of workers covered by the measures giving effect to the Convention (specifying the type and duration of their employment arrangements), and the number and nature of infringements reported in relation to the activities of private employment agencies (Articles 10 and 14 and Part V of the report form).***

***[The Government is requested to reply in detail to the present comments in 2013.]***

## Japan

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)**

The Committee notes the Government's report received in October 2011 including comments by the Japanese Trade Union Confederation (JTUC-RENGO). The Government's report refers to the 2010 Committee's observation as well as to the matters raised by the National Union of Welfare and Childcare Workers (NUWCW) in October 2010 and September 2011.

1. *Employment promotion for persons with disabilities.* In its 2010 observation, the Committee noted that the "Basic Policy on Employment Measures for Persons with Disabilities" was adopted by the Ministry of Health, Labour and Welfare in 2009 and was followed by a Cabinet Decision of 29 June 2010, regarding the Basic Direction with Promoting Reform of the System for Persons with Disabilities. JTUC-RENGO indicates that since the Basic Direction was adopted, there has been no sign of progress in the labour and employment-related policies for persons with disabilities. It also observes that the statutory employment rate, i.e. 1.8 per cent, is yet to be achieved and that less than half of the companies fulfilled their obligations. JTUC-RENGO calls for the promotion of comprehensive policy measures to improve the employment system of persons with disabilities. NUWCW also indicates that the socio-economic environment surrounding workers with disabilities has been increasingly worsening, coupled with the global economic and financial crisis: the number of unemployed persons with disabilities is increasing and decreased demand from private enterprises has seriously affected the Support Programme for Continuation of Work (SPCW). NUWCW stresses that only few of the employable persons with disabilities are employed under the quota system. The Government reports that the number of persons with disabilities employed has been increasing year by year and, as of June 2010, the employment rate was 1.68 per cent, representing the highest ever recorded. However, the Government recognizes that further employment promotion is needed, since this rate remains below the statutory employment rate and the percentage of enterprises that achieved the statutory employment rate was 47 per cent. The Committee notes that guidance will continue to be provided through the Public Employment Security Office (PESO) to enterprises that failed to achieve the statutory employment rate. PESO will also continue to support employment and workplace adaptation of persons with disabilities. The Government indicates that various measures will be implemented to further promote the employment of persons with disabilities, such as increasing the number of Employment and Living Support Centres for Persons with Disabilities. The Committee notes that the Basic Direction envisages reviewing the employment promotion system for persons with disabilities by 2012. ***The Committee invites the Government to provide in its next report an evaluation of the reform of the employment promotion system for persons with disabilities in terms of increasing the employment opportunities of these persons in the open labour market. It also invites the Government to include in the evaluation process representatives of organizations of and for persons with disabilities as well as the social partners. Please also supply statistics disaggregated as much as possible by sex, age and the nature of the disability, as well as extracts from reports, studies and inquiries concerning the matters covered by the Convention (Part V of the report form).***

2. *Follow-up to a representation under Article 24 of the ILO Constitution. Articles 1(3) and 3 of the Convention. National policy aimed at ensuring appropriate vocational rehabilitation for all categories of persons with disabilities.* (a) *Criteria used to determine whether a person with disabilities is considered to be able to "work under an employment relationship" (paragraph 73 of the tripartite committee report).* The Committee recalls that it was entrusted to follow-up on the application of the Convention with regard to the questions raised in the representation under article 24 of the ILO Constitution alleging non-observance by Japan of Convention No. 159. The report of the tripartite committee established to examine the representation was approved by the ILO Governing Body at its 304th Session (March 2009). In the 2010 observation, the Government was requested to provide information on the number of persons falling under the categories that do not allow them to be covered by an employment relationship and measures taken to ensure that they may also benefit from opportunities in the open labour market. In its 2011 report, the Government indicates that as of February 2011, the number of recipients of Type-A programmes under the SPCW was 12,731 but the number of those who were not covered by an employment relationship is not known. The number of recipients of Type-B programmes under the SPCW, i.e. those not working under an employment relationship and not covered by labour legislation, was 100,599. The Government also refers to measures implemented by PESO to ensure to persons with disabilities employment opportunities in the open labour market. ***The Committee invites the Government to provide further information on the measures taken or envisaged to increase the opportunities for persons with disabilities falling in the categories which do not allow them to be covered by an employment relationship, to have access to the open labour market. In this regard, the Government is requested to supply updated information on the number of transitions from Type-B programmes under the SPCW to Type-A programmes and to open employment, as well as on the impact of measures implemented by the PESO on the transition of persons with disabilities from welfare to open employment.***

(b) *Bringing work performed by persons with disabilities in sheltered workshops within the scope of the labour legislation (paragraph 75 of the report).* In its 2010 observation, the Committee noted the criteria according to which persons with disabilities engaging in activities at welfare workshops and small-scale workshops may be considered to be workers. NUWCW recalls that workshops and welfare factories (Type-B programmes under the SPCW and the Support Programme for Transition to Employment (SPTE)) appear to be the facilities for sheltered employment referred to by the

Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99). In NUWCW's view, the application of labour legislation to Type-B programmes under the SPCW is based on a very narrow interpretation contrary to the broad criteria of equal opportunity and treatment enshrined in *Article 4* of the Convention. Moreover, the transition to the new system under the Services and Support for Persons with Disabilities Act (SSPDA) was not sufficiently implemented and the sheltered employment system under the new scheme fails to bridge the gap in working conditions with other workers. NUWCW further indicates that several local governments have successfully implemented a social support scheme for the employment of persons with disabilities (sheltered employment system), according to the impact assessment made by the Subcommittee on Comprehensive Welfare for Persons with Disabilities. The Government recalls that an interim period until end of March 2012 is established for the transition to the new system. ***The Committee invites the Government to continue to report on the impact of the measures taken to ensure that the treatment of persons with disabilities in sheltered workshops is in line with the principles of the Convention, including the principle of equality of opportunity and treatment (Article 4).***

(c) *Low pay for persons with disabilities carrying out activities under the Type-B programmes under the SPCW (paragraph 76 of the report).* In its 2010 observation, the Committee noted that the Government adopted measures to increase the rates of workshop pay in the framework of the Five-Year Plan to Double Workshop Pay (Five-Year Plan). NUWCW indicates that due to its questionable effectiveness, resources allocated to the Five-Year Plan were decreased by half in the Government's 2010 budget. NUWCW also points out that the average monthly wage in sheltered workshops is much lower than that of regular workers. The Government indicates that prefectures have continued to provide support for service providers to increase the rates of workshop pay in accordance with the Five-Year Plan. ***The Committee invites the Government to report on further measures taken or envisaged for raising workshop pay.***

(d) *Service fees for participants in Type-B programmes under the SPCW (paragraphs 77 and 79 of the report).* In its 2010 observation, the Committee noted the measures taken to reduce service fees for recipients of Type-B programmes, such as the abolishing of fees for persons with disabilities from low-income households. NUWCW stresses that participation in programmes such as Type-B under the SPCW should in principle be free of charge. NUWCW further clarifies that the concern expressed for Type-B programmes under the SPCW should be understood to include the SPTE scheme and Type-A programmes under the SPCW. The Government reiterates that recipients of Type-B programmes under the SPCW, while engaging in productive activities also receive welfare support and thus pay service fees in the same way as recipients of other welfare services. The Committee notes that the SSPDA will be replaced by legislation comprehensively regulating the welfare of persons with disabilities, which will link payment for using welfare services to income and that discussions are taking place at the Comprehensive Welfare Panel for enforcing the new legislation. ***The Committee invites the Government to strengthen its efforts to ensure that persons with disabilities are not discouraged or excluded from becoming involved in such programmes and eventually gaining access to the labour market. In this regard, the Committee recalls that Paragraph 22(2) of the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), recommends provision of free vocational rehabilitation services.***

*Articles 3, 4 and 7. Equality of opportunity between persons with disabilities and workers generally.*  
(a) *Implementation of the Five-Year Plan for Implementation of Priority Measures (2008–12) (paragraph 80 of the report).* The Committee notes the new data provided by the Government on the implementation of the Five-Year Plan for Implementation of Priority Measures (2008–12). ***The Committee invites the Government to include in its next report an evaluation of the Five-Year Plan for Implementation of Priority Measures (2008–12), including information on the involvement of representatives of organizations of and for persons with disabilities, as well as of the social partners, in the evaluation process.***

(b) *Quota system for the employment of persons with disabilities (paragraphs 81 and 82 of the report).* In the 2010 observation, the Government was requested to provide information on the impact of the quota system, limited to persons with physical and intellectual disabilities, on the employment opportunities of persons with other disabilities. The Government indicates that in 2010, 244,621 persons with disabilities of which 95,347 with severe disabilities were employed under the quota system, marking an increase of 5,851 and 2,927 respectively, compared to 2009. NUWCW indicates that further information on the duration of employment is needed to corroborate the data on the increase in the employment of persons with intellectual disabilities. In view of the overwhelming increase in the number of jobseekers with disabilities, NUWCW questions the double counting practice effectiveness and calls for the adoption of policies focusing on improving the employment of persons with severe disabilities. The Government points out that in the 2009–10 period, dismissals decreased more rapidly among persons with disabilities than for other categories of workers. The Government indicates that the increase in the employment of both persons with severe and non-severe disabilities proves that the double counting system does not prevent the employment of those with non-severe disabilities. It further indicates that various measures have been taken for promoting the employment of persons with severe disabilities, such as fiscal and financial incentives to undertakings which employ persons with particular difficulties in finding employment. ***The Committee invites the Government to continue to provide relevant information on persons with disabilities employed under the quota system.***

(c) *Reasonable accommodation (paragraph 84).* In its 2010 observation, the Committee noted that a study group was to be formed on the issue of reasonable accommodation. NUWCW indicates that this issue was discussed in 2010 within the Subcommittee for Employment of Persons with Disabilities of the Labour Policy Council. While the

Subcommittee agreed on the obligation for employers to provide reasonable accommodation, the issue of whether or not the lack of provision of reasonable accommodation was to be regarded as discrimination was left for further discussion. NUWCW further indicates that the Persons with Disabilities Abuse Prevention Act, approved in June 2011, while prohibiting dismissal and other unfavourable treatment against persons with disabilities, does not clearly stipulate the means to ensure reasonable accommodation at the workplace and the procedure to settle conflicts between workers and the management on such issues. The Government indicates that the Basic Direction established that conclusions on measures to prohibit discrimination with regard to work and employment on the basis of disability and to secure the provision of reasonable accommodation at the workplace will be reached in 2012. It further reports that the issue will continue to be discussed by the Discrimination Prohibition Panel of the Committee for Disability Policy Reform. ***The Committee invites the Government to include in its next report updated information regarding the ongoing discussion on the matter of reasonable accommodation.***

3. *Consultation with representative organizations of employers and workers.* The Government indicates that the Subcommittee on Employment of Persons with Disabilities was established to discuss at a quadripartite level (Government, social partners and representatives of persons with disabilities) important matters related to the employment of persons with disabilities. NUWCW points out that it is not represented within the Subcommittee and, therefore, is not granted the opportunity to officially express its views. In this regard, it alleges that workers' opinions are not taken sufficiently into account by the Government. The Government indicates that the Ministry of Health, Labour and Welfare, upon request from trade unions, organizes meetings between ministerial officers and trade unions representatives in which the opinions of the latter may be heard and that the last of such meetings were held in November 2010 and May 2011. ***The Committee requests the Government to provide other concrete examples of how the views and concerns of representatives of workers' and employers' organizations as well as of organizations of and for persons with disabilities, are taken into account in the formulation and implementation of the policy on vocational rehabilitation and employment of persons with disabilities.***

*[The Government is requested to reply in detail to the present comments in 2013.]*

## Republic of Korea

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1992)***

*Articles 1 and 2 of the Convention. Overall labour market trends.* The Committee notes the Government's report for the period ending in May 2010, which includes replies to previous comments and detailed labour market data indicating that the rate of unemployment was 3.6 per cent in 2009 (0.4 percentage point higher than in 2008), a first such increase since 2005. The Committee further notes the comments submitted by the Korean Confederation of Trade Unions (KCTU) stating that the nation's capability to create jobs has been deteriorating as the economy followed a pattern of economic growth without employment generation. The employment rate was close to 59 per cent in 2009, and the figure has not changed much for years, posing employment issues. The unemployment rate was 4.1 per cent in March 2010, but the KCTU observes that more than 3 million workers are underemployed, including a very important number of young workers. The Federation of Korean Trade Unions (FKTU) has also observed that the Government initiatives to boost employment through growth and labour market flexibility were identified as a cause of the global economic crisis. ***The Committee invites the Government to include in its next report, as it did in the past, an analysis of the labour market trends taking into account the assessment made by the social partners of the effectiveness of the employment policy measures implemented.***

*Job creation measures.* The Committee notes from the report that job creation projects directly funded by the Government created 810,000 jobs, including major public works programmes such as the Hope Work Project which employed 250,000 people from low-income families. The Government indicates that despite a growing number of jobseekers due to the economic crisis and programmes implemented to provide vocational skills development, some workplaces had trouble finding suitable workers. The Committee also notes that under the national strategy and five-year plan for green growth established in July 2009, the Government laid the foundation for the creation of decent green jobs by monitoring working conditions and improving work environments, including the introduction of new technical qualifications to meet the needs of green industries. The number of green jobs was estimated at 610,000 in 2008 and the Government expects it will rise at an annual average of 6 per cent from 2009 to 2013, reaching about 810,000 people in 2013. The FKTU indicates that 78 per cent of the projects announced are public works and construction projects, but the funds allocated for research and development for the green economy appear to be limited when taking into account the expectations. ***The Committee invites the Government to continue to supply information on the impact of the measures taken to promote full employment within a framework of a coordinated economic and social policy.***

*Employment generation and deregulation.* The KCTU expresses concern to many deregulation initiatives considered as job creation measures by the Government. It claims that the Government is revising laws and labour market institutions to increase non-regular workers and dispatched workers, facilitate part-time work and expand private employment services. ***The Committee invites the Government to provide information on the impact and results achieved in terms of productive job creation by new labour market regulations.***

*Youth employment promotion.* The Government indicates that 426,000 young persons were having difficulties in finding employment in May 2010, representing a youth unemployment rate of 6.4 per cent, compared to 8.1 per cent in 2009. The Government launched measures aimed to provide short-term jobs to young people and enhance their employability. The New Start Project provided young people with comprehensive individually specialized employment services. The FKTU indicates that one in every four young persons is in fact out of work and claims that the youth employment measures implemented by the Government produced poor results when looking at the total amount of funds invested. It further indicates that public institutions and local public enterprises do not comply with their obligation under the Special Act on the Promotion of Youth Employment, as amended in June 2010, to hire at least three unemployed young people per year for every 100 workers employed. The KCTU denounces the significant reduction of decent jobs for young people, as jobs created by the Government for the youth have been low-wage or temporary jobs on a less than one-year contract. ***The Committee asks the Government to provide in its next report data which will allow assessing the effectiveness of the various measures implemented to promote the long-term integration of young persons in the labour market. The Government might also wish to hold appropriate consultations with the social partners and representatives of the stakeholders concerned in overcoming the difficulties encountered to obtain lasting employment for young people.*** In this regard, the Committee recalls its concluding remarks in the 2010 General Survey concerning employment instruments, where it was noted that there is a growing problem of unemployment among educated workers, particularly young university graduates, who are unable to find secure employment commensurate with their skill level. Not only are their skills underutilized, but this pattern of casual jobs can prove detrimental to their lifetime career progression. ***The Committee encourages the Government to develop job creation and career guidance policies targeted at educated young unemployed persons, as well as other categories of young people having difficulties in finding employment.***

*Employment promotion for women.* The Committee notes that the female participation rate increased to 50.5 per cent in May 2010 (6 percentage points higher than in 2009). The Government also reports on various measures to ease childcare burden on working women and to support reconciliation between work and family life. It also mentions a draft of a five-year plan to prepare for a low fertility and aging society, to be adopted after consultations and a public hearing. The FKTU indicates that, in its effort to promote decentralization, the Government is delegating its responsibilities relating to equal employment to local governments. The KCTU claims that regular female employment continues to fall. ***The Committee asks the Government to provide in its next report data which will allow it to assess the effectiveness of the various measures implemented to promote productive employment opportunities for women.***

*Employment promotion of older workers.* The Government indicates that it supported 274,849 people by providing subsidies for employment promotion for older workers and 1,497 people in 224 workplaces by paying allowances to compensate for wage cuts under the wage peak system. The Committee notes that a total of 3,031 people were employed after completing short-term adaptation for middle and old-aged people and that the employment rate for people aged 55–63 increased from 57.8 per cent in 2003 to 60.4 in 2009. The FKTU indicates that in 2003, people retired from their major career at 54 and then spend some 13–14 years in their second career with poor working conditions before complete retirement. The focus of the measures targeting those aged 55 or above is placed on implementing job retention and there are few job creation policies for older workers. The FKTU further notes that the recommendations included in the Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion were not accompanied by penal provisions and do not work effectively as measures for older workers. ***The Committee asks the Government to include data which will allow it to assess the effectiveness of the various measures implemented to promote productive employment opportunities for older workers.***

*Article 3. Participation of the social partners.* In reply to previous comments, the Government summarized in its report the agenda of the meetings held by the Regional Tripartite Consultative Body. The FKTU indicates that only government agencies participated in the process of setting up a national employment strategy without involving the representatives of the workers' organizations or the tripartite Economic and Social Development Commission. The KCTU asks for further measures to improve the quality of employment, creation of decent jobs in the public and social service sectors, building employment protection and new infrastructure for the public employment services. ***The Committee invites the Government to provide information in its next report on how consultations with the social partners have been used in the formulation and implementation of the employment policy. In this regard, the Committee asks the Government to focus on the points raised in this observation and the procedures which enable it to take fully into account the views and experiences of persons affected by employment policy measures.***

## Kyrgyzstan

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1992)***

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in June 2005. The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee's 2005 observation, which sets forth the following matters.

*Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* The Government enumerated the aims of the National Employment Policy, which was established in the context of the national poverty reduction strategy 2003–05, and was approved by Decree No. 126 on 14 March 2005. The objectives of the employment

policy aimed, among others, at assisting unemployed citizens in choosing an occupation and placement; improving vocational training and retraining of the unemployed; organizing temporary employment and voluntary work; preventing the rise of unemployment by eliminating or reducing the effect of the factors which lead to mass unemployment; and supporting entrepreneurship and self-employment. *The Committee asks the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies.* Indeed, the Committee considers that it is essential from the outset for employment objectives to be included “as a major goal” in the formulation of economic and social policy if these objectives are truly to be an integral part of the policies that are adopted. *The Committee requests the Government to provide detailed information on the results and progress achieved with the implementation of the measures envisaged by the National Employment Plan, including information on the employment situation of socially vulnerable groups such as women, young persons and older workers.*

*The Committee also requests the Government to include in its next report information on the following matters that were raised in its 2004 observation:*

- *training and retraining measures for workers affected by structural reforms (such as the declining of the Kumtor gold mine);*
- *the impact of the different programmes adopted by the Government concerning specific groups of workers, such as the “National programme ‘Zhashtyk’ on youth development until 2010” and the “State programme ‘New Generation’ for the protection of children’s rights”.*

*Article 3. Participation of the social partners in the formulation and application of policies.* The Government reported that a tripartite committee has been created to regulate issues of employment promotion, which held its first session on 17 May 1999. The basic tasks of the tripartite committee: were the preparation of the National Employment Policy up to 2010; the development of corresponding measures to determine future directions in reducing tensions in the labour market; and the development of proposals to introduce amendments in Kyrgyz legislation on employment promotion and other regulatory acts in application of employment policy. *The Committee asks the Government to provide specific information about the operation of the abovementioned tripartite committee, as well as the involvement of social partners in the formulation and implementation of the National Employment Plan. It also requests information regarding the measures taken or contemplated to involve in the consultations required by the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)**

The Committee notes with *regret* that the Government’s report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments, which read as follows:

The Committee notes the Government’s report received in June 2005, which is the second report received since the ratification of the Convention, for the period of 2004 through to the first quarter of 2005. The Government concedes that the situation of the labour market in Kyrgyzstan is exceptionally difficult. On 1 April 2005, there were on average 22 applicants for every job vacancy. Under these difficult conditions, persons with disabilities are particularly vulnerable. The basic objective of the state employment service is first and foremost to get them into employment. Two hundred and thirty five persons with disabilities applied to the employment services – of which 89 were placed in work – during the period covered by the report.

The Committee also notes the difficulties to implement the system of quotas in workplaces for persons with disabilities. The Committee hopes that the Government will continue its efforts in order to enable people with disabilities to participate in the open labour market. *The Committee asks the Government to regularly provide information on the manner in which difficulties have been overcome and the progress achieved by the National Employment Policy, in so far as it concerns vocational rehabilitation and employment of persons with disabilities (Article 2 of the Convention).*

*Access to the open labour market for persons with disabilities.* The Committee notes that a project on social support for persons with disabilities with visual and audio impairments was implemented in 2002, and that the results of the project were reviewed and evaluated in the Tripartite Committee on employment promotion issues. The Government mentions, however, that the experiment was halted due to lack of funds. *The Government is requested to keep the Committee informed of any further measures taken with a view to promoting the employment of persons with disabilities on the free labour market (Article 3).*

*Effective equality of opportunities and treatment between workers with disabilities, whether men or women, and other workers.* The Committee takes note of the measures set out in the decree of the President on the national plan of action to increase gender equality 2002–06. *It asks the Government to provide further information on the impact of the measures aimed at effective equality of opportunity and treatment between workers with disabilities and other workers (Article 4).*

*Consultation of the representative organizations.* In reply to previous comments, the Government states that consultations and exchanges of views with workers’ and employers’ representative organizations are held on a continuing basis through regular meetings of the tripartite committee on regulation of the labour market, including persons with disabilities. *The Committee asks the Government to provide information on the activities of the tripartite committee and on the outcome of any consultations held on the application of the national policy for the rehabilitation of workers with disabilities during the period covered by the next report. The Committee also asks the Government to indicate if any other deaf organization was created by the Act on the Social Protection of Persons with Disabilities, besides the Society for Deaf and Blind referred to in the Government’s report, and to describe the manner in which these organizations are consulted on the implementation of that policy (Article 5).*

*Vocational rehabilitation and employment services in rural areas and remote communities.* *Please describe the measures taken to promote the establishment and development of vocational rehabilitation and employment services for persons with disabilities in rural areas and remote communities (Article 8).*

*Training of staff responsible for vocational rehabilitation and employment of persons with disabilities. Please indicate the measures taken or envisaged to ensure the availability of suitably qualified vocational rehabilitation staff, in accordance with this Article of the Convention and section 17 of the Act on the Social Protection of Persons with Disabilities concerning training of vocational rehabilitation staff (Article 9).*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Lithuania

### **Employment Policy Convention, 1964 (No. 122) (ratification: 2004)**

*Articles 1 and 2 of the Convention. Employment trends.* The Committee notes the Government's report received in September 2010 which includes detailed information in reply to its 2009 observation. The Government indicates that as a result of the global economic crisis in 2008, the country's economy and financial sector suffered from a slowdown in economic growth. Credit resources in Lithuania became inaccessible and the Lithuanian economy experienced a great overheat in 2004–08, resulting in a greater decline than other EU Member States. On 9 December 2009, the Programme of the fifteenth Government of the Republic of Lithuania was approved and noted that globalization, emigration of the labour force, in particular of high-skilled specialists, has become a threatening holdout for economic development; therefore the Government will put resolute efforts in restructuring the labour market and the related institutions to ensure successful economic development and growth for the benefit and welfare of the country's population. The Government reports that the employment rate was calculated at 64.3 per cent in 2008, a 0.6 percentage point decline when compared to 2007, and decreased to 60.1 per cent in 2009 and 57.8 per cent in 2010. The Government further reports that the unemployment rate reached 13.7 per cent in 2009, twice as high as the previous year, and the Committee notes the Eurostat unemployment figures calculated this rate at 15.6 per cent in May 2011. The Government indicates that labour market policy was restructured so as to involve as much unemployed persons as possible in active labour market policy measures. The essential objective in 2009 was to stabilize the situation of the labour market and create employment opportunities for dismissed workers. The Law on Employment Support, adopted in 2009, aimed at creating conditions favourable to increase employment possibilities for individuals through active labour market policy measures such as retraining, subsidized employment, support for creating jobs, support for territorial mobility of the unemployed, job rotation, public works and self-employment. In 2009, the territorial labour exchange offices of the country referred over 47,500 persons to active labour market policy measures. Following the enactment of revised provisions of the Law on Employment Support, the Lithuanian Labour Market Training Authority ceased being the institution implementing employment support policy as of October 2010, and was replaced by the Lithuanian Labour Exchange and its 10 territorial labour exchange offices. The Lithuanian Labour Exchange prepares reports on the assessment of the situation of the labour market in Lithuania and labour market forecasts. It also provides statistical information to the Department of Statistics of the Government following surveys carried out by the territorial labour exchange offices. ***The Committee invites the Government to provide information in its next report on the extent to which active labour market policies are coordinated so as to effectively translate into productive employment creation. It also invites the Government to provide in its next report information and data concerning the size and distribution of the labour force, the nature and extent of unemployment and underemployment and trends therein by region, as a basis for deciding on employment policy.***

*Regional development.* The Government reports that provisions of the Law on Employment Support, as of 1 August 2009, created preconditions for the implementation of the measures for supporting territorial mobility and promoting employment with regard to jobs available in remote locations. The Committee notes that unemployed persons who obtain employment in remote areas shall be paid compensation which covers some expenses, such as commuting and accommodation costs, as indicated in the legislation. Following redundancies at the Ignalina Nuclear Power Plant (INPP), the Government indicates that monitoring of the labour market in the INPP region is carried out on a continuous basis, through the organization of individual and group consultations with employers and jobseekers in the region, with the aim of further integration of the redundant INPP employees in the labour market. ***The Committee invites the Government to include in its next report information on specific measures undertaken to promote employment in remote areas of the country.***

*Small and medium-sized enterprises. Cooperatives.* The Government reports that amendments were introduced to the Law on Small and Medium-sized Business Development in May 2010 aimed at reducing the administrative burden on businesses seeking to obtain state support. The Government further reports that a key priority for developing business at the European and national level remains to support small and medium-sized businesses, not only by encouraging the establishment of new enterprises but also by creating favourable conditions for existing ones. The Committee notes the measures targeting small and medium-sized businesses include: the Entrepreneurship Foundation, a measure implemented in the third quarter of 2010 which provides training, loans and/or subsidies to persons starting their own business and enterprises developing their activities; the Open Credit Fund which will facilitate open credit line agreements with selected banks; and the provision of guarantees and subsidizing of interests and loans. ***The Committee invites the Government to supply further information in its next report on the impact of the law adopted in May 2010 on the promotion of small and medium-sized enterprises as well as on the measures adopted to support cooperatives on employment creation.***

*Corporate social responsibility.* The Government indicates that it aims to promote the principles of corporate social responsibility among businesses operating within the country. The aim is to balance competitiveness with a safe and ecologically clean environment, strong social cohesion, transparent and ethical business practices. The Promotion of corporate social responsibility project in Lithuania was implemented following measures adopted under the 2007–13 Action Programme on developing human resources. Furthermore, on 12 January 2010, the Government approved the 2009–13 National Programme on Corporate Social Responsibility and its 2009–11 Plan of measures for its implementation. ***The Committee invites the Government to provide in its next report further information on the impact on employment generation of the abovementioned corporate social responsibility project and the 2009–13 National Programme on Corporate Social Responsibility.***

*Youth employment.* The Committee notes that, in 2009, the labour exchange offices registered 79,600 young unemployed persons under the age of 25 which represented twice the number of persons registered in 2008. The unemployment rate for young persons reached 29.3 per cent in 2009. In January 2010, the number of registered young unemployed persons amounted to 39,000, three times more than in January 2009. The Committee also notes the increase in long-term unemployment among the youth (young persons unemployed for over six months) with 24.7 per cent of all unemployed young persons (9,500 persons) as of 1 January 2010, when the figures for January 2009 were as low as 3 per cent. The Government indicates that mismatches between the needs of the labour market and the available pool of skills or lack thereof are the essential causes of unemployment among young persons. ***The Committee invites the Government to continue providing information on the impact of the measures aimed at finding lasting employment for young workers.***

*Other vulnerable categories of workers.* The Government reports that, in 2008, close to 50,000 unemployed persons over the age of 50 were registered with the labour exchange offices, and that this number increased to 71,900 in 2009. The Committee notes that 19,500 older workers were placed into jobs in 2009 and 10,600 older persons were referred to active employment policy measures, such as public works, subsidized employment and vocational training. ***The Committee invites the Government to continue providing in its next report information on the impact of the measures aimed at finding lasting employment for vulnerable categories of workers, such as the long-term unemployed and older workers.***

*Article 3. Consultation and cooperation with the social partners.* The Government indicates that the social partners implementing the employment policy measures represent their interests by participating in the activities of the Republic of Lithuania Tripartite Council at the Ministry of Social Security and Labour. Cooperation arrangements are also signed between the institutions implementing employment support policy and separate sectors of the economy, associations, organizations and research institutions representing interests of various groups of residents. Moreover, the Lithuanian Labour Exchange cooperates on the basis of agreements with eleven employers' organizations with the largest memberships in the country. In organizing vocational training of unemployed persons, the Labour Exchange coordinates the list of available training and retraining programmes with employers' organizations. The Committee also notes with ***interest*** that tripartite commissions were established at the Lithuanian Labour Exchange and territorial labour exchange offices and consist of an equal number of employer, worker and state/municipal representatives. The Government states that the objective of the tripartite commissions is to submit proposals on defining the priority guidelines for the Lithuanian Labour Exchange on the expediency of drafting employment support programmes, on the implementation of employment support measures and provision of labour market services, as well as on the issues of increasing the efficiency of activities. Furthermore, the Government approved on 24 March 2010 the proposals concerning the reduction of unemployment submitted by the Work Group which include: the creation of privileges to employers hiring young persons for their first job; the simplification of the procedure for organising public works by municipalities; and the compensation of partial costs for the unemployed getting business licences through the mediation of the Labour Exchange. ***The Committee invites the Government to continue providing information on consultation and cooperation with employers' and workers' organizations in the formulation and implementation of employment policies in the meaning of the Convention.***

## Madagascar

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Articles 1 and 2 of the Convention. Coordinating employment policy and poverty reduction.* The Committee notes the information sent by the Government in a report received in October 2010. The Government indicates that, since the regime change in 2009, the Action Plan for Madagascar 2007–11 (MAP), which placed employment promotion and poverty reduction at the heart of economic priorities, was abrogated and that statistical data on labour market trends are not available. In view of the national crisis and the reactions imposed against the new regime by the African Union, the European Union and the South African Development Community (SADEC), the economic and trade advantages granted by the United States under the African Growth and Opportunity Act (AGOA) have been suspended. Furthermore, the closure of several enterprises in the export processing zones and the problems encountered by enterprises have likewise had adverse effects on employment. ***In such a context the Committee is concerned about the effective pursuit of "an active policy designed to promote full, productive and freely chosen employment", "as a major goal" "within the framework of coordinated economic and social policy" (Articles 1 and 2 of the Convention). It hopes that the***

*Government will be in a position to send information in its next report that will allow an assessment of how the main axes of the economic policy, in areas such as monetary, budget, trade or regional development policies, contribute “within the framework of a coordinated economic and social policy” to the pursuit of the employment objectives laid down in the Convention. The Committee trusts that the Government will provide information on the measures taken to create lasting employment, to reduce underemployment (reported to affect some 25 per cent of the active population) and combat poverty, specifying the measures taken to promote employment among the most vulnerable categories (women, young people and rural workers).*

*Coordinating education and training policy with employment policy.* In reply to the previous observation, the Government states that the decree to create the Malagasy Employment Promotion Office (OMEP) was repealed in 2009 and that the employment programmes implemented with support from the UNDP have likewise been suspended since the onset of the crisis. The Government states that large enterprises that have vocational training centres have been alerted with a view to the provision of training opportunities to facilitate re-entry to the labour market for workers made redundant. *The Committee hopes to be able to examine information in the Government’s next report on the results of the action taken to ensure the coordination of education and vocational training policies with employment policies. It asks the Government to give an account of the results obtained in terms of access for young graduates to lasting employment.*

*Collection and use of employment data.* The Government again points out that the training organized by the ILO in 2008 on monitoring indicators was of benefit to employment managers. The statistical data allowing implementation of an employment policy are still not reliable because data collection has been disrupted by the national crisis. *The Committee hopes that the Government will be in a position to send the results of the household surveys conducted by the National Statistics Institute. It accordingly asks the Government in its next report to give an account of the progress made in obtaining reliable data so as to formulate and implement an employment policy within the meaning of the Convention.*

*Article 3. Participation of the social partners in the formulation and implementation of policies.* The Government states that at the last consultation, the social partners discussed the dissolution of the OMPE and the transfer of functions to the Malagasy Observatory of Employment and Ongoing and Entrepreneurial Training (OMEF). *The Committee again draws attention to the importance of giving full effect to Article 3 of the Convention, particularly in a context of massive and persistent underemployment. It hopes that the next report will contain detailed information on the consultations held with representatives of the social partners on the subjects covered by the Convention. Furthermore, it asks the Government to provide information on the consultations held with the most vulnerable categories of the population, particularly with the representatives of workers in rural areas and the informal economy, in order to obtain their cooperation in the formulation and implementation of employment policy programmes and measures.*

## Mauritania

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1971)**

*Employment promotion.* The Committee notes an observation from the General Confederation of Workers of Mauritania (CGTM) forwarded to the Government in September 2011. The CGTM deplors the introduction of a provision in the Labour Code leaving the management of employment offices to private organizations. The trade union recalls that the State has the obligation to define and promote employment policy in the country, which would be the best means of combating poverty and the current crisis and also of ensuring the best possible distribution of natural resources. The CGTM notes the systematic recourse to multinational companies, which exploit the principal mining, fishing and agricultural resources of the country without adopting genuine policies to promote employment. Furthermore, the multinational companies make use of expatriate staff to fill high-level positions. The CGTM considers that it is incorrect to say that there is a lack of skills among the national workforce. The CGTM also indicates that the major sectors which are the sources of employment, such as agriculture and stock breeding, are seriously dysfunctional. In this regard, the Committee refers to its direct request of 2010 concerning the application of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), where it noted that, in response to a crucial problem of unemployment, the Government established the National Youth Employment Promotion Agency (ANAPEJ) and had once again authorized labour inspectorates to open employment offices. The Committee refers to its 2010 General Survey concerning employment instruments, in which it emphasized that one of the fundamental steps contributing towards the achievement of full employment is to build or strive to build institutions that ensure an efficient public employment service and to regulate the operation of private employment agencies (paragraph 786). *The Committee requests the Government to provide a report indicating the measures taken to reinforce the institutions necessary for the achievement of full employment. It hopes that the report will contain precise information on the contribution of existing employment offices in the country towards ensuring the adequate placement of available workers in the labour market. It recalls that assistance is available from the ILO to promote the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.*

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* In its previous comments the Committee noted the “National Employment Strategy and Plan of Action 2008–12”. The Government indicated that the objectives pursued by the National Employment Strategy were geared to those laid down by the

Strategic Framework for Poverty Reduction 2006–10 (CSLP 2), namely reducing the unemployment rate to less than 25 per cent and increasing the rate of persons completing technical or vocational training to 55 per cent in 2010. According to the latest estimates, even though the poverty index in 2008 was 42 per cent, compared to 46.7 per cent in 2004, this figure is still far removed from the 25 per cent target fixed for 2015. The National Employment Strategy had enabled the main gaps in employment policy to be identified, namely a very high unemployment rate, a national economy dominated by the informal sector and a mismatch between training and the needs of the national labour market. Issues and structures related to employment would now be grouped together within the Ministry of Employment, Integration and Vocational Training (MEIFP). ***The Committee requests the Government to provide detailed information on the results achieved under the National Employment Strategy in terms of the creation of lasting employment and the reduction of underemployment and poverty. In particular, the Committee would be grateful if the Government would supply information on the steps taken to improve the vocational and technical training available for young persons and women, to promote small and micro-enterprises, and to create productive and lasting employment in conditions which are socially satisfactory for workers in the informal economy.***

***Employment promotion and labour-intensive services.*** In its National Employment Strategy, the Government indicated that its economic choices had concerned industrial and commercial projects and labour-intensive services. The labour-intensive approach (HIMO) aimed at integrating persons with few or no skills in working life had been tried out in numerous programmes, such as the stone masonry programme, the urban development programme and the integrated national programme to support small and micro-enterprises. ***The Committee requests the Government to provide information on the number of jobs created by the labour-intensive programmes and on their impact on the creation of productive employment.***

***Compilation and use of employment data.*** The Committee previously noted that the sixth component of the employment strategy underlined the need to establish a national information system on the employment market and a mechanism for technical and vocational training. This system would cover three main areas: (a) creation and operation of the network of producers and users of employment and training data, with the joint involvement of the Ministry of Employment, the National Office for Statistics, sectoral departments and the private sector; (b) monitoring of employment and the technical and vocational training mechanism; and (c) focusing on studies and analysis to improve the system and share information. ***The Committee requests the Government to provide information on the progress made in the compilation of employment data, stating the employment policy measures further adopted to the establishment of a new national employment information system.***

***Article 3. Participation of the social partners in policy formulation and implementation.*** The Committee previously noted that, in the context of the National Employment Strategy, two institutional mechanisms would be established, namely an Inter-Ministerial Committee on Employment and a Higher Council for Employment, Training and Labour (CSEFT), chaired by the Ministry of Employment, and that within these two bodies the social partners would be represented. ***The Committee requests the Government to supply detailed information on the operation of these two bodies, and also on the participation of the social partners in the implementation of the National Employment Strategy. It also requests the Government to indicate the steps taken or contemplated to involve representatives of persons living in rural areas and those operating in the informal economy in the consultations provided for by the Convention.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Mongolia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1976)**

***Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. Consultation with the social partners.*** The Committee notes the brief report provided by the Government in November 2010 and the information submitted by the Mongolian Employers Federation (MONEF) and the Confederation of Mongolian Trade Unions (CMTU). The Committee also notes that Mongolia is one of the countries assisted by the ILO in designing and implementing their crisis response policies through the framework provided by the Global Jobs Pact, which was adopted in June 2009. The Government reports that the population of Mongolia was 2,683,500 at the end of 2009; and in 2010, the unemployment rate was 3.7 per cent, the same level as in 2009. The Government indicates that the Employment Promotion Law was revised in 2010. This revision brought on the adherence of principles which include: (i) to improve the participation of public and private organizations and responsibilities of local and administrative and employment promotion organizations; (ii) to decentralize; (iii) to improve budget allocation for employment promotion and its effectiveness; (iv) to renew the coordination mechanism of employment promotion in meeting with local features and needs; (v) to identify the scope of employment promotion; and (vi) to conduct its activities to the targeted groups who needed support from the Government. Two new mega-mines will be operational in the south of the country in 2013 which will have a significant impact on the economy of Mongolia. The Committee notes the comments submitted by MONEF indicating that the Government did not allow the National Employment Council to discuss the legislative revisions and did not take into account comments from stakeholders. MONEF also raised some concerns that some tripartite bodies had not yet been established, such as subcommittees on employment in the mining, construction, and transport sectors, as well as at the *aimag* and district level. Furthermore, MONEF indicates that the centralization of the labour and social welfare

services has had a negative impact on the quality of the activities and employment services, such as covering all the vulnerable target group of jobseekers; therefore, MONEF indicates that there is a need for decentralization and raising private sector responsibilities for the implementation of employment services and projects. MONEF expressed the view that it is very important for the Government to support employers in times of economic crisis, increased international competitiveness and costs. ***The Committee asks the Government to provide information in its next report on the extent to which active labour market policies are coordinated so as to effectively translate into productive employment creation. In this regard, the Government is requested to include information on the results of the implementation of the Employment Promotion Law and on the potential employment impact of the increase in activity in the mining industry. The Committee also requests the Government to report on the activities of the National Employment Council and other tripartite bodies in respect of employment policies and the steps taken to ensure that the views of representatives of social partners (including representatives of the rural sector and the informal economy) are fully taken into account for the purposes of formulating and enlisting support for employment policies.***

***Vocational training and education.*** The Government reports that the Law on Vocational Education and Training was adopted in February 2010. The Government also indicates that section 20 of the Employment Promotion Law provides that the National Employment Council acts as a social partnership institution which will ensure equal participation of the public and private sectors for the implementation of state policy on vocational education and training. The Committee notes that the number of persons involved in vocational training reached 10,128 in 2010, compared to 9,753 in 2008, and 11,233 in 2009. ***The Committee asks the Government to provide information in its next report on the impact of policies and measures implemented to improve skill levels and coordinate education and training policies with employment opportunities.***

***Employment services.*** The Government indicates that 39,842 jobseekers registered in labour exchange services offices in 2010, compared to 31,925 in 2008 and 39,212 in 2009. The CMTU indicates that 21.5 billion tugriks were disbursed by the Employment Promotion Fund in 2009 on different activities in which 285,000 persons participated. ***The Committee asks the Government to continue to provide information on the activities of the employment services, and how they contribute towards implementing active labour market policies.***

***Youth employment.*** The Committee refers to its previous observation noting that a draft National Plan on Youth Employment for 2008–15 was formulated with a view to promoting school-to-work transition and to support the employment of young persons. ***The Committee once again asks the Government to provide information on the measures taken to implement the National Plan on Youth Employment, and to report on the effects of such measures on increasing the access of young people to sustainable employment.***

***Persons with disabilities.*** The Committee notes from the Global Jobs Pact Scan that special employment support measures and services are provided for persons with disabilities under the Employment Promotion Fund, in addition to the training and job placement support provided as a regular service for all persons in need. The main support measure is the cash support to promote the creation of micro-enterprises by persons with disabilities based on invitations to tender. Funding for this measure more than doubled in 2010, supporting over 300 micro-projects. ***The Committee asks the Government to continue to provide information on the results of measures taken to address the employment needs of persons with disabilities.***

***Herders.*** The Committee notes from the Global Jobs Pact Scan that measures were undertaken in 2009 for herders to redress cash deficits and loan defaults. The Committee also notes that the Herders' Employment Promotion Programme, approved in 2010, is resourced by the Employment Promotion Fund and delivered through business incubation centres in selected aimags. ***The Government is invited to continue to provide further information on the Herders' Employment Promotion Programme and other measures taken to address the particular needs of herders.***

***Workers in the informal economy.*** The Committee notes from the Global Jobs Pact Scan that the first action plan to implement the National Policy on Informal Employment covered the period 2006–08 and had limited results. A national review of the informal economy was organized by the Ministry of Social Welfare and Labour in June 2010, leading to the adoption of an action plan for the informal economy for the period of 2010–12. Several NGOs have established the United Confederation of the Informal Economy, providing some level of organization for informal workers. The new Confederation will, however, need capacity building to implement its mandate. ***The Committee once again asks the Government to include information in its next report on the implementation of measures to enable the progressive transfer of workers from the informal economy to the formal economy, and any measures to promote complementary relationships between the formal and informal economy and to provide greater access of undertakings in the informal sector to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies (Part V of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

***Migrant workers seeking employment abroad.*** The Committee notes from the Global Jobs Pact Scan that the Ministry of Social Welfare and Labour is working on a new draft Law on sending workers abroad and receiving foreign workers. ***The Committee invites the Government to include information in its next report on the implementation of the new legislation including relevant information on programmes implemented in the field of labour migration policy.***

## Morocco

### Employment Policy Convention, 1964 (No. 122) (ratification: 1979)

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the Government's report sent in September 2010 containing information on the points raised in the observation of 2009. The Government indicates that cooperation between the National Agency for the Promotion of Employment and Skills (ANAPEC) and the various administrations takes place via the steering and monitoring bodies set up at national and regional level. **The Committee invites the Government to provide a detailed evaluation of employment policies in its next report, as it would like to be able to examine the active and effective policies which help to achieve full employment. The Committee recalls that it already expressed the wish in its previous observation to be able to examine the monetary, budgetary and trade policies that are contributing "within the framework of a coordinated economic and social policy" to the attainment of the objectives of full employment set out in the Convention.**

*Labour market programmes.* The Committee notes the information sent by the Government on the resources mobilized in the context of three major programmes relating to training and job placement (Idmaj), employability (Taehil) and enterprise creation (Moukawalati). **The Committee hopes that the Government will be able to include an evaluation in its next report of the number of jobs created by these three programmes, establishing the ratio of jobs created during a given period in relation to the total active population, the total population of working age and the number of persons who are underemployed. The evaluation of the impact of these programmes should incorporate data disaggregated by sex.**

*Women's employment.* The Government provides information in its report on the many measures taken to advance the participation of women in the labour market. The Ministry of Employment and Vocational Training has embarked on a policy of gender mainstreaming. The Committee notes that in 2007–08 women accounted for 43 per cent of persons who completed vocational training. The Government indicates that women continue to predominate in sectors leading to traditionally female occupations and remain very much in the minority in sectors where new investment has occurred. However, in the sectors of information technology and communication, hotels and tourism, there is a growing trend towards parity. **The Committee invites the Government to continue to send information on the progress made in ensuring the participation of women in the labour market. It hopes that the next report will contain up-to-date information enabling an evaluation of the extent to which the adopted initiatives have ensured free choice of employment, giving workers the fullest possible opportunity to acquire and use the necessary qualifications, in accordance with Article 1(2)(c) of the Convention.**

*Employment promotion in small and medium-sized enterprises.* In its previous observation the Committee expressed the wish to examine information on the amount of financing allocated to the development of small and medium-sized enterprises, the number of beneficiary enterprises and the economic sectors concerned. **The Committee invites the Government to provide information in its next report on the measures adopted "in order to create an environment conducive to the growth and development of small and medium-sized enterprises" (see Paragraph 5 of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)).**

*Article 3. Participation of the social partners in policy formulation and implementation.* In its report the Government again describes the functions of the Higher National Council and regional and local councils for the promotion of employment. It also mentions that the social partners participate in the implementation of employment promotion measures through participation in the study committee preparing the ANAPEC development plans. **The Committee invites the Government to provide further information on the consultations held with the social partners on the matters covered by the Convention as well as on the role of the Higher National Council and regional and local councils for the promotion of employment. It also requests the Government to supply information on the consultations held with the most vulnerable categories of the population, and particularly with representatives of workers in rural areas and in the informal economy, with a view to securing their cooperation in formulating and implementing employment policy programmes and measures.**

## Myanmar

### Unemployment Convention, 1919 (No. 2) (ratification: 1921)

*Advisory committees on the operation of free public employment agencies.* The Committee notes the Government's report received in August 2011 indicating that measures are being taken to enact the Employment and Skill Development Law in order to increase employment opportunities, maintain industrial peace and enhance the skill development of workers. The Government further reports that the Labour Organization Bill has been finalized. A draft of the said Bill was amended after discussions with the ILO Consultation Team in July 2011. In August 2011, the amended Bill was approved by a legislative body. The Government also indicates that more local employment opportunities are created due to the implementation of many infrastructure projects and the financing of large industries by foreign direct investment. Bilateral employment agreements have been signed with the Republic of Korea and Thailand containing measures aimed at reducing unemployment. **The Committee reiterates its hope that the future legislation will enable the establishment of free and independent workers' organizations for the purposes of consultation on the operation of free public**

*employment agencies, as required by the Convention. It invites the Government to include in its next report information on the impact of the measures taken to combat unemployment in the country, such as the infrastructure projects implemented and the bilateral employment agreements with other neighbouring countries (Article 1 of the Convention).*

## Netherlands

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the information provided in the Government's report for the period ending in June 2010 and the comments submitted by the Confederation of Netherlands Industry and Employers (VNO-NCW), the Federation for small and medium-sized businesses (MKB-NL), and the Netherlands Trade Union Confederation (FNV). The Government indicates that the Dutch economy was hit relatively hard by the global financial crisis in September 2008, resulting in a historically large decline in economic growth of 4 per cent in 2009 and the effects of the negative economic developments can be observed in the labour market: unemployment rose from 3.9 per cent in 2008 to 4.9 per cent in 2009 and 5.4 per cent in 2010. The unemployment rate was measured at 5.1 per cent in June 2011 and 5.3 per cent in July 2011. Furthermore, Statistics Netherlands provides data indicating that the number of unemployed men in the age category 25–45 has more than doubled over the past three years: from 46,000 in the second quarter of 2008 to 99,000 in the second quarter of 2011. The Government indicates that before the crisis the main goal of employment policy was to increase the employment rate to solve problems caused by an ageing labour force and society, such as labour shortages and deficits in public finances. It further states that despite the economic crisis, the underlying structural challenges have not fundamentally changed; if anything, they have intensified. Increasing participation remains as important as before. The Committee notes the main crisis measures introduced to help employers deal with the impact of a sudden drop in demand: the Special scheme for the reduction in working hours (bijzondere WTV), and its successor, the Partial unemployment benefit (deeltijd WW). The Committee notes the comments submitted by the FNV indicating that the focus of the government policy is on higher participation. According to the FNV, both the Government and employers should pay more attention to the slowing growth in productivity. The FNV further states that, although the regulation concerning dismissal did not change, employment security declined due to the extension of the number of temporary contracts a company is allowed to offer an employee before the company is obliged to offer a permanent contract. This further increases the number of people with a flexible contract, the same group of workers that were already hit hard by the crisis. The FNV also points out the steadily declining share of labour in national income, which is seen as a clear indication that wage increases in the Netherlands have been moderate in comparison with economic growth. ***The Committee invites the Government to provide information in its next report on the impact of the measures taken on employment generation and in particular to indicate how such measures are decided and kept under periodical review within the framework of a coordinated economic and social policy. It also invites the Government to provide information on employment policy objectives with regard to productivity and the development of wages.***

*Older workers.* The Committee notes that an important goal of the Government is to increase the employment rate and to improve the labour market position of older workers. It notes that the labour participation rate of persons aged between 55 and 64 rose from 50.9 per cent in 2007 to 53 per cent in 2008 and 55.1 per cent in 2009. The Government indicates that it used a variety of policy instruments to reach the goal of increased participation of older workers aimed at both the supply and demand side of the labour market. These include financial incentives for employers and changes to the statutory retirement age. The FNV states that the position of older workers has not improved in recent years and highlights the need for a better analysis of the labour market for this particular group of workers. ***The Committee invites the Government to provide information on the effectiveness of the various measures implemented to increase employment opportunities for older workers.***

*Youth employment.* The Government indicates that a consequence of the crisis was to negatively impact, to a greater extent, employees with temporary or flexible contracts or self-employed persons. Groups that are relatively most often working in flexible jobs are young people and ethnic minorities. The Committee notes that the Government introduced the Investment in the Young Act with the aim of promoting sustainable participation by young people. The Act requires municipalities to provide an offer for work or learning to jobless young people up to the age of 27 who request social assistance. Furthermore, the Invalidity Insurance (Young Disabled Persons) Act (Wajong) was adopted in January 2010 in order to offer maximum support to young people who do not have prospects of work, helping them find and retain jobs. The FNV raises concern on the quality of the education, training or jobs available to all young workers targeted by these measures. ***The Committee asks the Government to report on the effectiveness of the various labour market measures implemented to meet the employment needs of young persons and to provide further information in light of the concerns raised by the FNV.***

*Ethnic minorities.* The Government indicates that the relative labour market position of ethnic minorities is quite dependent on the economic situation. Before the crisis their employment rate was growing faster and the decrease of their unemployment rate was more substantial than for other groups. In 2009, the unemployment rate for ethnic minorities rose for the first time since 2005. The Committee notes that the Government chose to improve the underlying factors that cause

the weaker position of ethnic minorities, such as lower educational attainment. They will benefit from general measures to prevent school leaving and improve the employability of workers. The Government also indicates that the labour market position of ethnic minorities will be improved by other measures taken, such as the Integration Delta Plan. ***The Committee invites the Government to continue to provide information on the employment situation of ethnic minorities as well as on measures taken to improve their participation in the labour market.***

*Article 3. Cooperation with social partners.* The Committee notes that, although the crisis had a negative impact on the employment rate, the Government remains committed to the target agreed with the social partners of achieving an employment rate of 80 per cent in 2016. The Government indicates that a social summit was held on 24 March 2009 on how to combat the effects of the crisis on the labour market. The main topics were to prevent long-term unemployment, promote a responsible development of labour costs and improve the sustainability of public finances and the Dutch pension system. The Government revealed its plan to increase the statutory retirement age from 65 to 67 years and gave the social partners the opportunity to come up with an alternative plan. The FNV indicated that it strongly opposed the Government's plans to raise the statutory age to 67 years. In this regard, employers and trade unions, after an initial failure to come to an agreement, have made a better and more robust plan to come to a sustainable retirement scheme. Part of this agreement is to improve the position of older workers in the labour market, as people will work until a later age in the decades to come. ***The Committee invites the Government to continue to report on consultations held with representatives of employers' and workers' organizations and representatives of other sectors of the economically active population involved in the formulation and implementation of active employment policies.***

### **Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)**

*Supervision of the operation of private employment agencies.* The Committee notes the information provided in the Government's report received in August 2010 in reply to the 2009 direct request. It also notes the new remarks provided by the Netherlands Trade Union Confederation (FNV) and the contribution of the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Federation for small and medium-sized businesses (MKB-NL). In reply to the issues raised by the FNV in 2009 indicating that a system of permits would be more efficient for combating fraud and illegality, the Government indicates that until 1998 such a system of permits existed in the Netherlands; however this system was not efficient. The Government reports that it was hardly possible to maintain the system and to control all permit holders. It further indicates that it is difficult to confirm if the current system of self-regulation eliminates illegal temporary work agencies. The FNV maintains its concerns about the system of self-regulation indicating that it does not eliminate fraudulent and illegal temporary work agencies. It also acknowledges that the previous system of permits was not the most efficient and points out that with sufficient government resources, a better, more efficient and transparent system is possible. The FNV reiterates its previous statement concerning the estimated number of fraudulent private employment agencies in the country, that is, 5,000 to 6,000. The VNO-NCW and the MKB-NL also refer to these estimates, indicating that the figures are based on a 2008 study carried out for the Foundation for Compliance with Collective Agreements in the Temporary Employment Sector (SNCU). The Committee recalls the concerns expressed by the FNV indicating that the purpose of the self-regulatory system is that the labour inspectorate focuses its attention and inspections mainly on the non-registered temporary work agencies instead of inspecting the registered agencies. The FNV indicates that the Government transfers through the system of self-regulation the responsibility of supervision and control over certified agencies on to private parties. Furthermore, the FNV is of the view that, in practice, both registered and unregistered agencies are mainly, if at all, supervised and monitored by private and not public authorities. The Government states that temporary agencies registered in the Labour Standards Register are supervised or controlled by the labour inspectorate. The Dutch Association of Temporary Work Agencies (ABU) periodically produces facts and figures on the activities of private employment agencies. ***The Committee invites the Government to report on the application of Article 14 of the Convention to all temporary work agencies and to provide extracts from reports of the inspection services and information on the number of workers covered by the Convention (Part V of the report form). It also invites the Government to indicate the manner it ensures that the system of self-regulation of temporary work agencies is supervised by the labour inspectorate or other competent public authorities (Article 14(2)).***

*Article 6 of the Convention. Protection of personal data.* The FNV indicates that it is very critical about the fact that temporary work agencies have access to all the data files of the registered unemployed persons at the public employment service (UWV). ***The Committee invites the Government to provide information in its next report on the manner in which workers' personal data is protected.***

*Articles 11 and 12. Protections for workers and responsibilities of private employment agencies and user enterprises.* Replying to the FNV's previous comments regarding the payment of wages, the Government indicates that it has the responsibility to ensure that minimum wages are paid to all employees, not for the payment of correct wages. It further indicates that, with respect to the matters covered in *Articles 11 and 12*, the protection of the position of temporary workers is the same as regular employees. The Government also states that the user enterprise explicitly is responsible for the working conditions of the temporary agency workers. The FNV states that the protection of the position of temporary workers is not always the same as regular employees and provides an example indicating that most agency workers have no access to training. The FNV is also of the opinion that a joint liability for full wages should be shared by the agency and user enterprises together as agencies tend to file for bankruptcy if a wage claim is looming. Furthermore, the FNV indicates that Section 10 of the Placement of Personnel by Intermediaries Act (WAADI) prohibits a company confronted

with a strike of its workers from hiring workers from a temporary employment agency. However, the Act does not prohibit a company affected by a strike in a contracted company from making its own personnel perform the duties of the striking workers. The FNV is of the opinion that the Act should be revised. The Committee wishes to recall that given the particularities of working arrangements in which employees work for a user enterprise that assigns and supervises the execution of the work and the uncertainty as to responsibility, it is necessary for member States to address these particularities through measures that ensure that in each case effective responsibility is determined (see paragraph 313 of the 2010 General Survey concerning employment instruments). ***The Committee invites the Government to provide information with regard to the concerns raised by the FNV and to supply information on the measures taken to ensure protection for workers in the areas described in Article 11 and how it has determined the allocation of the responsibilities between the temporary work agencies and the user enterprises as laid down in Article 12.***

***Article 13. Cooperation between the public authorities and private employment agencies.*** The Government indicates that temporary employment agencies play no additional role in the formulation of labour policy of public employment services. Private agencies are positioned at the central floor of the work plazas because they are considered as a useful party in helping people with difficulties in the labour market. At the regional level, public and private employment services are working together. The Government reports on an agreement between the UWV and the ABU concerning the placement of young unemployed persons. The FNV raises concern that an unemployed person asking for an unemployment benefit is obliged to accept a new job not only through the UWV but also through the temporary work agency. If the unemployed person does not accept a suitable temporary job, he or she may lose the benefit. ***The Committee invites the Government to report on the manner in which efficient cooperation between the public employment service and private employment agencies is promoted and reviewed periodically. Please also provide information on the measures taken to ensure that the competent authority receives relevant information on the activities of the private employment agencies.***

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Nigeria

### **Employment Service Convention, 1948 (No. 88) (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:

*Contribution of the employment service to employment promotion.* In its 2004 observation, the Committee requested the Government to report in detail on the application of the Convention. In June 2006, the Government reported that a total of 6,640 applicants were registered in the Employment Exchange and Professional and Executive Registries in 2005. Of these, 1,516 applicants were placed in employment, while a total number of 1,989 vacancies were notified. In reply to a request by the Office for supplementary information, the Government provided, in August 2006, figures on the impact of the National Economic Empowerment and Development Strategy (NEEDS) concerning the training of youth under the Vocational Skills Development Programme between 2002 and 2005. The Committee notes that the NEEDS covers small-scale enterprise programmes, rural employment promotion programmes, assistance for self-employment, special public work programmes and women's cooperatives. The Committee notes again, as pointed out by the NEEDS, that since manufacturing is stagnant there are few jobs for the growing urban population, and urban unemployment was estimated at 10.8 per cent in 2004. NEEDS policies are expected to create about 7 million new jobs by 2007, by making it easier for private enterprises to thrive, by training people in skills relevant for the world of work and by promoting integrated rural development in collaboration with the States. The Committee hopes that the Employment Exchange and Professional Executive Registries will effectively perform their essential task within the meaning of the Convention, that is, of ensuring, in accordance with *Article 1(1) of the Convention*, the best possible organization of the employment market for the achievement and maintenance of full employment and for the development and use of productive resources. ***The Committee therefore requests the Government to report on the measures taken, in cooperation with the social partners, so that the public employment service is run efficiently and free of charge, and that it comprises a network of offices sufficient in number to meet the specific needs of jobseekers and employers countrywide. It also asks the Government to describe in its next report the activities of the employment service and the effects noted or expected on employment as a result of implementing its poverty reduction strategy.***

***The Committee further requests the Government to include in its next report statistical information published in annual or periodical reports on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices (Part IV of the report form). Please also provide information on the following matters:***

- *consultations held with representatives of employers and workers on the organization and operation of the employment service and the development of employment policy (Articles 4 and 5);*
- *the manner in which the employment service is organized and the activities which it performs in order to carry out effectively the functions listed in Article 6;*
- *the activities of the public employment service concerning the various occupations and industries, as well as particular categories of jobseekers that are in socially vulnerable positions, in particular workers with disabilities (Article 7);*
- *measures proposed by the employment service to assist youth in finding suitable employment (Article 8);*
- *measures proposed by the employment service, with the cooperation of the social partners, to encourage the full use of employment service facilities (Article 10);*
- *measures taken or envisaged by the employment service to pursue cooperation between the public employment service and private employment agencies (Article 11).*

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Pakistan

### **Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)**

The Committee notes the short statement submitted by the Government in June 2011 indicating that it is complying with the provisions of the Convention through the application of the Fee-Charging Employment Agencies (Regulation) Act, 1976. The Government further reports that the Act regulates employment agencies and licensing, and provides sanctions which may lead to imprisonment of up to one year. In its previous observations, the Committee recalled that in 1977 it noted the enactment of the Fee-Charging Employment Agencies (Regulation) Act, 1976, which provided for the licensing of fee-charging employment agencies and empowered public authorities to prohibit the establishment of fee-charging employment agencies in any area where the public employment service was operating. According to section 1(3), the Act would enter into force when the federal Government made an official notification in the *Official Gazette*. The Committee recalls the comments made by the All Pakistan Federation of Trade Unions (APFTU) in June 2005. The APFTU stated that agencies are allowed to charge fees for recruitment abroad and that some of them were involved in human trafficking. The Committee also noted the Pakistan Workers Federation's (PWF) observations, forwarded to the Government in August 2010, indicating that recruiting agencies have been exploiting prospective migrant workers. The PWF urged the Government to ensure that the Fee-Charging Employment Agencies (Regulation) Act, 1976, enters into force in order to protect prospective migrant workers against exploitation and to set up free public employment exchange facilities for jobseekers. **The Committee requests a copy of the Official Gazette indicating the enactment of the Fee-Charging Employment Agencies (Regulation) Act, 1976. The Committee also requests the Government to reply in detail to the following points raised in the previous observations.**

*Progressive abolition of fee-charging employment agencies conducted with a view to profit. Part II of the Convention.* In its 2006 observation, the Committee noted that in relation to the abolition of fee-charging employment agencies, as required by Part II of the Convention, the Government reiterated that draft rules have been framed to regulate the operation of fee-charging employment agencies. The Government also confirmed that the licences for overseas employment promoters were granted for a period of one, two or three years. In relation to *Article 9* of the Convention, the Government indicated that, due to the economic conditions of Pakistan, levies have been established for migrant workers. Therefore, the Government was not in a position to adopt a policy for abolishing fee-charging employment services for migrant workers. It also added that punitive action was taken against those overseas employment promoters that were involved in violations of the Emigration Ordinance, 1979, and the Emigration Rules, 1979. **The Committee refers to its previous comments, noting again the lack of progress in achieving the abolition of fee-charging employment agencies. The Committee asks the Government to report on the following issues:**

- **the measures taken to abolish fee-charging employment agencies;**
- **the numbers of public employment offices and the geographical areas they serve (Article 3(1) and (2));**
- **the consultations of employers' and workers' organizations on the supervision of all fee-charging employment agencies (Article 4(1)(a), (2) and (3));**
- **with regard to overseas employment promoters, the measures taken to ensure that these agents may only benefit from a yearly licence renewable at the discretion of the competent authority (Article 5(2)(b)) and charge fees and expenses on a scale submitted to, and approved by, the competent authority (Article 5(2)(c));**
- **with regard to placing and recruiting workers abroad, the conditions established by the laws and regulations in force for the operation of fee-charging employment agencies (Article 5(2)(d)).**

*Revision of Convention No. 96.* The Committee refers to its 2010 General Survey concerning employment instruments in which it recalled that public employment services and private agencies are both actors in the labour market. They should therefore mutually benefit from cooperation as their common aim is to ensure a well-functioning labour market and the achievement of full employment (paragraph 728). In Chapter III of the General Survey, the Committee noted that if private employment agencies operate in a particular labour market, this operation has to be regulated. Therefore, governmental action is required, either directly through a system of legislation, licensing or certification or, indirectly, by authorizing an existing national practice or one that is to be established (paragraph 237 et seq.). In its previous observations on Convention No. 96, the Committee has already highlighted the role that the Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188), play in the licensing and supervision of placement services for migrant workers and the role that Convention No. 181 attributes to private employment agencies for the functioning of the labour market (see paragraph 730 of the 2010 General Survey). **Taking into account that the present situation is not in conformity with the provisions of Part II of Convention No. 96, the Committee hopes that the Government and the social partners will contemplate adhering to the obligations of the Private Employment Agencies Convention, 1997 (No. 181), the ratification of which involves the immediate denunciation of Convention No. 96. It invites the Government to report on steps taken, in consultation with the social partners, to ratify Convention No. 181.**

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1994)**

*Promotion of employment opportunities for persons with disabilities.* The Committee notes the report submitted by the Government in June 2011 including a copy of the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981. The Government states that it is complying with the provisions of the Convention through the application of the abovementioned Ordinance. It also indicates that organizations are required to employ persons with disabilities according to fixed quotas which are notified by the federal and provincial governments. The Government further reports that Special Education Departments are functioning in all four provinces to educate children with disabilities and to rehabilitate them through vocational training. The Committee recalls the remarks made by the Pakistan Workers Federation (PWF) indicating that the vocational education and training facilities provided by the State to the rehabilitation of workers with disabilities are insufficient. PWF also suggested that the Government should increase the quotas for the employment of persons with disabilities in the public and private sectors so that they can be rehabilitated and obtain gainful employment after receiving vocational education and training. *The Committee refers to its previous comments and asks the Government to provide information on measures taken in the context of its policy on vocational rehabilitation and employment of persons with disabilities, both at federal and provincial levels (Articles 3 and 7 of the Convention). The Committee also asks the Government to include relevant information supported by statistics disaggregated by sex on the implementation of the Convention, as well as on the activities of the National Council for the Rehabilitation of Disabled Persons (NCRDP) (Part V of the report form).*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Panama**

### **Employment Service Convention, 1948 (No. 88) (ratification: 1970)**

*Reorganization of the employment office network.* The Committee notes the detailed information on activities to modernize the employment service which were undertaken in 2006–09. In a report received in October 2010, the Government refers to the information and documentation sent with regard to the application of the Employment Policy Convention, 1964 (No. 122). In relation to the observation of 2004 concerning Convention No. 88, the Government indicates that the model put forward in August 2006 included the proposal to decentralize the employment offices. The Government reports that, in accordance with *Article 3 of the Convention*, in August 2008 an evaluation was made of the strengths, weaknesses and opportunities relating to the proposal of the public employment service. Difficulties were identified with regard to the area of employment in the regional offices, which should be given greater priority. Plans were also made to strengthen the Directorate-General of Employment in order to have an optimum public employment service that promotes, organizes and facilitates public access to a modern service. *The Committee invites the Government to continue to supply information in its next report on Convention No. 88 on the progress made in ensuring that full effect is given to Article 3 of the Convention. The Committee requests the Government to include up-to-date statistical information on the number of public employment offices established, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment by such offices at national and local levels (Part IV of the report form).*

*Participation of the social partners.* In its observation of 2004, the Committee noted the collaboration between the Ministry of Labour (MITRADEL) and the social partners in relation to certain matters covered by the Convention. The report received in October 2010 does not contain any information on the participation of the social partners to ensure the effective functioning of a free public employment service. The Committee refers to the 2010 General Survey concerning employment instruments, in which it highlighted the importance of the public services' direct and constant interaction with employers and jobseekers (General Survey, paragraph 208). *The Committee requests the Government to provide information on the manner in which the social partners have been involved in the activities of the public employment service. The Committee recalls that, under the provisions of Articles 4 and 5 of the Convention, advisory committees must be set up to ensure the full cooperation of employers' and workers' representatives in the organization and operation of the employment service.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

The Committee notes the detailed information and full documentation provided by the Government in October 2010 in reply to the comments made in 2009.

*Articles 1 and 2 of the Convention. Coordination of employment policy with social and economic policy objectives.* The Committee notes the National Strategic Plan for the period 2010–14, approved in December 2009, which contains a programme for economic growth and social development, accompanied by a financial programming and public investment plan. The National Strategic Plan focuses on four high-priority sectors: high added-value logistical services, tourism, high-margin agriculture and non-traditional financial services. Significant investment is envisaged in public infrastructure projects, such as the construction of the Metro in the city of Panama and the launching of private electricity generation projects. Up to May 2010, the economy had grown by 5.5 per cent under the stimulus of an increase in

investment in public infrastructure and the dynamism of sectors such as construction, trade and transport, storage and telecommunications. ***The Committee invites the Government to include detailed information in its next report on the impact that the National Strategic Plan 2010–14 is having on the achievement of the objectives of the Convention.***

***Labour market trends.*** According to the data published by the ILO in *Panorama Laboral 2010*, the participation rate as of October 2010 was 63.5 per cent, the occupation rate was 59.4 per cent and the unemployment rate was 6.5 per cent. The Committee observes that women's unemployment fell to 8.5 per cent, while men's unemployment rose slightly to 5.3 per cent. The sectors in which there was net job creation in 2009 include, in particular, construction under the effect of hotel and tourism projects, and various public infrastructure works. These projects helped to mitigate the effects of the financial crisis on employment. The Government envisaged the creation of 500,000 new jobs by 2010 and the creation of 500,000 additional jobs, with a view to achieving full employment by the end of 2020. ***The Committee invites the Government to continue providing statistical information in its next report on the situation, level and trends of employment, unemployment and underemployment.***

***Panama Canal extension and employment creation.*** The Government considers that the Canal Extension Project will generate as many technical and artisanal jobs as professional posts connected with the planning, coordination and implementation of the various phases of the work. It is envisaged that the extension work will lead to the indirect creation of jobs in areas such as logistics, messaging, purchasing and supplies, financial services, customs procedures, security, housing, transport and food. The National Vocational Training and Human Development Skills Institute (INADEH) has launched training programmes in such areas as information and communication technologies, enterprise management, English, gastronomy, hotels and tourism. The Committee notes that, as of March 2010, a total of 6,274 jobs had been created derived from the Canal Extension Project. The Government envisages a greater impact on employment generation in the medium and long term as a result of the economic growth induced by the additional income generated by the extended canal and the economic activities generated by the increase in cargo and vessels transiting the canal. ***The Committee invites the Government to continue providing information on the results that are being achieved in terms of direct and indirect employment creation through the Canal Extension Project and other infrastructure investments.***

***International trade and its labour market impact.*** With regard to the impact of the free trade treaties in terms of the improvement of the labour market, the Government indicates that the conclusion of free trade treaties has a positive impact on legal regulations and international cooperation in terms of the exchange of information and support for human resources development. ***The Committee invites the Government to provide more specific information in its next report on the impact of trade policy on the demand for employment.***

***Employment promotion and vulnerable categories of workers.*** The Government indicates that 14 per cent of the population is in a situation of extreme poverty and that the authorities have formulated a Strategic Social Plan with a view to reducing poverty and social exclusion and creating opportunities for everyone, with particular emphasis on training and social inclusion. The Plan is focused on the provision of high-quality education and vocational training to improve the skills of workers in priority development sectors. ***The Committee invites the Government to provide information on the measures adopted to meet the needs of persons who are below the poverty line and to promote the development of income-generating opportunities.***

***Youth employment.*** The Government indicates in its report that youth unemployment is an alarming problem which has given rise to much attention in the public sector. The youth unemployment rate was 15.2 per cent in 2009. The Government adds that an analysis is being undertaken of the occupational situation and difficulties encountered by young persons in integrating the labour market. The programme "My First Job", launched in July 2009, envisages the provision of training to over 20,000 young persons between the ages of 18 and 29 who lack the skills to compete on the labour market, including in the most vulnerable areas of the country. By the end of 2010, some 2,213 young persons who had been unemployed and were without work experience had entered into the labour market. The General Directorate of Employment is implementing the Labour Assistance and Integration Programme (PAIL), which offers grants for periods of up to three months of vocational adaptation in enterprises. As of July 2009, agreements had been concluded with 104 enterprises at the national level to hire 860 persons. ***The Committee requests the Government to provide data in its next report on the impact of the measures adopted in improving youth employability and in supporting and promoting the entrepreneurship initiatives of young persons.***

***Coordination of training and employment policies.*** The Government indicates that 6 per cent of GDP is invested in education. It recognizes that educational results, over and above quantitative progress in access to education and average schooling (94 per cent of the population have completed primary education) are still not satisfactory, particularly with regard to quality and equality of opportunity. In this respect, the Committee notes a considerable increase in the number of students enrolled in the INADEH, which offered 991 courses during the period between January and May 2010. Total enrolment rose to 21,217 students, of whom 6,576 obtained certificates. Furthermore, collaboration with other institutions at the national level resulted in the creation of new careers and university programmes in critical areas for the implementation of the Canal Extension Project. The number of universities and training institutes increased. The Committee notes that the Strategic Social Plan proposes the establishment of coordination machinery between the INADEH and the Ministry of Labour (MITRADEL) and their institutional strengthening with a view to the development of a system for the identification of demand for vocational training and employment services. ***The Committee requests the***

**Government to include information in its next report on the manner in which INADEH and MITRADEL coordinate so as to ensure that education and training policies are in coherence with employment policy.**

*Participation of the social partners.* The Committee notes that the Government is continuing to examine the possibility of reactivating the Tripartite Decent Work Commission. The Committee recalls the essential role played by social dialogue in employment policy and in the promotion of decent work. **The Committee requests the Government to include detailed information in its next report on the progress achieved in the reactivation of the Tripartite Decent Work Commission and reiterates its interest in examining concrete information on the manner in which the social partners participate in the process of designing, formulating, implementing and reviewing employment policies, as required by Article 3 of the Convention.**

## Peru

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

With reference to its observation of 2009, the Committee notes the information supplied by the Government in the report received in September 2010. The Committee also notes the joint comments from the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT), the Confederation of Workers of Peru (CTP) and the Autonomous Confederation of Workers of Peru (CATP) dated 27 August 2010, from the Lima Chamber of Commerce (CCL) dated 28 August 2010, and from the CGTP dated 31 August 2010.

*Articles 1 and 2 of the Convention. Formulation of an active employment policy.* The Government indicates that, in July 2009, by means of Ministerial Decision No. 160-2009-TR1, the “Guidelines on social and labour policy 2009–11” were approved. The Decision contains the foundations for the formulation and implementation of the “Sectoral plan of action for the promotion of youth employment 2009-II-2012-I”, the formulation of national employment policies, the setting up of the Directorate of Labour Migration and the National Employment Service, and also the establishment of the *Revalora Peru* programme, the restructuring of the “PROJOVEN” programme and the reinforcement of the *Construyendo Peru* programme. The trade unions again express their concern at the lack of a national employment plan, without which it is difficult to apply the guidelines adopted in July 2009 and achieve their objectives. Moreover, the trade unions consider that the policies formulated to promote employment do not contribute to an overall, integrated decent work strategy and tend to make conditions of work more precarious. The Committee notes the information provided by the Government in its report, reflecting a recovery in economic activity in the first quarter of 2010, which had a positive impact on labour indicators in comparison with those for the same period in 2009. According to data published by the ILO in the Labour Overview, *Panorama Laboral 2010*, the unemployment rate stood at 8.1 per cent and the underemployment rate owing to insufficient hours of work stood at nearly 16 per cent. The Government indicates that the impact of the international financial crisis was seen in a sharp drop in foreign demand during 2009. In order to alleviate its impact, measures were adopted to sustain domestic demand and from the third quarter of 2009 onwards economic activity began to recover. The *Revalora Peru* programme promotes employment and improves the employability of the unemployed and of workers who risk becoming unemployed owing to the global crisis or as a result of changes occurring in the country’s economic sectors. The programme also seeks to increase business competitiveness by means of training services, consultancy, technical assistance and links between enterprises. According to Government data, the programme had provided training for 28,474 persons up to April 2010, of which 39 per cent were women and 61 per cent were men. The CGTP points out that investment in infrastructure, colleges and health centres and investment in social expenditure could generate many temporary jobs in areas where mass unemployment occurred as a result of the crisis. The Committee recalls that the Convention invites member States to take steps to implement active labour market measures and to keep those measures under review, within a clearly defined and established framework. The Convention accordingly asks governments and the social partners to periodically review their labour market measures to evaluate their effectiveness in achieving full employment (2010 General Survey concerning employment instruments, paragraphs 785 and 786). **The Committee requests the Government to indicate in its next report whether a national employment plan was adopted, and how it is ensured that the social partners participate in the review and evaluation of the measures adopted to achieve full employment. The Committee requests the Government to include information in the report on the situation, level and trends of employment, unemployment and underemployment in both urban and rural areas of the country.**

*Article 3. Participation of the social partners in the formulation and implementation of employment and vocational training policies.* The Government indicates that the process of drawing up national employment policies has been public and participatory, with contributions and comments from the employers, the workers and the general public, with the goal of promoting the creation of decent work, especially identifying the different features and needs of men and women from vulnerable groups of the population. The trade unions state that the Government was unwilling to subject employment policies to the process of social dialogue and that the Technical Employment Committee of the National Council for Labour and Employment Promotion (CNTPE) has not met since October 2007. **The Committee requests the Government to provide information in its next report on the manner in which it is ensured that the views of the representatives of the social partners (including representatives of workers in the rural sector and the informal**

*economy) are taken fully into account in formulating employment policies and obtaining the necessary support for their implementation.*

*Precarious employment and the informal economy.* The Committee observes that informal work continues to involve large sections of the population, with nearly seven in ten persons outside the agricultural sector engaging in some kind of informal employment. In the first half of 2010, a total of 4,426 enterprises and 17 formalization offices and information booths catering for micro- and small enterprises were established, providing assistance, advice and training in that sphere. The Ministry of Production, through the CRECEMYPE programme, provides users with brochures and publicity material to inform them of the procedures to follow to formalize their businesses and the profits made. Priority sectors are wood and carpentry, textiles, craftwork, tourism, catering, leather, footwear and agro-industry. The trade unions have repeatedly expressed concern, stating that measures to promote micro- and small enterprises may generate more precarious employment and have a negative impact on the rights of workers in micro-, small and medium-sized enterprises (2010 General Survey, paragraph 394). The trade unions repeat their concern in the observations received in August 2010 at the lack of consultation with regard to identifying and resolving the social problems that arise in micro-, small and medium-sized enterprises and in the informal economy. The CCL considers that the existing legislative machinery can facilitate the formalization of small and medium-sized enterprises. The Committee recalls that the Conference, in the conclusions relating to the promotion of sustainable enterprises (96th Session, June 2007), urged all enterprises, regardless of their size, to apply workplace practices based on full respect for fundamental principles and rights at work and international labour standards. ***The Committee requests the Government to include information in its next report which shows that while the creation of productive and sustainable employment in smaller enterprises is promoted, it is also ensured that the rights contained in ratified Conventions are applied to the workers in these enterprises.***

*Vulnerable categories of workers.* The Government indicates that women, young persons, persons with disabilities and, in general, all groups with low skill levels tend to have a precarious footing in the labour market. The goal of the *Construyendo Peru* programme is to generate temporary employment and the development of skills for unemployed persons in situations of poverty and extreme poverty in urban and rural areas. The beneficiaries of the programme include significant numbers of women, young persons at risk, single mothers, persons with disabilities and older people. According to the information in the Government's report, since July 2006 a total of 296,277 temporary jobs were created in 10,522 projects and 224,058 persons were trained to develop basic, technical and productive skills to improve their employability. ***The Committee requests the Government to include up-to-date information in its next report on the impact of the measures taken to ensure that the most vulnerable categories of workers obtain productive, high-quality employment.***

*Youth employment.* The Government indicates that youth unemployment stands at 18.8 per cent. The Committee notes that the aim is to provide labour and social security incentives for employers in labour-intensive sectors with regard to placing young persons in jobs or training schemes. In addition, the aim is to strengthen the Vocational Guidance and Occupational Information Service vis-à-vis young persons, taking account of their needs and capacities and the requirements of the labour market. ***The Committee requests the Government to provide up-to-date information in its next report on the impact of the measures taken to stimulate youth employment, vocational training and the business development of young entrepreneurs. Furthermore, the Committee requests the Government to include information on the incorporation of the youth employment promotion policy in tripartite consultation bodies.***

*Coordination of training policies with employment.* The Government indicates that the "National vocational training policy guidelines" (LNPPF) are being implemented to create more effective links between vocational training and the requirements of the labour market. Vocational training policies have been established in 18 regions, six of which have a regional vocational training plan. The Committee notes that the drawing up of various surveys on worker skills in different sectors served as the means for developing occupational profiles in the agro-industry and dock work and updating occupational profiles connected with tourism and the textile industry. Policies were also formulated to promote occupational, technical and vocational training, to increase access to high-quality technical training and various forms of retraining, and to enhance the development of entrepreneurial capacities in the workforce and the reinforcement of enterprises. The trade unions consider that the level of investment in education is abnormally low. ***The Committee requests the Government to provide information in its next report on the impact of regional policies and plans on promoting education and vocational training policies. It also requests the Government to include information on the coordination of education and vocational training policies with employment policies, especially how the supply of training is coordinated with the demand for knowledge and skills and the needs of the labour market.***

*Cooperatives.* The Government recalls that the Ministry of Production is formulating policies and programmes to promote the creation of cooperatives, the formalization thereof and an increase in their competitiveness. The Committee notes that the "National plan for cooperative development" will lead in the medium term to a greater contribution by cooperatives to productive employment in the country. The IV National Economic Census of 2008 reveals that urban cooperatives have created 8,120 jobs but does not contain any information on rural service cooperatives. The trade unions reiterate their concern at Act No. 27626 regulating temporary work cooperatives, which they consider contributes towards evasion in the application of the labour legislation. The Committee again emphasizes the importance of ensuring the application of labour laws so as to avoid the emergence of "pseudo-cooperatives", which are only intended to gain access

to the benefits related to the status of cooperatives, such as tax advantages or social security benefits, while avoiding the application of labour legislation (2010 General Survey, paragraph 465). ***The Committee requests the Government to indicate in its next report the measures taken to combat and eliminate the practices of “pseudo-cooperatives”. The Committee refers to the Promotion of Cooperatives Recommendation, 2002 (No. 193), and requests the Government to include information on the manner in which cooperatives contribute to the promotion of productive employment.***

## Philippines

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1976)**

*Articles 1 and 2 of the Convention. Implementation of an active employment policy.* The Committee notes the Government's report received in September 2010 including replies to the 2009 observation. The Government indicates that the Worktrip Entrepreneurial Program continues to benefit the workers in the informal sector to have sustainable business enterprises. The Committee also notes that evaluation studies will be undertaken as to the impact of programme assistance to the workers in the informal sector. The Government indicates that the Philippine Labor and Employment Plan (LEP) for the period 2011–16 was adopted and focused on inclusive growth through decent and productive work. The LEP provides the strategic directions for the Medium-Term Development Plan (2010–16) by communicating the Philippine vision for labour and employment and showing the intended direction and emphasis over the next five years. The Government is currently strengthening its commitment to addressing the employment issues by preparing a Philippine Labor and Employment Agenda 2011–16. ***The Committee invites the Government to provide in its next report detailed information regarding the impact of the Worktrip Entrepreneurial Program on assisting workers in the informal sector to enter into sustainable business enterprises. It also invites the Government to indicate how the major employment promotion strategies articulated in the Medium-Term Development Plan (2010–16) are executed and whether special difficulties are encountered in attaining the employment objectives of the strategies announced. Please also provide information on the implementation of the Labor and Employment Agenda 2011–16 objectives within a framework of a coordinated economic and social policy (Article 2(a)).***

*Employment trends.* The Committee notes that employment increased by around 6,879 million persons from 2001 to 2010; from 29,156 million to 36,035 million persons. Employment moved towards the services sector (74 per cent of total employment generated) and away from the industrial sector (10 per cent) and agriculture, forestry and fishing sectors (16.1 per cent). The LEP indicates that by 2010, 51.8 per cent of the employed during the year were in the services sector and the share of agriculture, forestry and fishing sector stood at 33.2 per cent, while the industrial sector was at 15 per cent. The Committee notes that with the economic recovery in 2010, the domestic economy posted a rebound, growing by 7.3 per cent, due to a firm recovery in manufacturing. Merchandise exports and service based industries bolstered by strong consumption and sustained inflow of remittances. The LEP also indicates that over the 2001–10 period, the growth trend in labour productivity has been generally increasing, except during the 2008–09 crisis years. Nevertheless, labour productivity, on average, grew annually by 1.6 per cent with the highest growths posted in 2007 (4.1 per cent) and 2010 (4.4 per cent). The Committee notes that a large proportion of the employed is made up of the self-employed and unpaid family workers, and the volatility in employment can be traced in large part to the effect of weather disturbances which had a negative impact on agricultural employment. The Committee further notes that employment growth is barely catching up with population growth. The LEP also suggests that unemployment is prevalent in areas where the agriculture sector continues to play a dominant role. Unemployment rates had little changes from 2005 to 2010, following a small decline between 2006 and 2007 (-0.7 percentage point), unemployment rates remained constant in 2008 (7.4 per cent), 2009 (7.5 per cent) and in 2010 (7.4 per cent). ***The Committee invites the Government to include in its next report an analysis of the labour market trends, including data on the active population, employment, unemployment and underemployment, disaggregated by sector, age, gender, in particular for vulnerable categories of workers mentioned in this observation.***

*Youth employment.* The Committee notes that unemployment is largely concentrated among young workers (aged 15–24 years) which in 2010 represented 51.1 per cent of the total number of persons unemployed. It further notes that the Government has implemented the Youth Education–Youth Employability (YE–YE) project to respond to the urgent need to create more opportunities for the youth to study and enhance their employability. The Government indicates that the YE–YE project was implemented through the Department of Labor and Employment and that three programmes are partners of the YE–YE project: the Jollibee Foods Corporation (JFC), the Youth Employment and Migration (YEM), and the Special Program for Employment of the Students (SPES). ***The Committee invites the Government to continue to report on measures taken to meet the needs of young persons and to indicate how beneficiaries of the different programmes implemented have found lasting employment.***

*Coordination of training policies with employment opportunities.* The Government indicates that the Technical Education and Skills Development Authority (TESDA) facilitates the employment of the Technical Vocational Education and Training (TVET) system graduates through the SEEK-FIND-TRAIN-VERIFY-EMPLOY proactive job-skills matching approach – this approach aims to provide for increased wages and/or self-employment for TVET graduates – by equipping the Filipinos with the skills needed in the labour force. The Government also indicates that, in 2009, graduates of TVET regular programs accounted for 1,903,793 out of the 1,982,435 enrollees. The Committee notes that some

programmes such as the Youth Profiling for Starring Career (YP4SC), the TESDA Blue-Desk Jobs Bridging (BJB), and the Private Education Student Financial Assistance (PESFA), link training to employment opportunities. The Government indicates that there is no available information, disaggregated by gender and age, concerning education, training and lifelong learning. ***The Committee invites the Government to provide information in its next report on how the human resources development policies are coordinated with employment policies and on how the Government is strengthening the coordination between vocational institutions. It also welcomes information on how the local authorities and social partners participate in the design and implementation of training policies and programmes, and relevant data on the impact of the training programmes implemented in terms of the integration of its beneficiaries into lasting employment.***

*Article 3. Participation of social partners in the formulation and application of policies.* The Committee notes that the Department of Labor and Employment (DOLE) collected inputs from many stakeholders through discussions at the Tripartite Industrial Peace Council (TIPC), and dialogue with worker's and employer's groups and other stakeholders to prepare the LEP. The Committee also notes with ***interest*** that the Task Force on Private Employment Agencies Convention, 1997 (No. 181), was created to benchmark areas for improving regulatory measures affecting private employment agencies. The Government indicates that one of the objectives of this Task Force is to identify the potential areas of partnership between private recruitment and placement agencies and public employment service and establish a mutual cooperation, assistance and collaboration between them in facilitating local employment opportunities. In its General Survey of 2010 concerning employment instruments, the Committee highlighted that the employment services are part of the necessary institutions for the achievement of full employment. In conjunction with Convention No. 122 and the Employment Service Convention, 1948 (No. 88), Convention No. 181 forms a necessary building block for employment growth (see General Survey, op. cit., paragraphs 785–790). ***The Committee invites the Government to include in its next report on Convention No. 122 information on the new measures taken to build institutions for the realization of full employment. It further invites the Government to include information regarding the involvement of representatives of the rural sector and the informal economy in the formulation and implementation of the employment policy.***

## Poland

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1966)***

*Implementation of an active labour employment policy.* The Committee notes the Government's report received in August 2010 containing detailed replies to the points raised in the 2009 observation. The Government reports greater efficiency of employment services, cooperation of labour market partners, and professional activation measures for vulnerable categories of workers. In terms of improving the institutional servicing of the labour market, the most important change relates to the separation of the Centre for Professional Activation from the structure of the *poviat* labour office into a specialized, decentralized unit mandated with the implementation of services and tools into the labour market. The Government further reports that it seeks to enhance the enforceability of decisions taken by employment councils and authorities. The Government indicates that, in a 2009 research study, it was demonstrated that the employment councils fulfil their entrusted advisory function but lack the ability to make any binding decisions. As a result of this study, a set of recommendations was formulated concerning the organization, activities and tasks of employment councils. The National Action Plan for Employment 2008 (NAPE) has benefited several categories of vulnerable workers notably: persons with disabilities, elderly workers and the long-term unemployed. According to Government data, 14,649 persons with disabilities and 49,388 elderly persons participated in the implementation of employment programmes. The Government further reports that, over the last several years, the long term unemployment rate was reduced by half. The Committee notes that the Government has drafted a National Action Plan for Employment for 2009–11 with the specific purpose to increase the professional activity of Polish workers during the economic slowdown. The Committee notes that the global financial crisis led to a slowdown in economic activity in Poland, with the rate of real GDP growth dropping to 1.6 per cent in 2009. In 2010, real GDP growth increased to 3.8 per cent. The general government deficit rose from 3.7 per cent of GDP in 2008 to 7.9 per cent in 2010. ***The Committee invites the Government to provide information in its next report on the results achieved and difficulties encountered in implementing the measures set out under the national actions plans to promote full employment and how these measures will translate into productive and lasting employment opportunities for the unemployed and other categories of vulnerable workers affected by the crisis.***

*Youth unemployment.* The Government states that the high and rapidly rising level of unemployment among young people is one of the most important problems in the Polish labour market. The Government reports that the unemployment rate among young people is slightly higher than the EU average. The Committee observes from ILO data that the youth unemployment rate increased from 17.3 per cent in 2008 to 23.7 per cent in 2010. The lack of work experience and appropriate high-level vocational education are an impediment for young jobseekers. In 2009, active labour market programmes covered 267,953 unemployed persons under the age of 25, which marked an increase of 7,336 (2.6 per cent) from 2008. For the period of January–April 2010, active forms of counteracting unemployment benefited 96,975 persons less than 25 years of age (i.e. 37.6 per cent of all persons who started participating in active programmes). The Committee notes that a programme of professional activation for persons less than 30 years of age has been initiated by the Minister of Labour and Social Policy in 2010. The activation measures focus, inter alia, on general and vocational trainings, apprenticeship programmes and granting of loans to finance the costs of trainings. ***The Committee invites the Government to continue providing detailed information in its next report on the efforts made to improve the situation***

*of young persons, and the results achieved and difficulties encountered in implementing the youth employment policy objectives.*

*Women.* The Government reports that, in recent years, the employment situation of women in the workforce has improved. The disparity between the unemployment rate of men and women has decreased over the years. In 2005, this disparity was 2.5 percentage points (16.6 per cent for men and 19.1 per cent for women). In 2009, the active labour market measures covered 697,370 unemployed persons, including 384,634 unemployed women. During the period of January–April 2010, 144,149 women participated in active employment programmes. The Government indicates that the traditional division of social roles persists in its society. It also underlines the importance of stimulating the country's low birth rate and its intention to address this issue. ***The Committee draws the Government's attention to the 2010 direct request formulated under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in which the Government was encouraged to pursue its efforts to combat the stereotypes regarding the roles of women and men in society and at work. The Committee therefore invites the Government to provide in its next report on Convention No. 122 information on the impact of measures adopted to ensure that each worker shall have the fullest possible opportunity to qualify for and use his or her skills, in accordance with Article 1(2)(c) of the Convention.***

## Portugal

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1981)**

*Implementation of an active employment policy. Articles 1, 2 and 3 of the Convention.* The Committee notes the report provided by the Government for the period ending May 2010, with contributions from the General Union of Workers (UGT), the Confederation of Trade and Services of Portugal (CCSP) and the Portuguese Confederation of Tourism (CTP). In its observation in 2009, the Committee invited the Government to provide information on the manner in which the difficulties encountered in attaining the objectives of the Convention had been overcome, and particularly on the effects on the labour market of the February 2009 reform of the Labour Code. The Government recalls that, with a view to overcoming the global financial and economic crisis, the "investment and employment" initiative (Act No. 10 of 10 March 2009) was launched to promote public investment projects in critical areas for the modernization of national infrastructure (school infrastructure, renewable energy, information technology), including measures to facilitate exports by small and medium-sized enterprises. In January 2010, the Government launched an "employment initiative" (Council of Ministers Decision No. 5/2010 of 29 January 2010) to maintain employment levels, facilitate the entry of young persons into the labour market and combat unemployment. Furthermore, to follow up the tripartite agreement concluded in June 2008, the Government had adopted new contractual arrangements, adjusted unemployment benefits and taken other measures to promote employment. Agreement was reached with the social partners on combating precarious employment and the segmentation of the labour market and improving the quality of employment. The reforms of the Labour Code were intended to strengthen the legal presumption of the existence of an employment contract and prevent dependent employment relationships being hidden by means of "false green receipts", which prejudiced workers and state revenue. The measures adopted included limiting the renewal of fixed-term contracts and promoting the use of a simple form to legally challenge dismissal. According to the data published by the Employment and Vocational Training Institute (IEFP), in 2010 a total of 181,115 persons benefited from employment and placement programmes, around 340,000 persons had received vocational training and 11,718 retraining (similarly, in 2009, almost 173,000 persons benefited from employment and placement programmes, 344,155 persons from vocational training and 17,103 from retraining). The Committee notes that in January 2011 a total of 557,244 unemployed persons were registered with the employment centres, showing a small decrease in the number of unemployed (of 0.5 per cent) in relation to January 2010. Nevertheless, despite this slight improvement, unemployment had increased for 27 consecutive months. The unemployment rate rose from 7.6 per cent in 2008 to 9.5 per cent in 2009, reaching 10.8 per cent in 2010. Taking into account changes in the statistical methodology, it is projected that the unemployment rate will be higher than 12 per cent in 2011. In view of the worsening nature of the debt crisis, in May 2011 the Government received the support of the European Financial Stability Mechanism and submitted a Memorandum of Economic and Financial Policies to the International Monetary Fund with the intention of restoring market confidence and increasing the potential of the national economy to generate socially balanced growth and employment. The Government plans to create new jobs, particularly for youth. Furthermore, the Government indicates its readiness, in consultation with the social partners, to reform the employment protection legislation to foster flexibility and improve equity, and to ensure that labour costs support job creation and competitiveness. Although it was decided to suspend public works and reduce the number of public employees, the Committee understands that the Government is also proposing to continue implementing active measures to support the labour market, improve the employability of young persons and other vulnerable categories of workers and ease labour market mismatches. While being aware of the burden of structural adjustment, the Committee emphasizes the importance of continuous and genuine tripartite consultations in confronting and mitigating the effects of the crisis (paragraph 788 of the 2010 General Survey concerning employment instruments). ***In this respect, the Committee invites the Government to provide information in its next report demonstrating that the opinions of the social partners have been taken into account in the adoption of measures intended to increase labour market flexibility. The Committee also requests the Government to provide information allowing an assessment of the manner in which the reduction of labour costs has permitted the creation of productive and quality jobs.***

*Measures to promote employment among vulnerable categories of workers.* In its report, the Government recalls the measures specifically intended for unemployed workers over 55 years of age and those adopted in respect of the “integration employment” and “integration employment+” contractual arrangements (envisaged in the tripartite agreement of June 2008). According to the IEFP analysis, in December 2010, the majority of the unemployed were women between 35 and 54 years of age. ***Taking into account the importance of the employability of young and disadvantaged categories of the population in the new adjustment measures proposed in May 2011, the Committee once again requests the Government to include updated information in its next report on the results achieved by the measures intended to promote employment opportunities for all vulnerable categories of workers.***

*Creation of jobs in small and medium-sized enterprises.* The CCSP emphasizes the positive contribution of the meetings held periodically of the Technical Support Group for the National Employment Plan in the context of the Economic and Social Council. The CCSP expresses its conviction that the future of employment policy will depend on the improvements that are made in the coordination of the various national policies, on giving greater importance to measures intended to promote the creation of self-employment and on improving the evaluation of the impact of the measures adopted on employment levels. The CCSP also emphasizes the need to review the measures adopted so as to allocate resources more effectively and obtain a positive return on the investments already made in employment. The CCSP also reports the difficulties encountered by most Portuguese enterprises, which are small or micro-enterprises, and are not able to organize their work so that one or more of their workers can benefit from training schemes. Small-enterprises and micro-enterprises should be provided with specific training taking into account the very small number of their workers. The Government recalls in its report the specific training measures adopted aimed at small enterprises. ***The Committee invites the Government to indicate in its next report the measures adopted which have been successful in facilitating the activities of micro- and small enterprises for the creation of productive employment.***

*Education and training policies.* In its previous comments, the Committee emphasized the concern of trade union organizations concerning the school drop-out rate among youngsters and the decline in the participation of adult workers aged between 25 and 65 years in further training. In its report, the Government refers to the establishment of a tripartite support commission for the initiative *Novas Oportunidades* and the National Qualification System (SNQ). Enterprises are now under the obligation to provide quantitative data on the continuous training of workers in their annual reports. In the Memorandum on Economic and Financial Policies submitted to the IMF in May 2011, the Government acknowledged the need to continue taking action to tackle low educational attainment and early school leaving and to improve the quality of secondary education and vocational education and training, with a view to increasing efficiency in the education sector, raising the quality of human capital and facilitating labour market matching. ***The Committee once again requests the Government to provide updated information in its next report on the measures adopted to coordinate education and training policies with employment policy, the necessity for which has become more acute in the current context of structural adjustment.***

## Sao Tome and Principe

### ***Employment Service Convention, 1948 (No. 88) (ratification: 1982)***

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Contribution of the employment service to employment promotion.* The Committee notes the Government’s report received in April 2007 in reply to its 2006 observation, which includes a brief statement that there is no formal cooperation between the public employment services and representatives of employers’ and workers’ organizations and that the public employment services have not yet been properly organized to act in accordance with the Convention. The Committee understands that human resources development and access to basic social services are one of the five principles set out in the National Strategy for Poverty Reduction (NSPR – *Estratégia Nacional de Redução de Pobreza*), which was validated in December 2002 and approved in January 2003. From the information contained in the update of the NSPR published in January 2005, urban and rural unemployment in the country is still a matter of serious concern. ***In this context, the Committee emphasizes the need to ensure the essential function of employment services, which is to achieve the best possible organization of the labour market, including its adaptation to meet the new needs of the economy and the active population (Articles 1 and 3 of the Convention). It requests the Government to provide the statistical information available in published annual or periodical reports concerning the number of public employment offices established in the district of Agua Grande and in rural areas, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment, disaggregated by gender and the location of the offices concerned (Part IV of the report form).***

*Cooperation of the social partners.* ***The Committee refers once again to the provisions of Articles 4 and 5 of the Convention and asks the Government to report on the manner in which the representatives of the social partners have been associated with the operation of the public employment service.*** The Committee recalls that for many years, it has been pointing out that the above provisions of the Convention require the establishment of advisory committees to secure the full cooperation of representatives of employers and workers in the organization and operation of the employment service.

The Committee recalls again that the Office is available to provide the Government with technical advice and assistance for the implementation of a public employment service within the meaning of the Convention.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received since 2007. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments, which read as follows:

The Committee notes the brief reply provided by the Government in March 2007 indicating that owing to a lack of human, material and financial resources, the Ministry of Labour still does not have a centre to deal with persons with disabilities. Therefore, there are currently no policies of any kind relating to the matters covered by the Convention. The Committee also notes that there is a single NGO which deals with issues relating to persons with disabilities. Owing to the lack of material and financial resources, this NGO has been able to do very little for persons with disabilities. ***The Committee hopes that the Government will demonstrate its commitment to the Convention and will be able to provide in its next report detailed information on the measures adopted or envisaged to promote employment opportunities in the open labour market for persons with disabilities within the meaning of the Convention.*** The Committee recalls that the Government may request technical advice and assistance from the Office for the implementation of a national policy to provide vocational rehabilitation and to promote employment opportunities for persons with disabilities as required by the Convention.

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **Serbia**

### **Employment Policy Convention, 1964 (No. 122) (ratification: 2000)**

*Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. Participation of the social partners.* The Committee notes the Government's detailed report received in November 2010, which includes a comprehensive analysis of the country's labour market and a description of the implemented measures. The Government reports that the employment policy and decentralization process continued in 2009 and activities were directed at local employment councils in order to strengthen their capacities in the area of elaboration and implementation of local employment measures. In this regard, training activities were held for members of local employment councils which focused on: the European employment policy; the national employment policy and the importance of employment policy decentralization; regional and local employment policy development; the creation of local employment action plans; and the financing of active employment policy measures. The Government further indicates that the Law on Employment and Unemployment Insurance, which took effect on 23 May 2009, provides an adequate, all-inclusive and flexible legal framework for elaboration and implementation of an active employment policy. The obligation to conclude individual employment plans, the system for tracking and assessing the active employment policy, as well as forecasting the future needs of employers have been introduced. Arrangement and positioning of the National Employment Service and other employment agencies have been specially regulated, while the promotional mechanisms have provided for greater decentralization in the implementation of active employment policy measures. As for the participation of employers' and workers' organizations, the Government indicates that representatives of the social partners have been included in the elaboration of strategic and operative components of the employment policy with regard to defining objectives, priorities and determining measures for employment promotion at the national, regional and local levels. ***The Committee invites the Government to provide in its next report information on the impact of the implementation of employment policy measures at the local level, as well as the involvement of the social partners in policy development and implementation and in the local employment councils. The Committee also requests the Government to provide specific details on the consultations held on the matters covered by the Convention with the representatives of employers' and workers' organizations, both at the national and local level, with regard to the implementation and review of an active employment policy.***

*Employment policy measures taken in response to the global economic crisis.* The Government reports that objectives concerning the employment rates defined in the National Employment Strategy 2005–10 were not attained due to the global economic crisis. The Government indicates that macroeconomic data indicate gradual recovery and stabilization, which has also been confirmed by the positive grade carried out by the IMF under the programme supported by a standby arrangement. Interventions implemented by the Government and the National Bank of Serbia to mitigate the negative consequences of the global economic crisis contributed to the attainment of key objectives of the 2009 economic policy. The Government reports that more balanced growth in Serbia will depend on global trends but primarily on structural reforms. The Committee notes that the employment rate declined from 50 per cent in October 2009 to 47.2 per cent in April 2010 and, during the same period, the employment rate of women declined from 42.7 to 40.3 per cent. Unemployment increased during the reporting period with 16.4 per cent in April 2009, 17.4 per cent in October 2009, and 20.1 per cent in April 2010. The unemployment rate of women reached 20.9 per cent in April 2010 compared to 19.4 per cent for men. The number of unemployed persons increased from 517,000 in October 2009 to 572,000 in April 2010. The Government indicates that the active employment policy measures implemented through the National Employment Service include: mediation for persons looking for employment; professional orientation and career-planning counselling; employment subsidies for employers; self-employment support; additional education and training; incitements for financial compensation beneficiaries; and public works. The total number of unemployed persons who participated in the different employment policy measures in 2009 was 135,784 persons, with 42 per cent of this total amount securing employment. ***While stressing the importance of mitigating job losses in the process towards a new economic growth***

**model, the Committee invites the Government to include in its next report information on the impact of interventions implemented by the National Employment Service. The Committee also invites the Government to provide an evaluation on progress made in terms of policy coherence and policy integration in order to achieve sustainable and productive employment growth.**

*Monitoring and evaluating employment policy measures.* The Government indicates that the Statistical Office carries labour force surveys in April and in October. The opportunity to carry out the labour surveys four times per year is being examined. The Government also indicates that the National Employment Service's information system has been improved so that changes in the labour market can be continuously reported on. Since the new information system has been introduced in all National Employment Service local offices and the central reporting database has been organized, data presentation will now be of a considerably better quality. The Committee refers to the 2010 General Survey concerning employment instruments and recalls that "[p]rocedures to review and assess the results of employment policy measures are of crucial importance" and such procedures "serve as a helpful means for governments and the social partners to assess the extent to which proposed measures have been implemented and the desired results have been achieved" (paragraph 66). **In this regard, the Committee requests the Government to include information in its next report on the methods of coordination envisaged between the economic and social ministries and the social partners, to review and assess the results of employment policy measures.**

*Youth employment.* The Government indicates that the promotion of employment of persons up to 30 years of age is a great challenge since the unemployment rate of young persons in Serbia is one of the highest in Europe. The Committee notes that the unemployment rate of persons in the 15–24 age group increased from 40.7 per cent in April 2009, to 42.5 per cent in October 2009, and 46.4 per cent in April 2010. The number of young persons deciding to continue with their education increased by 31.9 per cent in April 2010 when compared to October 2009 figures, due to the lack of employment opportunities caused by the period of economic crisis. The Committee notes that the ILO Project on Youth Employment Promotion in Serbia, realized with the technical support of the ILO and funding from the Government of Italy, has been assisting, since February 2008, an inter-ministerial working group of experts in the development of the youth employment policy and a National Action Plan on youth employment. The Committee also notes the joint project entitled Support National Efforts for the Promotion of Youth Employment and Management of Migration implemented by the IOM, ILO, UNDP and UNICEF. The project, which started in May 2009 and will last in 2012, has been financed by the Spanish Millennium Development Goals Achievement Fund. **The Committee invites the Government to provide information on the results of the measures taken to increase the access of young people to sustainable employment.**

*Roma population and other minorities.* The Government indicates that the promotion of employment of the Roma population was one of its employment policy priorities in 2009 and 2010. The Committee notes that a working group dealing with the promotion of employment of Roma people was appointed by the decision of the Ministry of Economy and Regional Development. The information system of the National Employment Service was also improved to better track the effects of the active measures intended for Roma people. On 31 December 2009, 13,416 persons of Roma nationality were registered within the National Employment Service, 6,571 of which were women. In 2010, special public invitations were announced for self-employment of Roma people as well as for employment with subsidies for employers. Activities were directed towards raising awareness and encouraging employers to employ Roma people and towards the improvement of the capacities of local authorities and employment councils with regard to the creation of active employment policy measures intended for Roma people. **The Committee invites the Government to continue to provide information on the employment situation of the Roma population and other minorities as well as measures taken to improve their participation in the labour market.**

## Sudan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1970)**

*Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction.* In reply to its 2009 observation, the Government provided in September 2010 a brief report in which it recalled that, in the context of the five-year plan for the period 2007–11, a comprehensive strategy was adopted under which small employment projects aimed at poverty reduction were funded by the Government in collaboration with the Federation of Employers. Job opportunities were also created through funding and training activities for graduates and persons with disabilities. The Government also paid special attention to projects aimed at combating desertification and providing income-generating activities in regions suffering most from poverty. In its 2009 observation, the Committee noted that about 60–70 per cent of the population in the north and 90 per cent in the south of the country are estimated to be living below the poverty line, with incomes of less than US\$1 per day. Persons living in rural areas, in particular women and internally displaced populations, are the hardest hit by poverty. Beyond the state of Khartoum, the infrastructure is either non-existent or underdeveloped. The Committee once again recalls that the UN adopted a policy for post-conflict employment creation, income generation and reintegration which stresses that, in post-conflict situations, employment is vital to short-term stability, reintegration, economic growth and sustainable peace. **The Committee asks the Government to report in detail on the measures taken to develop and implement an active employment policy within the meaning of the Convention, with the assistance of the ILO and other international agencies. The Government is also asked to**

*provide detailed information on the results obtained, in the context of the five-year plan for 2007–11, in meeting the employment needs of vulnerable categories of workers, such as women, young persons, older workers and persons with disabilities.*

*Collection and use of labour market data.* In its 2009 observation, the Committee noted that the Government carried out a population census in 2008 in order to compile information needed by planners and policy-makers. The Government expressed its intention to release the results of the census in 2009 and to prepare a survey for the collection of data and information on the labour market. In this respect, the Committee notes that the ILO provided training to concerned staff to carry out a labour market survey. ***The Committee invites the Government to provide in its next report an account of the progress made to improve the labour market information system and to include detailed statistics on the situation and trends in employment, specifying the manner in which the collected data has been used to determine and review employment policy measures.***

*Article 3. Participation of the social partners in policy preparation and implementation.* The Government refers in its report to the formulation and implementation of an employment policy in line with the Global Jobs Pact. It also indicates that a national charter was formulated with the full participation of the social partners. The Government intends to provide the Committee with information on the development of the national charter in a subsequent report. In the 2010 General Survey concerning employment instruments, the Committee underlines the importance of ongoing genuine tripartite consultations for tackling and alleviating the consequences of the global economic crisis (2010 General Survey, paragraph 788). ***The Committee expresses its firm hope that the Government will supply detailed information in its next report on the consultations held with the social partners on the formulation and implementation of an active employment policy. It also requests the Government to supply information on the consultations held with the representatives of the persons affected by the employment measures to be taken, such as those working in the rural sector and the informal economy.***

*Technical assistance to fulfil reporting obligations and the requirements of the Convention.* ***In view of the difficulties to comply with the reporting obligations under the Convention during these past few years and the lack of information in the last report received, the Committee notes that the preparation of a detailed report, including the information requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the effectiveness of the employment policy in meeting the objectives of full and productive employment set out in the Convention. In this regard, the Government might wish to request technical assistance from the relevant units of the ILO to address gaps in the implementation of an active employment policy within the meaning of the Convention.***

## Thailand

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1969)**

*Follow-up of the discussion at the 99th Session of the International Labour Conference (June 2010).* The Committee notes the replies provided by the Government in January 2011 containing information on the measures taken to promote employment for persons with disabilities, women in remote areas and workers in the informal economy. According to the data from the National Statistical Office, 24,300,000 workers, representing nearly half of the entire active labour force, were in the informal economy. The Committee notes that studies performed by two academic institutions have concluded that Thai workers in the informal economy definitively need benefits from the Social Security Fund. The Government refers again to the second SMEs Promotion Plan for 2007–11 among other measures to enhance the capacity of business and enterprises to tackle the global economic crisis. ***The Committee invites the Government to provide in its next report updated information on the impact of the measures taken to promote full, productive, freely chosen and decent employment for vulnerable categories of workers, in particular for workers in the informal economy. Please also include information on the extent, trends and coverage of social security benefits for workers in the informal economy, as well as on the steps taken to coordinate active labour market measures with social security benefits.***

*Articles 1, 2 and 3 of the Convention. Coordination of employment policy with poverty reduction. Involvement of the social partners.* The Government recalls the three strategic objectives of the Tenth National Economic and Social Development Plan for 2007–11: development of human potential and social protection, sustainable restructuring of rural and urban development, and upgrading national competitiveness. Between October 2009 and September 2010, the Government provided some assistance to workers that were unemployed as a consequence of the global economic crisis. The Committee also notes that a Code of Practice to Promote the Labour Relations in the Economic Crisis was adopted by the social partners in 2008. In its contribution, received in February 2011, the National Congress of Thai Labour (NCTL) recalls that most Thai people have lived in poverty, and indicates that the disparity of income generation is rather high. NCTL asks the Government to formulate concrete policies and measures to alleviate income disparities. ***The Committee asks the Government to include in its next report information on the results obtained in terms of employment generation concerning the Tenth National Economic and Social Development Plan and to provide details on the employment objectives formulated following the 2007–11 Plan. In this regard, the Committee stresses the importance of promoting and engaging in genuine tripartite consultations on the matters covered by the Convention. The***

**Committee therefore asks the Government to include in its next report detailed information on the consultations held with the social partners to formulate and implement an active employment policy as required by Article 3 of the Convention.**

*Labour market and training policies.* The Government indicates that the National Committee on Skills Development Coordination and Labour Development was set up under the authority of the Prime Minister. In 2010, the Department of Skills Development formulated a new strategy to take into account the impact of the global economic crisis. Furthermore, the Committee notes that the Government provides online labour market information. The NCTL expressed the view that the Skills Development Scheme does not respond to the needs of the labour market. The cooperation between skills development institutes and enterprises in implementing the measures should be taken into account. In its 2010 General Survey concerning employment instruments, the Committee emphasized the increasingly important role of the social partners and training institutions in defining human resources development strategies. **The Committee requests the Government to indicate in its next report the manner in which the representatives of workers and employers have contributed to developing vocational training mechanisms, as well as how the coordination between training institutions has been strengthened. Please also indicate how skills development measures are coordinated with active labour market measures.**

*Women. Prevention of discrimination.* The Government indicates that there is no discrimination towards women and that women have equal opportunities and market access. The Committee notes the statistical data disaggregated by gender provided by the Government in its report on the number of jobseekers registered with the Department of Employment who obtained jobs, as well as on the training courses provided. **Referring to its 2011 comments on the Equal Remuneration Convention, 1951 (No. 100), the Committee requests the Government to clarify to what extent the data provided in its report on Convention No. 122 shows that the principle of non-discrimination is being implemented effectively in practice. It also invites the Government to continue to provide information on initiatives taken to promote increased participation of women in the labour market. Please provide further information, including statistics, on the effects of such initiatives in ensuring that there is freedom of choice of employment, and that each worker shall have the fullest possible opportunity to qualify for, and to use his or her skills in a job for which he or she is well suited in the conditions set out in Article 1(2)(c) of the Convention.**

*Migrant workers.* The Government recognized in its report that it faces a challenge concerning migrant workers related to political, social, economic, health-care and national security issues. Having realized the difficulties that migrant workers face in terms of harassment from employers and employment agencies, including the threat of human trafficking, the Ministry of Labour carried out various measures to register migrant workers, especially illegal migrant workers, and to enhance the labour inspectorate for these workers. The Government mentions the Declaration of 3 August 2010 for dignity and work aimed to protect Thai workers working overseas and migrant workers working in Thailand and to prevent human trafficking, to reduce service fees and expenses on employment services and to take care of the families of the workers concerned. The Committee notes that NCTL expressed concerns about the practices and measures taken by the Government to tackle the difficulties concerning migrant workers. NCTL further indicates that an extensive number of unregistered alien workers, who do not possess any national identity certificates, are still remaining. Unregistered alien workers are unable to enjoy their rights with regard to access to labour protection and social security coverage, as required by Thai law and regulations. **The Committee requests the Government to act expeditiously and to report in detail on the effective measures taken to address and resolve issues relating to migrant workers. It also requests the Government to provide information on the results obtained in the framework of an active employment policy to prevent abuse in the recruitment of foreign workers and the exploitation of migrant workers in Thailand, with due regard to their fundamental rights.**

*Older workers.* The NCTL indicated that priority should be given to extend medical coverage, retirement savings and employment opportunities for older workers. **The Committee invites the Government to include in its next report information concerning the measures taken or envisaged in order to better integrate older workers into the labour market.**

*Workers in the rural sector and the informal economy.* The Government reports on the project for emergency employment and skills development to mitigate the suffering of people from economic crisis and natural disasters. Emergency employment includes hiring workers for public interest work like dredging canals and ditches and building dams. **The Committee invites the Government to indicate how the emergency schemes implemented gave the opportunity for its beneficiaries to qualify for and use their skills in decent jobs for which they are well suited, as required by Article 1(2) of the Convention. In this respect, the Committee invites the Government to report on the quantity and quality of job opportunities for homeworkers, with special attention to the situation of women, and on the impact of the measures taken to reduce the decent work deficit for male and female workers in the informal economy and to facilitate their transition into the labour market.**

## Tunisia

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1966)**

*Implementation of an active employment policy.* The Committee notes the brief report received in May 2011 containing information relating to its previous comments. The Committee notes the provisional Government's employment programme, established by the Ministry of Vocational Training and Employment. The programme has four main components: the creation of new paid jobs in all sectors; entrepreneurial development and the creation of micro-enterprises; support for struggling enterprises and the preservation of existing jobs; and active support for jobseekers and enhancing their employability. In its previous comments the Committee underlined the importance of being able to examine information on the manner in which the main areas of economic policy contribute "within the framework of a coordinated economic and social policy" (*Article 2 of the Convention*) to achieving the objectives of full, productive and freely chosen employment. ***The Committee requests the Government to provide information in its next report on the results achieved and the difficulties encountered in attaining the employment policy objectives set out in the Government's new programmes, including updated quantitative information on the trends and results of the measures established to stimulate growth and economic development, raise living standards, respond to labour force needs and resolve the problem of unemployment and underemployment (Article 1(1)).***

*Labour market policies to promote balanced and integrated regional development.* The Government indicates that the Ministry of Vocational Training and Employment has adopted a local approach toward the creation of jobs involving all regional and local players concerned with employment. This local approach has been gradually stepped up. The Government also indicates that the dialogue with the social partners is ensured on an annual basis in the context of the Higher Council for the Promotion of Human Resources. ***The Committee requests the Government to provide detailed information in its next report on the results achieved, in collaboration with the social partners at the regional and local levels, in terms of job creation through the various programmes established, particularly to make up the backlog in relation to employment creation between the regions.***

*Promotion of small and micro-enterprises.* In its previous comments the Committee expressed the desire to examine the measures adopted "in order to create an environment conducive to the growth and development of small and medium-sized enterprises" (see Paragraph 5 of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)). The Committee understands that one of the main components of the provisional Government's employment programme is the development of entrepreneurship and the creation of micro-enterprises and also support and monitoring at all stages of the business development. The support programme for promoters will go ahead throughout the first two years of the project. ***The Committee invite the Government to include detailed information in its next report on the results achieved as result of these initiatives.***

*Collection and use of employment data.* ***The Committee invites the Government to provide information in its next report on the progress achieved in the coordination of the various labour market information systems and information on the manner in which the data compiled have been used to decide on and keep under review employment policy measures. It hopes that the studies undertaken with international assistance will allow new measures to be defined to promote employment among the most vulnerable categories of workers, such as women, young persons, older workers, rural workers and workers in the informal economy.***

*Article 3. Participation of the social partners in the formulation and application of policies.* ***The Committee once again emphasizes the importance of giving full effect to Article 3 of the Convention, particularly in a new constitutional context and one of persistent unemployment. It hopes that the next report will contain precise information on the consultations held with the representatives of the social partners on the subjects covered by the Convention. It also requests the Government to provide information on the consultations held with the most vulnerable categories of the population, and particularly with representatives of workers in rural areas and in the informal economy, with a view to securing their cooperation in formulating and implementing employment policy programmes and measures.***

## Uganda

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1967)**

*Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction.* Following its previous observations, the Committee notes with *interest* that the National Employment Policy (NEP) for Uganda was completed, adopted by Cabinet and launched by the President in May 2011. The Government commended the ILO in providing technical support for the preparation of the NEP. The Committee observes that the NEP addresses the problems of unemployment, underemployment, labour productivity and poverty in the country. It also emphasizes that employment creation is central to the national socio-economic development process. Furthermore, the NEP stresses that despite Government poverty reduction efforts, the number of Ugandans living under poverty (7.5 million according to the data provided by the Uganda Bureau of Statistics (UBOS) in 2009) is still high and that addressing unemployment and underemployment is one of the ways to further reduce poverty levels. ***The Committee expresses its appreciation with regard to the efforts made to implement an active employment policy within the meaning of the Convention. It invites***

*the Government to provide information in its next report on the results achieved and the difficulties encountered in attaining the employment policy objectives set out in the National Employment Policy, including results of the programmes established to stimulate growth and economic development, raise living standards, respond to labour force needs and resolve the problems of unemployment and underemployment.*

*Article 2. Collection and analysis of employment data.* The NEP recognises that the twin challenge of poverty and unemployment is at the core of the transformation of Uganda from a poor agrarian economy to a modern, prosperous and skilled society. Accordingly, the NEP has laid a strategic framework to direct efforts towards employment intensive interventions within a stable macro-economic environment. In this respect, the NEP emphasizes that monitoring and evaluating the implementation and impact of policy measures at all levels shall be carried out on regular basis using appropriate indicators. This will involve full participation of the government ministries and departments, private sector, workers' and employers' organizations and civil society. The Government recognises that accurate and timely labour market information on jobs, jobseekers, labour mobility, employment levels, real wages, and hours worked and desired skills, among others, in the public and private sector, especially in the small-scale unregistered private sector, is essential to this policy. Labour market information enables the monitoring of the employment situation and trends, as well as the design of appropriate policies. *The Committee invites the Government to include in its next report up-to-date information on the current situation and trends regarding the active population, employment, unemployment and underemployment throughout the country and in the different regions, by sector of activity, gender, age and level of qualifications.*

*Labour market information system.* The Government indicates in its report that to strengthen the labour market, it has created a unit for the collection of labour market information in the Directorate of Labour. The unit works very closely with the UBOS. It also indicates that the capacity of the unit to collect, analyse and disseminate information on the employment situation needs to be developed. Further steps have been taken to update the labour market database to cater to the new demands of information and statistics nationwide and in East African Community. *The Committee invites the Government to indicate in its next report whether any particular difficulties have been encountered in improving the labour market information system.*

*Promotion of youth employment.* The Committee notes that there are differences in employment levels by gender, education attainment, residence, whether urban or rural, and by age. The NEP indicates that the population is predominantly young with children and youth constituting 75 per cent of the total population. It further indicates that Uganda's labour force is young, untrained, unskilled and rural-based. According to the UBOS, the youth population is estimated to increase from 5.4 million in 2002 to 8.5 million in 2015. The high total fertility rates (6.38 per cent) in Uganda are the proximate cause of the fast rate of growth of new young entrants to the labour force. The Committee notes that despite the introduction of Universal Primary Education, the majority of new entrants to the labour force over the period 2002–03 to 2009–10 had not completed primary education. Poor training, low productivity jobs and low wages trap the working poor and exclude young persons from participating in economic growth. The Committee notes that the NEP also emphasizes that youth requires to be instilled with, among others, a positive work culture, commitment and dedication to work, including discipline, career guidance and counselling and provision of skills to enable them to meet the current needs of the labour market. *The Committee invites the Government to continue to provide information on the results of programmes concerning education and vocational training for young persons. Please also provide information on the efforts made to improve the employment situation for young persons and the results achieved in terms of designing targeted programmes and incentives for promotion of sustainable job creation for the youth.*

*Promotion of women's employment.* The Committee notes that women represent over 50 per cent of the labour force. A larger percentage of the female rather than the male labour force is illiterate. Unequal access to education restricts women to sectors with low productivity and low wages, and most of the young unemployed persons are women. The Government indicates that women in Uganda constitute the majority of farmers and unpaid workers as they are responsible for most of the care economy. Only 12 per cent of women are in wage employment compared to the 25 per cent of economically active men (the male participation rate in wage sectors is more than three times that of women). The Committee notes that there is a sharp segregation of women into low paying sectors such as agriculture; women in the low paying sectors receive at most half the average male wage. *Recalling the Committee's comments under the Equal Remuneration Convention, 1951 (No. 100) as to the occupation segregation of women and its contribution to the gender pay gap, the Committee invites the Government to provide information in its next report on Convention No. 122 on the efforts to improve job creation and increase labour market participation for women as a result of the measures adopted.*

*Informal economy.* The Committee notes that, according to the NEP, the informal sector is growing and generates both wage and self-employment opportunities in unregistered small and micro-enterprises. Informal employment constitutes 67 per cent of the total employment outside agriculture. The 2009–10 Uganda National Household Survey (UNHS) indicates that 1.2 million households operated off-farm informal businesses engaging 3.5 million persons. Out of these, 600,000 persons and one million persons respectively were engaged in trade and manufacturing. The Government indicates that the informal sector will continue to be a major employer for some time and that more information is required on the full range of its activities, as well as on its capacity to generate decent wage earning opportunities. It also indicates that despite the fact that the informal sector currently provides alternative employment to the majority of the

labour force, it is insufficiently supported, hence the need for measures to develop it, enable it to grow and provide better job opportunities. ***The Committee invites the Government to provide information in its next report on the efforts made to extend access to justice, property rights, labour rights and business rights to the informal economy workers and business (see 2010 General Survey concerning employment instruments, paragraph 697). It also invites the Government to indicate how the initiatives relating to micro-enterprises have contributed to improving the working conditions in the informal economy.***

***Article 3. Participation of the social partners.*** The Government indicates that the NEP was developed by a National Taskforce comprising ministry officials, representatives of the Federation of Uganda Employers and of the unions, the Uganda Bureau of Statistics and others key stakeholders. Furthermore, the NEP emphasizes that the Government shall take overall responsibility for its implementation with the participation of other actors, including the private sector, employers' and workers' organizations, development partners, as well as other stakeholders. The Committee notes that the Ministry responsible for Labour shall spearhead the implementation of the policy in collaboration with other ministries, social partners and agencies that play a key role in employment creation. ***The Committee invites the Government to provide examples of the questions addressed or the decisions reached on employment policy through tripartite bodies. It would also appreciate continuing to receive information on the involvement of the social partners in the implementation of the National Employment Policy.***

## United Kingdom

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1966)***

***Articles 1, 2 and 3 of the Convention. Employment trends and active labour market measures.*** The Committee notes the comprehensive and detailed Government's report received in September 2010 for the period from June 2008 to May 2010, including the 2008–11 Corporate Plan of the Department for Employment and Learning, and information for Northern Ireland, Scotland and Wales. The Government states that it remains committed to the idea that work is the best route out of poverty and, despite the recession, has objectives to: (a) provide employment opportunities for all; (b) prevent poverty and provide security for those who cannot work; and (c) ensure that the welfare system is affordable for the State. The Government indicates that the labour market performed well during the recession, despite record falls in GDP and large rises in the number of people being made redundant. While unemployment increased by 383,000 people in January 2010 when compared to the previous year, it fell in the last quarter of 2009. The number of people in employment in the United Kingdom for the three months ending January 2010 was 28.86 million, down 54,000 over the quarter, and down 483,000 over the year. This relatively strong performance was reportedly driven by £5 billion investment to maintain an active labour market regime and extend support to people to help them move back into work. The Government reports that, even at the height of the recession, around half of all people who made a claim to Jobseeker's Allowance had left benefit within three months, many of them moving straight into employment. The Government also reports that the employment rate for ethnic minorities fell, along with the overall rate in Great Britain, while the gap between the two narrowed to 12.4 per cent. The 2010 first quarter figures showed that the employment rate in Great Britain stood at 71.9 per cent and the ethnic minority employment rate at 59.9 per cent. The Government indicates that the most urgent task facing the United Kingdom is to implement an accelerated plan to reduce the deficit as a necessary precondition for sustained economic growth. The June 2010 budget set out the action the Government will take to rebalance the economy and provide the conditions for sustainable, private sector-led growth, balanced across regions and industries. The Office for Budget Responsibility forecasts an increase in private sector employment of nearly 2 million by 2015–16 through measures such as reducing the main rate of corporation tax and increasing support to businesses. ***The Committee invites the Government to provide information in its next report on private and public sector employment outcomes and the labour market impacts of public budget cuts, as well as on the involvement of the social partners in the employment policy formulation and implementation process.***

***Role of employment services in employment promotion.*** The Committee notes that Jobcentre Plus is the principal agent of the Government's active labour market policy. Working with a range of partners, Jobcentre Plus promotes work as the best form of welfare, helping unemployed and economically inactive people of working age to move closer to the labour market and compete effectively for work, while providing appropriate help and support for those without work. The Committee notes that the Government published a consultation paper entitled "21st Century Welfare" in July 2010 on the future of the benefits and tax credit systems. Following consultations, one of the Government's responses with regard to Jobcentre Plus is to allow it freedom and flexibility to work in partnership at the local level and to respond to local needs, to secure improvement to employment services and achieve the necessary employment outcomes. ***The Committee invites the Government to include information on the contribution of the employment services and Jobcentre Plus in the implementation of active labour market policies.***

***Education and training policies.*** The Government reports that it established a Commission for Employment and Skills (UKCES) in April 2008, which funded and managed the performance of the Sector Skills Councils. The Government also indicates that it is committed to bring about a culture and systems change to integrate employment and skills services to help low-skilled unemployed persons to improve their skills, to get and keep a job, and to progress in work through continued training. The white paper "Building Britain's Recovery, Achieving Full Employment", published

in December 2009, committed the Department for Work and Pensions and the Department for Business, Innovation and Skills to work more closely with Jobcentre Plus and the LSC–SKILLS Funding Agency, to bring employment and skills closer together. The Committee notes the Five Year Strategic Plan 2009–14 which sets out UKCES' corporate plan and high-level priorities. An important part of the skills strategy is to focus training provision on meeting more accurately the needs of business and local economies. The Committee also notes that in April 2008 the Scottish Government created a new public body, Skills Development Scotland (SDS), to bring a better focus to skills development. The SDS has a key role to play in driving forward the strategic priority on learning, skills and well-being as set out in the Scottish Government Economic Strategy to contribute to increasing sustainable economic growth. It will work with other established bodies to realise the vision set out in the skills strategy to focus on the individual development of skills, improve the economic pull of skills development and create cohesive structures for the delivery of skills development. The Government further reports on the trade unions' role in raising demand for learning and skills through the Union Learning Fund, which has enabled over 800,000 workers to get back into learning since the Fund was introduced in 1998; and over 220,000 workers during 2008–09. ***The Committee asks the Government to provide in its next report information on how various existing and newly established bodies are actually streamlining the efforts to make skills development and employment closer.***

***Youth employment.*** The Committee notes two major specific measures targeting youth employment. Firstly, the Young Persons' Guarantee (YPG) offers a guarantee of an offer of a job, training or work experience to jobseekers aged 18–24 who reached the six-month point of their claim to Jobseeker's Allowance. Under this programme, the young unemployed were given a number of options to choose, from applying to existing vacancies to taking up an internship. However, due to the austerity measures, the Government planned to end the YPG programme during the first half of 2011. Another programme called Backing Young Britain (BYB) supported young people aged 18–24 in obtaining work experience. Work experience was available from week 13 of a young person's Jobseeker's Allowance claim. However, as part of the public expenditure savings announced in the May 2010 budget, the Future Jobs Fund was scaled back and the recruitment subsidy ceased in June 2010. The Government indicates that it will replace the employment measures with a coherent single programme, the Work Programme. ***The Committee asks the Government to provide information on the impact of the measures taken to meet the needs of young people in order to increase their access to lasting employment.***

***Persons with disabilities.*** The Government indicates that it is important that everybody, and in particular health-care professionals and employers, understand the links between work and health and the role they can play in helping people to stay in or return in employment. It is working to take this agenda forward, in partnership with key stakeholders like employers, the National Health Service, health-care professionals, trade unions and insurers. The Government reports an increase in the labour participation rate for persons with disabilities from 39 per cent in 1998 to 48 per cent in 2008, thanks to specific targeted measures, such as the New Deal for Disabled People and Pathways to Work provision, alongside a strengthening of the legal rights of persons with disabilities. ***The Committee asks the Government to continue to provide information on the results of the implementation of the measures designed to address the needs of persons with disabilities in the open labour market.***

***Older workers.*** As many people wanted to remain in the labour market beyond the age of 65, the Government indicates that it issued a public consultation paper in July 2010 outlining proposals to phase out the Default Retirement Age (DRA). The Government also indicates that the Age Positive initiative is working with business leaders in nine key sectors – manufacturing, transport, construction, health, retail, hospitality, local authorities, education and finance – to align their respective priorities to the business case for older workers, the value of flexible working and the value to employers of retaining skills and experience by working without a fixed retirement age. ***The Committee invites the Government to provide information on the impact of measures promoting the participation of older workers in the labour market.***

***Long-term unemployed.*** The Government indicates that it recognizes the continuing need to provide strong employment support to people out of work. In this regard, the Committee notes that the Government will introduce a single Work Programme for the long-term unemployed to deliver coherent, integrated support more capable of dealing with complex and overlapping barriers to work. The Work Programme will be an integrated package of support providing personalized help for people who find themselves out of work, based on need rather than benefit claimed. ***The Committee invites the Government to include information on the implementation of the Work Programme and the achievements in promoting the return of long-term unemployed persons to the labour market.***

## Uruguay

### ***Employment Policy Convention, 1964 (No. 122) (ratification: 1977)***

***Articles 1 and 2 of the Convention.*** *Implementation of an employment policy within the framework of a coordinated economic and social policy.* In reply to the observation of 2009, the Government described in its report received in September 2010 the interrelationship between active and passive labour market measures. The Committee notes that the Unemployment Insurance Act was amended to approve the payment of a special benefit to people over 50 years of age who faced major difficulties in finding employment. For specific sectors particularly affected by the crisis in the leather, textiles, clothing, wood and metallurgical industries, a system of special subsidies for partial unemployment was set up.

Moreover, the Committee notes that employment protection measures were adopted for training and reclassifying workers in the most vulnerable sectors by means of the “Objective Employment” and “Uruguay Studies” programmes. The Committee notes that during 2009, despite the effects of the crisis, the economy maintained a positive growth rate (2.9 per cent) supported by increases in consumption, public investment and external demand. The most dynamic sectors were transport, storage and communications, while the industry in general contracted significantly as a result of the decrease in exports. In 2009 the activity rate stood at 63.2 per cent and the unemployment rate fell from 7.3 per cent in 2009 to 6.8 per cent in 2010. The Committee notes that the strengthening of the network of public job centres (CEPES) continued and that 24 such centres were operational by May 2010. ***The Committee refers to its previous observation and requests the Government to indicate in its next report what progress was made in achieving the goals of tackling poverty, reducing social inequalities and ensuring sustainable development, as indicated in the Decent Work Country Programme (DWCP) adopted in February 2007. The Committee requests the Government to include information on the results of the active and passive labour market measures referred to in the present observation and the manner in which they have contributed towards achieving full, productive and high-quality employment. The Committee also requests the Government to provide data disaggregated by categories of workers who face major difficulties in finding lasting employment, such as women in the rural sector, young people and older unemployed workers.***

***Strengthening and coordination of institutions.*** The Government indicates that the “National Employment Directorate–National Employment Board” system was reorganized in the context of the DWCP and draws attention to the setting up of the National Employment and Vocational Training Institute (INEFOP) in October 2008. In the 2010 General Survey on employment instruments, the Committee observed the setting up of INEFOP (2010 General Survey, para. 144). The Committee recalls the importance of linking measures adopted in the context of employment and vocational training policy with general development policies, especially those promoting industry. ***The Committee requests the Government to include information in its next report on mechanisms established to facilitate the necessary coordination of employment and education policies with economic and social development policies adopted by various ministerial bodies.***

***Workers in the informal economy.*** The Government states that the informal employment sector has decreased markedly, due to a set of measures adopted to that end. The Committee notes with *interest* that a negotiating group for the domestic service sector was formed in the Wage Council and initiatives were taken by the Social Security Bank (BPS) to reduce the lack of social security registrations, which increased the number of contributors. Moreover, steps were taken to facilitate the formalization of the smallest enterprises, the tax system and exports of products manufactured by micro-enterprises. According to the National Institute of Statistics, the informal employment rate reached 32.9 per cent in 2008, mostly affecting the interior of the country, where there was also a greater disparity between the rates for men and women than in urban areas. ***The Committee invites the Government to continue to supply information on the integration of workers from the informal economy into the formal economy and on the impact of support measures on the establishment and consolidation of micro- and small enterprises.***

***Cooperatives.*** The Committee notes that by Decree No. 558/009 of 9 December 2009 the Government regulated the functioning of the National Cooperative Institute (INACOOP), whose tasks include coordination of the formulation, linkage and execution of the programmes constituting the National Cooperative Development Plan, promotion of the cooperative sector and formulation of training programmes for capacity building in cooperative management. ***The Committee invites the Government to supply further information in its next report on the progress made by INACOOP in promoting labour cooperatives and social cooperatives.***

***Education and vocational training.*** The Government supplied information on the “Uruguay Studies” programme aimed at enhancing competencies, knowledge and skills linked to innovative projects and to the demands from the public, private and social sectors. Grants, internships and credit lines have been established for persons wishing to develop productive business ventures further to completion of their training. ***The Committee invites the Government to include information in its next report on the impact of the adopted measures and the other initiatives aimed at training employed workers, the recently unemployed and the long-term unemployed.***

***Article 3. Participation of the social partners in the formulation of employment and vocational training policies.*** The Government highlights in its report the tripartite operation of INEFOP, which strengthens the possibilities of formulating and implementing vocational training programmes in the country. The Government also mentions that in November 2009, under the national agreement concerning employment in the construction industry, activities were undertaken with social partners from Argentina to train workers in the sector. ***The Committee requests the Government to include more detailed information in its next report on the manner in which the social partners participate in the formulation and implementation of active employment and vocational training policies, including data on activities undertaken by the INEFOP tripartite committees on employment and vocational training at departmental and sectoral levels and with other countries in the region.***

## Uzbekistan

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1992)**

*Articles 1 and 2 of the Convention. Active labour market measures taken in response to the global crisis.* The Committee notes the Government's report received in September 2010 and the additional information provided by the Government and the Federation of Trade Unions of Uzbekistan (FTUU) in May 2011. The Government indicates that it benefited from sustainable economic growth, with an 8.1 per cent GDP growth in 2009. The Asian Development Bank forecasted GDP growth of 8.5 per cent in 2010 and 9.0 per cent in 2011. The Committee notes with *interest* that prior to the elaboration of the ILO Global Jobs Pact, the Government adopted in 2008 an Anti-Crisis Programme of Measures for 2009–12 aimed at recovering from the crisis and providing an increase of the number of available jobs. The Government indicates that 600,000 jobs were created in 2008, and 940,000 jobs in 2009 due to the implementation of the anti-crisis programme. In 2010, in accordance with set targets, 950,000 jobs were created through the adoption of measures which included the support of exporting enterprises, the modernization of vital branches of the economy, the implementation of investment projects, the development of micro- and small enterprises, and the promotion of home-work arrangements in cooperation with the manufacturing sector. ***The Committee invites the Government to provide in its next report information on the impact of the employment measures taken to overcome the negative effects of the crisis.***

*Implementation of an active employment policy.* The Government reports that the country's employment policy is proactive as it aims at ensuring full, productive and freely chosen employment. It also indicates the provisions of the Employment Act dealing with employment policy. Furthermore, the Government indicates in its report that in order to implement the employment policy, the local state administration bodies are vested with certain powers which include the development and implementation of the measures promoting the stabilization of the situation of the labour market through, inter alia, the identification of the regions in need of priority development. In this regard, state policy on regional labour markets is implemented both in the framework of national programmes and regional and local employment promotion programmes, taking into account the specific demographic features and the social and economic development of the regions. The FTUU indicates that a General Agreement on socio-economic issues for 2011–13 between the Cabinet of Ministers, the Chamber of Commerce and Industry, and the Council of the FTUU provides, inter alia, for the following: ensuring that systemic measures are taken into account when drafting and implementing annual job creation and employment programmes, where special attention should be given to the creation of permanent jobs with stable remuneration and safe working conditions, especially in rural areas; ensuring further implementation of job creation measures by developing effective forms of employment, including small business development and entrepreneurship, construction of housing and social infrastructure, and extensive use of home work arrangements; ensuring the reduction in unemployment and the improvement of vocational training and retraining for the unemployed; ensuring a steady growth in employment, especially in rural areas; and supervising employers' compliance with the requirements laid down in the labour legislation. ***The Committee requests the Government to provide in its next report detailed information on the effects of the 2011–13 General Agreement and the outcomes of specific employment policy measures and programmes adopted to address the employment situation in the most affected regions.***

*Vulnerable categories of workers.* The Committee notes the information supplied by the FTUU indicating that trade unions submit proposals on job creation measures and on the allocation of a fixed number of jobs for vulnerable categories of workers. The FTUU further states that these proposals are normally taken into account in designing regional employment programmes. It also indicates that one of the objectives of the General Agreement on socio-economic issues for 2011–13 is to provide all possible support to ensure the employment of graduates of higher education and specialized secondary schools, persons returning from military service and socially vulnerable population groups. ***The Committee invites the Government to include in its next report detailed information on the impact of employment measures addressing the needs of vulnerable categories of workers such as women, young people, older workers and workers with disabilities.***

*Article 3. Participation of social partners in the formulation of policies.* The Government indicates that the direct participation of the representatives of employers' and workers' organizations is ensured in the elaboration and implementation process of the employment policy. The FTUU also indicates that an agreement to cooperate in the field of employment policy has been reached between the Ministry of Labour and Social Protection and the Council of the FTUU. As part of the implementation of the said agreement, the trade unions have set up a public monitoring system relating to job creation measures. In the first quarter of 2011, trade unions carried out verifications in 118 enterprises in order to evaluate the number of new jobs created. The FTUU also indicates that regional and sectoral agreements focus on matters relating to the design and implementation of programmes to promote employment, create jobs, prevent mass unemployment and provide social protection to persons who have lost their jobs. ***The Committee requests the Government to provide information in its next report on the consultations held with the representatives of employers' and workers' organizations, including details of their contributions to the implementation of an active employment policy.***

## Bolivarian Republic of Venezuela

### **Employment Policy Convention, 1964 (No. 122) (ratification: 1982)**

The Committee notes the information provided by the Government in its report for the period ending September 2010. The Committee also notes the comments made by the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the Independent Trade Union Alliance (ASI), and the Government's replies to the comments made by FEDECAMARAS and ASI.

*Implementation of the employment policy in the framework of a coordinated economic and social policy. Participation by the social partners.* The Government provides information on the implementation of the Simón Bolívar National Economic and Social Development Plan (2007–13) to achieve an efficient economy and collective social welfare. Among the various elements of the employment policy, emphasis may be placed on protecting the quality and mobility of employment, an active wages policy and the reactivation of employment in strategic sectors. The objective, through the Plan, is to reactivate the construction industry so as to reinforce its dynamic role, and there is also interest in promoting tourism as an employment-generating industry. Credit policies and incentives are also being applied to promote small and medium-sized enterprises. Support has been provided for non-traditional exports through the establishment of facilities, the identification of potential products and the implementation of incentive policies. The Government has established funds with resources to improve the physical infrastructure of the country, the support services for production and to reduce the deficit in relation to social infrastructure. According to the ASI, employment policies have been strengthened in the services and transport sectors, although in the industrial sector the policies have not met the expectations generated. FEDECAMARAS expresses concern at the absence of bipartite and tripartite consultations and the lack of social dialogue. The Government indicates that consultations were held with all the sectors of the national economy. It reiterates that all the social partners participated in productive round-table meetings, including representatives of all production sectors, social production enterprises, cooperatives and micro-, small, medium-sized and large enterprises. ***The Committee invites the Government to provide detailed information in its next report on the impact of the measures adopted within the framework of the Economic and Social Development Plan 2007–2013 in terms of the generation of productive, stable and quality employment. The Committee also requests the Government to provide tangible examples of the manner in which the viewpoints of employers' and workers' organizations and of other categories affected have been taken adequately into account in the development, implementation and review of employment policies and programmes (Article 3 of the Convention).***

*Employment situation, level and trends.* According to the National Statistical Institute (INE), in January 2010 the activity rate was 65.2 per cent and the unemployment rate was 10 per cent. According to the data provided by the Government, between 2005 and 2009, the total unemployment rate fell by 3.9 percentage points, with that of women falling by 5 percentage points and of youth by 3.8 percentage points. The Committee notes that, according to the INE, in the second half of 2009 the employed population numbered 7,001,120 workers, of whom 2,364,562 were engaged in the public sector and 4,636,558 in the private sector. ***The Committee invites the Government to provide data in its next report on the size and distribution of the labour force, employment, underemployment and unemployment. The Committee would welcome information on the manner in which labour market data are used as a basis for regularly reviewing the employment policy measures adopted, as an integral part of a coordinated economic and social policy, with a view to achieving the objectives of the Convention (Article 2).***

*Youth employment.* The Committee notes that in 2009 there were 360,815 unemployed young persons. The Government indicates that a series of programmes have been launched to delay the entry of young persons into the labour market through the provision of study grants and education subsidies. ***The Committee invites the Government to provide information in its next report on the measures adopted to create jobs for young persons, ensure their training and promote entrepreneurship among young persons.***

*Workers in the informal economy.* The Committee notes that, according to the information provided by the Government, three out of every four new jobs created during the period under examination were in the formal economy. The Government indicates that over the past decade public policies have been introduced to promote formalization through alternative financing mechanisms. In its *Economic Survey of Latin America and the Caribbean 2009–10*, ECLAC emphasized that there had been a significant reduction in the number of formal jobs, accompanied by the creation of informal employment. Over the last two quarters of 2009, formal employment fell by 0.7 per cent, while informal employment rose by 5.1 per cent in relation to the same period of 2008. ***The Committee requests the Government to provide information in its next report on the implementation of measures allowing the progressive transfer of workers from the informal to the formal economy.***

*Development of micro and small enterprises.* The Committee notes that the Observatory of Small and Medium-Sized Industry (PYMI) is working on the implementation of a geographical statistical information system for the development of policies and interventions for the promotion, development and strengthening of small and medium-sized industries and social ownership units at the national level. According to FEDECAMARAS, the Government's economic policies do not facilitate the development of the private sector, which has diminished in size over the past 10 years by 23 per cent, with a consequent negative impact on possible employment generation. FEDECAMARAS emphasizes that INE data show that micro-enterprises (between one and five workers) fell in numbers by 27.6 per cent and that the number

of small enterprises fell by more than 97,000 over the past decade. FEDECAMARAS also denounces the progressive replacement of the private sector by the public sector in terms of employment generation. ***The Committee requests the Government to provide detailed indications in its next report on the measures adopted for the creation of a conducive climate for the generation of productive employment. The Committee would also welcome information on the impact of the measures adopted by the National Institute for the Development of Small and Medium-Sized Industry (INAPYMI) to promote productivity and employment.***

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 2** (Guyana, Montenegro); **Convention No. 88** (Algeria, Azerbaijan, Bahamas, Belarus, Belize, Bosnia and Herzegovina, Central African Republic, Djibouti, El Salvador, Ethiopia, Guinea-Bissau, Hungary, Iraq, Montenegro, Nicaragua, Sierra Leone, The former Yugoslav Republic of Macedonia, Tunisia); **Convention No. 96** (Argentina, Ireland); **Convention No. 122** (Antigua and Barbuda, Armenia, Australia, Australia: Norfolk Island, Bosnia and Herzegovina, Bulgaria, Cameroon, Central African Republic, Croatia, Cuba, Denmark: Greenland, Estonia, Finland, France: French Polynesia, France: New Caledonia, Gabon, Georgia, Hungary, Iceland, Israel, Jamaica, Japan, Kazakhstan, Latvia, Lebanon, Republic of Moldova, Montenegro, Mozambique, Netherlands: Aruba, Netherlands: Curaçao, Netherlands: Sint Maarten, Nicaragua, Norway, Paraguay, Slovakia, Slovenia, Sweden, The former Yugoslav Republic of Macedonia, Turkey, Yemen); **Convention No. 159** (Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Chile, Costa Rica, Côte d'Ivoire, Czech Republic, Dominican Republic, Ecuador, Ethiopia, Fiji, Hungary, Ireland, Luxembourg, Malawi, Montenegro, The former Yugoslav Republic of Macedonia, Uganda, Zambia); **Convention No. 181** (Algeria, Bulgaria, Czech Republic, Ethiopia, Hungary, Poland).

## Vocational guidance and training

### Czech Republic

#### **Human Resources Development Convention, 1975 (No. 142) (ratification: 1993)**

The Committee notes the Government's report, received in March 2010, for the period ending in August 2009, including comments from the Czech-Moravian Confederation of Trade Unions (CMKOS) and the Confederation of Industry of the Czech Republic.

*Article 1 of the Convention. Formulation and implementation of education and training policies and programmes.* The Government indicates that the Strategy of Lifelong Learning constitutes a comprehensive concept for lifelong learning to be promoted with European funds through the 2007–13 period. The Government further explains that the basic strategic directions of lifelong learning are defined on the basis of analysis of its current state of development in the country and that of its individual segments (initial general, technical and vocational, tertiary, further education). The strategy aims to remove barriers and to provide targeted support in order to allow lifelong learning to become a reality for everyone. CMKOS indicates that the Government's report is confined only to the area of competence of the Ministry of Labour and Social Affairs and the Ministry of Education, Youth and Sports. CMKOS also indicates that Resolution No. 1670 of 21 December 2005 regarding the implementation of the Human Resources Development Strategy has been replaced by Resolution No. 761 of 11 July 2007, which focuses only on lifelong learning issues. ***The Committee requests the Government to supply information on the policies and programmes of vocational guidance and vocational training, indicating the manner in which it ensures effective coordination between these policies and programmes, on the one hand, and employment and the public employment services, on the other. The Committee also requests the Government to provide extracts from reports, studies and inquiries and statistical data relating to current policies and programmes of vocational guidance and training (Part VI of the report form).***

*Article 5. Cooperation of employers' and workers' organizations.* The Government indicates that the Employment Act provides for the Labour Offices to establish advisory boards composed principally of representatives of trade unions, employers' organizations, cooperative bodies, organizations for persons with disabilities and regional self-government units. The purpose of these advisory boards is to coordinate the implementation of Government employment policies and human resources development in the relevant administrative districts. The Government further states that the advisory boards provide recommendations on issues such as the assignment of contributions to employers within the scope of active employment policies and retraining programmes. The Labour Offices create working groups, mainly composed of representatives of organizations for persons with disabilities and representatives of employers whose workforce includes more than 50 per cent of employees with disabilities for the purpose of examining suitable forms of work rehabilitation for them. The Committee notes the comments formulated by CMKOS indicating that the Government Board for Human Resources Development, which had been managed by the Deputy Prime Minister due to the cross-sectoral and regional nature of these issues, was terminated without any consultation with the social partners. The Committee also notes that the Confederation of Industry requested the Government to re-establish and use the Board for Human Resources Development with the participation of the social partners. ***The Committee invites the Government to provide information regarding the manner in which the cooperation of employers' and workers' organizations and, where applicable, other interested bodies is assured in the formulation and implementation of vocational guidance and vocational training policies and programmes. The Committee also refers to its comments formulated on the application of the Employment Policy Convention, 1964 (No. 122).***

### Guinea

#### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1976)**

The Committee notes with *regret* that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the following matter raised in its 2006 direct request, which read as follows:

*Policy for the promotion of paid educational leave and its application in practice.* ***The Committee asks the Government to provide detailed information to demonstrate that it has formulated and that it applies, in accordance with Article 2 of the Convention, a policy designed to promote the granting of paid educational leave for the various purposes of training and education specified. The Committee also asks the Government to describe the manner in which public authorities, employers' and workers' organizations, and institutions providing education and training are associated with the formulation of the policy for the promotion of paid educational leave (Article 6). Lastly, the Committee invites the Government to communicate all reports, studies, inquiries and statistics which will allow it to assess the extent of the application of the Convention in practice (Part V of the report form).***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observations, which read as follows:

*Formulation and implementation of education and training policies.* In reply to its previous comments, the Government indicates that there are no coordination structures linking the three ministries responsible for the implementation of vocational guidance and training policies and programmes. The Government's report received in June 2004 enumerates the technical and vocational training institutions that exist. It also provides information concerning the implementation of the "employment" component of the Poverty Reduction Strategy approved in 2002. *The Committee refers, in this respect, to the comments on the Employment Policy Convention, 1964 (No. 122), and asks the Government to indicate the manner in which the measures adopted or envisaged in the context of the Poverty Reduction Strategy reinforce the links between education, training and employment, particularly through the employment services. It asks the Government to provide information in its next report on the efforts being made to secure coordination among the various institutions responsible for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training.* It draws attention once more to the importance of social dialogue in preparing, implementing and reviewing a national human resources development, education and training policy. *It would be grateful if the Government would also provide practical information on levels of instruction, qualifications and training activities so that it can assess the application of all the provisions of the Convention in practice.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Guyana**

### **Paid Educational Leave Convention, 1974 (No. 140) (ratification: 1983)**

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its 2003 direct request:

*The Committee requests the Government to provide detailed information on the manner in which the various training programmes and plans implement paid educational leave, as provided for by the Convention. It also hopes that the Government will be in a position to provide statistics on the number of workers in both the public and private sectors who have benefited from paid educational leave during the period covered by the next report (Part V of the report form).*

*The Committee requests the Government to indicate the arrangements for the participation of employers' and workers' organizations in the formulation and application of the policy for the promotion of paid education leave (Article 6 of the Convention).*

### **Human Resources Development Convention, 1975 (No. 142) (ratification: 1983)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in 2003.

*Article 1 of the Convention.* The Committee recalls the Government's reply to its direct request of 1999 regarding proposed amendments to draft legislation for the creation of a National Council for Technical and Vocational Education and Training. *The Committee requests the Government to report on any progress achieved in adopting and developing comprehensive and coordinated policies of vocational guidance and vocational training, closely linked with employment, in particular through public employment services, as provided in Article 1 of the Convention.*

*Article 1(5).* The Committee refers to its previous comments regarding projects and programmes adopted by the Government to encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society. *The Committee requests the Government to include in its next report information on the implementation of projects and programmes in line with Article 1(5) of the Convention and relevant information on initiatives to encourage the vocational training of women, as well as on the type of training used and the percentage of their participation.*

*Article 5.* *The Committee requests that the Government indicate the manner, procedure or consultative machinery instituted to ensure the cooperation of employers' and workers' organizations and other interested bodies in the formulation and implementation of policies and programmes for vocational guidance and training.*

*The Committee requests the Government to provide any extracts, reports or other available material relating to policies and programmes of vocational training which target specific areas or particular branches of economic activity or specific population groups, as requested in Part VI of the report form.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Bolivarian Republic of Venezuela**

### **Human Resources Development Convention, 1975 (No. 142) (ratification: 1984)**

*Implementation of policies and programmes of vocational guidance and training. Collaboration of the social partners.* In its 2008 observation, the Committee requested the Government to provide detailed information on the manner in which employers' and workers' organizations collaborate in extending the system of vocational guidance, ensuring effective coordination between initiatives for the provision of vocational guidance and training and the

achievement of employment policy objectives. In the report received in September 2010, the Government provides information on progress in relation to training, the activities of the Directorate of Professional and Vocational Training and the vocational guidance services of the employment service. With regard to the National Institute of Socialist Cooperative Education (INCES), the Government emphasizes that work was undertaken for the unification of the various allied courses and that training models were prepared for the certification of learning and knowledge so that beneficiaries could find employment outlets. Since 2009, a vocational skills certification plan has been under implementation in 184 communes. The Government also provides information on the vocational rehabilitation of workers with disabilities. According to INCES data, during the course of 2008 training was provided to 79,237 people, and during 2009 to 96,788 people through the training programmes of the Che Guevara mission, principally targeting the socio-productive vocational training of young persons. In its examination of Convention No. 142 in the context of the 2010 General Survey concerning employment instruments, the Committee emphasized that consultation with the social partners in both the design and implementation of training policies and programmes is imperative for the full application of Convention No. 142. The involvement of local communities and the private sector, including through public–private partnerships, is key to the successful design and delivery of effective training policies and programmes. *The Committee requests the Government to include detailed information in its next report on the manner in which, in accordance with Article 5 of the Convention, the cooperation is ensured of the social partners and of representatives of communities and the private sector with the view to achieving the objectives of the Convention (Article 1, paragraphs 2–4). The Committee once again requests the Government to supplement the report with extracts from reports, studies and surveys, statistical data, disaggregated by age and gender, etc., on the policies and programmes designed to promote access to education, training and lifelong learning for people with special needs, such as young persons, the low-skilled, people with disabilities, migrant workers, older workers, indigenous peoples, ethnic minority groups and the socially excluded, as well as for workers in small and medium-sized enterprises, the informal economy, the rural sector and in self-employment (Part VI of the report form and Paragraph 5(h) of the Human Resources Development Recommendation, 2004 (No. 195)).*

### Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 140** (Azerbaijan, Czech Republic, The former Yugoslav Republic of Macedonia, Ukraine); **Convention No. 142** (Central African Republic, India, Islamic Republic of Iran, The former Yugoslav Republic of Macedonia).

## Employment security

### Australia

#### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1993)**

The Committee notes the Government's detailed report received in September 2011 which includes replies to the matters raised in the 2009 observation. The Committee also notes the comments received from the Australian Council of Trade Unions (ACTU). The Government indicates that from 1 January 2010, all States other than Western Australia referred their industrial relations powers to the Commonwealth, essentially creating a new national industrial relations system for the private sector (known as the "national system"). The number of applications by national system employees for remedy for unfair dismissal in 2009–10 was 11,116. At the end of first quarter of 2011, the number of applications for 2010–11 was 9,498. Information provided by Fair Work Australia indicates that there have been a total of 258 applications finalized at arbitration in the first nine months of 2010–11, of which a total of 20 orders were made for reinstatement. The Government indicates that it is not possible to make a direct comparison between the number of applications under the general protections and the previous legislation because the Fair Work Act general protections consolidated the freedom of association protections, unlawful termination and other miscellaneous protections that applied under the previous legislation. The conciliation settlement rate for 2009–10, which includes all termination matters, was 81 per cent. Under the former legislation, the conciliation settlement rate was 75 per cent in 2008–09. Telephone conciliation remains the predominant conciliation method (96 per cent of conciliations in the first quarter of 2011 and 97 per cent in the last quarter of 2010). The Government indicates that research conducted by TMS Social Research for Fair Work Australia and released in November 2010 shows that 88 per cent of employers reported that having the conciliation over the telephone was convenient and cost effective and 82 per cent of employers were satisfied or extremely satisfied with the cost effectiveness and efficiency of the conciliation process. ***The Committee invites the Government to continue providing updated information on the application of the Convention in practice and examples of court rulings concerning questions of principle relating to the Convention.***

*Article 2(2)(b) of the Convention. Workers serving a qualifying period of employment.* The Government indicates that the Fair Work Act provides for a longer qualifying period of 12 months for employees in businesses with less than 15 employees to make an unfair dismissal claim. The Government supplied information indicating that, out of the 9,498 unfair dismissal applications made to Fair Work Australia in 2010–11, 1,876 related to small business employers. The ACTU welcomed the Fair Work Act's restoration of unfair dismissal rights to most workers in the federal system. However, the ACTU has serious concerns about the continuing existence of different rules for small businesses. The ACTU notes that this 12-month qualifying period for workers in small businesses effectively excludes 22 per cent of small business employees from claiming unfair dismissal: 41 per cent of all hospitality sector workers and 64 per cent of young people between the ages of 20 and 24. Furthermore, in a transfer of business situation, the Fair Work Act allows a new employer to require a transferring employee to re-serve a qualifying period for accessing unfair dismissal remedies. ***Keeping in mind the concerns raised by the ACTU, the Committee invites the Government to continue providing information on this issue.***

*Article 4. Valid reasons for dismissal.* The ACTU expresses concern that the Fair Work Act does not require Fair Work Australia to be satisfied that individuals selected for redundancy are fairly chosen. The ACTU adds that there is a risk that employers will be able to unfairly select individuals for redundancy. It believes that the Act should clearly specify that a redundancy is only genuine if the workers retrenched were fairly chosen. The Government indicates that there were 22 unfair dismissal claims dismissed in 2009–10 and 21 unfair dismissal claims dismissed in the first three quarters of 2010–11, arising from redundancy. ***The Committee invites the Government to continue to provide information concerning this provision of the Convention, including examples of court rulings taking into account the requirements for genuine redundancy.***

*Article 7. Procedure prior to or at the time of termination.* ***The Committee refers to its 2009 observation and invites the Government to include in its next report information on the application of the Small Business Fair Dismissal Code with regard to workers' opportunity to defend themselves against the allegations made prior to termination.***

*Articles 8 and 9. Procedure of appeal against termination.* The Committee notes the ACTU's comments indicating that the usual limitation period for civil claims is six years. The ACTU believes that the 60-day limit under the Fair Work Act is too short, as many workers may not be aware of the motive for the dismissal until well after the event. ***The Committee invites the Government to provide information on the effect given to these provisions of the Convention.***

*Article 11. Serious misconduct.* The ACTU is concerned that the Small Business Fair Dismissal Code does not ensure that employees in small businesses are treated fairly. For example, the Code suggests that an employer may summarily dismiss an employee if he/she believes that the employee has engaged in a single act of theft, fraud or violence. The ACTU indicates that it is unclear whether Fair Work Australia will be able to inquire into the reasonableness of the employer's belief in these cases. The Government indicates that for Fair Work Australia to determine that the Small

Business Fair Dismissal Code has been complied with, employers must be able to show that they had reasonable grounds for the summary dismissal, which may include reporting the alleged theft, fraud or violence to the police. Employers who make false reports to the police may be liable for charges under other legislation. The Government indicates in its report that a number of Fair Work Australia decisions demonstrate that the tribunal will examine whether an employer had reasonable grounds for believing that an employee is guilty of serious misconduct. **Keeping in mind the concerns raised by the ACTU, the Committee invites the Government to continue providing information on this issue.**

*[The Government is asked to reply in detail to the present comments in 2014.]*

## Cameroon

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)**

*Articles 12, 13 and 14 of the Convention. Collective dismissals. Severance allowance.* The Committee notes the detailed information supplied in the Government's report received in September 2011 in reply to its previous comments. It notes a communication from the General Union of Workers of Cameroon (UGTC), which was forwarded to the Government in November 2010, in which the UGTC informed the National Social Security Fund (CNPS) of the dismissal of a number of young workers without prior notification and without any payment of damages. The union also emphasized that the former employees of several local companies had still not received any severance pay after several years. In its observation of 2009 the Committee noted the establishment in July 2006 of a tripartite committee responsible for assessing the balance of social rights of the former employees of liquidated or restructured state companies. The tripartite committee completed its work and the Government gave assurances that the procedure for the settlement of those entitlements was under way. **The Committee requests the Government to indicate in its next report whether the dismissed workers have been paid their severance allowance and to provide information on the measures taken to mitigate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166). The Government is also requested to supply statistics relating to the activities of appeal bodies and the number of terminations on economic grounds (Part V of the report form).**

*Article 2.* The Government indicates that domestic workers and workers in the informal economy belong to the categories of workers that are subject to special regulations or a special scheme. Workers subject to special regulations are not considered as workers covered by the Labour Code of 1992. As regards domestic workers, the Government indicates that the legislation dating from 1967 does not appear to be applied properly. The Committee recalls that the Government did not list in its first report the categories of workers excluded under *Article 2(4)* of the Convention. **The Government is requested to include in its next report copies of the particular provisions that apply to domestic workers.** The Committee draws the Government's attention to the new standards concerning domestic workers adopted by the International Labour Conference in June 2011 (Convention No. 189 and Recommendation No. 201). **It also requests the Government to continue to take all possible steps to ensure that domestic workers and workers in the informal economy enjoy adequate protection in the spheres covered by the Convention.**

*Articles 4 and 5. Valid and invalid reasons for termination.* The Government indicates that section 34 of the Labour Code requires the existence of grounds for termination. In a ruling of 2 November 1996, the appeals court of the Littoral region stated that, in addition to giving the worker written notification of the termination, the grounds for termination had to be established, proven and legitimate. **The Committee requests the Government to continue to provide up-to-date information in its next report on the application of the Convention in practice (especially court decisions relating to valid and invalid reasons for termination).**

*Article 7. Procedure prior to termination.* The Government indicates in its report that, in accordance with the right of defence, employers are required to notify the workers concerned of the grounds for termination of their employment. The Government also indicates that, in cases where the worker's conduct or competence constitute grounds for termination, the worker has the right to prove otherwise. **The Committee requests the Government to send examples of court decisions which implement this Article of the Convention.**

*Article 8(3). Time limit for the appeal procedure.* The Government indicates that, as regards the time limit for lodging an appeal, if there is no communication from the labour inspector, the appeal is rejected and the matter is referred to the competent authorities, once a period of three months has elapsed Ordinance No. 72/6 of 26 August 1972 establishing the structure of the Supreme Court). The Committee previously noted that section 74(1) of the Labour Code stipulates a limitation of three years for an action to recover wages or compensation for termination of a contract. **The Committee requests the Government to include cases in its next report which show that the time limit for exercising the right of appeal against termination is three years.**

*Articles 11 and 12(3). Definition of serious misconduct.* The Committee notes that serious misconduct is not defined by the Labour Code but by case law. The Government indicates that, according to the decision of the Supreme Court, is serious misconduct of an extremely grave nature which, according to customary practice at work, makes it intolerable to maintain the contractual link. Depending on the circumstances, it may also entail deliberate misconduct or negligence which is extremely detrimental to the employer (theft, assault, defamation, prolonged and unjustified absence). **The Committee requests the Government to include in its next report examples of relevant court decisions which allow an evaluation of the application of Articles 11 and 12(3) of the Convention.**

## Central African Republic

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 2006)**

*Progress in the application of the Convention.* In its 2008 direct request, the Committee expressed the hope that, when preparing new labour legislation, the Government would take into account its comments with a view to reinforcing the application of the Convention. The Committee notes the replies provided by the Government in June 2011 and welcomes the fact that, in January 2009, when adopting a new Labour Code, the terms of the Convention were reflected more precisely in defining the termination of the employment contract at the initiative of the employer, justification for termination and the payment of compensation (*Articles 3, 4 and 10 of the Convention*). The Committee also notes with **satisfaction** that under section 152 of the Labour Code of 2009 the dismissal of a worker for filing a complaint or participating in proceedings against an employer involving alleged violations of laws or regulations, or for having recourse to the competent administrative authorities (*Article 5(c)*) is invalid. Section 143 of the Labour Code of 2009, by providing that an employer who envisages termination for economic reasons shall, to avert or minimize termination, meet the representatives of the personnel and, in the presence of the labour inspector, and explore “all other possibilities, such as: work by rotation, part-time work, temporary lay-offs, the readjustment of bonuses, compensation and other benefits”, is in line with the approach envisaged in Paragraph 21 of the Termination of Employment Recommendation, 1982 (No. 166). **The Committee invites the Government to provide in its next report examples of decisions by courts of law relating to individual or economic reasons for termination, as set out in section 142 of the Labour Code (Article 4). It invites the Government to include in its next report statistics on the activities of the labour inspectorate and the courts in relation to termination of employment, the number, duration and outcome of appeals, the level of compensation for termination (Articles 10 and 11), and examples of situations examined by the labour inspection services in relation to collective dismissals (Articles 13 and 14).**

The Committee is raising other points in a request addressed directly to the Government.

## Gabon

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)**

The Committee notes the information supplied by the Government in its report received in August 2011, and also the recent decisions issued by the labour tribunals attached to the report. It notes with **interest** that Ordinance No. 018/PR/2010 of 25 February 2010 has given a new wording to section 23 of the Labour Code to introduce safeguards against the recourse to fixed-term contracts in order to avoid the protection afforded by the Convention. It is thereby established that fixed-term contracts may only be renewed once, for a maximum period of two years (*Article 2(3) of the Convention*). Moreover, section 51 of the Labour Code has been amended by introducing an obligation for the employer to draw up a record of the interview that takes place prior to the termination procedure (*Article 7*).

*Application in practice.* In reply to the 2009 direct request, the Government indicates that in 2010 there were 73 terminations on economic grounds and 981 terminations on individual grounds in Libreville, where most activities in the tertiary sector are concentrated. The Committee notes Decision No. 40/2010 of 3 December 2010 issued by the court of first instance in Libreville, which, referring to section 53(2) of the Labour Code, indicates that in the event of any dispute the burden of proving the genuine and serious nature of the grounds for termination rests on the employer and thus gives effect to *Article 9(2)(a)* of the Convention. It also notes that Decision No. 63/09-10 of 24 December 2010 issued by the court of first instance in Libreville, by referring to the relevant provisions of the Labour Code – termination of the employment contract is subject to notice being given by the party that initiates termination – gives effect to *Article 11* of the Convention. **The Committee requests the Government to continue to provide information in its next report on the application of the Convention in practice, including available statistics on the activities of appeal bodies and examples of court decisions concerning workers whose employment was terminated on economic grounds.**

## Papua New Guinea

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)**

The Committee notes the Government’s report received in September 2011 indicating that the Industrial Relations Bill has received legal clearance from the Office of the State Solicitor and is now in its passage through the National Executive Council and the Parliament for promulgation. It further indicates that, with the assistance of the ILO Pacific Office, progress is being made in the review of the Employment Act with the first round of consultations scheduled to begin in October 2011 and continuing through 2012. **The Committee reiterates its previous comments and invites the Government to report on the enactment of the new Industrial Relations Act in order to ensure the full and effective application of each provision of the Convention. As soon as the new legislation is enacted, please provide a copy of its text to the ILO.**

*[The Government is invited to reply in detail to the present comments in 2013.]*

## Spain

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)**

The Committee notes the Government's report for the period ending June 2011, in which emphasis is placed on the provisions respecting termination of the employment relationship adopted through Act No. 43/2006 of 29 December to improve growth and employment; Framework Act No. 3/2007 of 22 March on Effective Equality for Women and Men; and Act No. 35/2010 of 17 September adopting urgent labour market reform measures.

*Reasons for dismissal.* The Committee notes with *interest* that the provisions of the Framework Act on Effective Equality for Women and Men have reinforced the grounds that do not constitute justified reasons for the termination of the employment relationship (*Article 5 of the Convention*). Reasons included relate to the protection of workers during maternity leave, an absence related to pregnancy and adoption, and also in the case of workers who are victims of harassment in respect of the exercise of their work-related rights.

The Committee notes, in particular, that dismissal as a disciplinary measure is imposed for harassment against the employer or persons who work in the enterprise on grounds of racial or ethnic origin, religion or convictions, disability, age or sexual orientation, as well as sexual harassment or harassment on grounds of sex (section 54.2 of the new version of the Workers' Charter).

*The Committee invites the Government to indicate in its next report any decisions by courts of law giving effect to these changes introduced by the Framework Act of 2007 on Effective Equality for Women and Men.*

*Justification of dismissal. Reforms of termination benefits.* The Government indicates in its report that Act No. 35 of 2010 adopting urgent labour market reform measures changed the wording of the reasons for dismissal on economic, technical or production-related grounds, as a result of certain shortcomings in the operation of the termination procedures set out in sections 51 and 52(c) of the Workers' Charter. These shortcomings had given rise to a shift from the termination of indefinite contracts for economical or production-related reasons towards more cases of wrongful dismissal for disciplinary reasons. The Committee notes the detailed wording of the justified reasons required for dismissal on economic, technical, organizational or production-related grounds set out in section 54(1) of the Workers' Charter. The Committee observes that this is intended to reinforce the giving of reasons for the termination of employment contracts.

*The Committee invites the Government to provide with its next report the main decisions by courts of law giving effect to the reasons justifying the termination of the employment relationship based on the operational requirements of the enterprise (Article 4).* The Government adds that Act No. 35 of 2010 contains other amendments to the Workers' Charter and the Labour Procedures Act specifically related to notice periods and the calculation of termination benefits. The Committee understands that the principal purpose of these measures is to maintain and create employment. *The Committee invites the Government to include in its report an evaluation of the impact of the reduction in the level of termination benefits by the legislative reforms of 2010 and 2011 in terms of maintaining and creating employment. In this respect, the Committee invites the Government to include with its report updated information on the intervention of the labour authorities in cases of collective dismissal, the outcome of appeals against unjustified termination, the average time taken for an appeal to be decided and the role played by mediation and arbitration in resolving issues related to the Convention (Part V of the report form).*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Uganda

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1990)**

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its report received in June 2004, which indicated that the draft Employment Bill which, according to the Government, would give effect to the Convention, had still not been adopted. The Committee understands that the Employment Act was adopted and came into force in 2006. In this context, the Committee considers it particularly regrettable that the Government has still not provided the relevant information on the application of the Convention. *The Committee trusts that the Government will be in a position to provide a detailed report containing full particulars on the application of each of the provisions of the Convention in both law and practice.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Bolivarian Republic of Venezuela

### **Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)**

*Legislative reforms.* In two communications received in September 2010 and September 2011, the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) referred to the extension of the decrees providing protection against dismissal until December 2011, which are intended to guarantee labour stability for workers who earn up to three times the minimum wage by requiring employers to seek authorization to terminate employment. According to FEDECAMARAS, the application of the new rules could mean that workers will agree to

financial compensation so as to avoid cases being brought before the labour authorities. In a reply received in November 2010, the Government emphasizes the progressive fall in the number of persons applying for benefits for involuntary loss of employment and the annual fall in the number of unjustified dismissals. In the report received in August 2011 and in a new communication received in December 2011, the Government confirms the extension of protection against dismissal until December 2011 for those earning up to three times the minimum wage. Workers covered by protection against dismissal cannot be terminated, without a valid reason approved previously by the labour inspector. The Government indicates that during the course of 2010, a total of 40,298 applications for reinstatement (appeals against dismissal) were lodged with labour inspectorates. These appeals resulted in 19,710 applications being found to be justified, with the corresponding reinstatement of the persons, while 12,718 applications were found to be without merit. The decisions were handed down within a period of between four and eight months. The Government indicates that in 2010 no complaints were recorded for economic dismissals. The Committee also notes the summary of court decisions relating to the definition of justified reasons for dismissal provided by the Government in its report. *The Committee invites the Government to continue providing updated information on the activities of the appeal bodies (the number of appeals against unjustified dismissal, the outcome of such appeals, the nature of the remedy awarded and the average time taken for an appeal to be decided) and on the number of terminations for economic or similar reasons (Part V of the report form). The Committee invites the Government to provide examples of recent court rulings handed down in relation to the definition of justified reasons for dismissal (Part IV of the report form).*

*Exclusions.* The Committee understands that workers engaged in managerial positions are excluded from the special protection against dismissal established since 2001. *The Committee invites the Government to indicate the measures adopted to ensure the protection afforded by the Convention to managers.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Antigua and Barbuda, Bosnia and Herzegovina, Central African Republic, Cyprus, Democratic Republic of the Congo, Ethiopia, Finland, France, Latvia, Malawi, Republic of Moldova, Morocco, Namibia, Niger, Saint Lucia, Serbia, Slovenia, Turkey, Ukraine, Yemen, Zambia*).

## Wages

### Algeria

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)**

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes the Government's indications that steps have been taken to ensure the application of the provisions of section 14 of the Presidential Decree of 26 October 2008 obliging all public operators to incorporate in all public contracts a clause requiring observance of national labour law. It notes that correspondence describing the terms of this obligation was sent to the General Secretary of the Ministry of Finance and also to the President of the Procurement Board at the Ministry of Labour, Employment and Social Security. However, the Committee pointed out in its previous comment that the inclusion in public contracts of clauses simply requiring compliance with the labour legislation is insufficient to give effect to the core requirement of the Convention. The Convention states that public contracts must include clauses ensuring that workers employed in the execution of the contracts receive wages and enjoy other conditions of work which are not less favourable than those established for work of the same character in the same region and the same sector of activity by national law or regulations, collective agreement or arbitration award. In other words, the workers concerned must have conditions of work not less favourable than the best conditions provided by the three aforementioned alternatives. Hence it often happens that minimum conditions relating to wages or hours of work are improved either for the whole economy or for a given sector of activity through a collective agreement. In this case, the mere application of the labour legislation in the context of public contracts would be insufficient to provide these workers with the best conditions of work that exist.

The Government also indicates in its report that bidders are required, at the time they submit their tenders, to provide a certificate that they are up to date with their contributions to the National Social Security Fund. However, as the Committee emphasized in its 2008 General Survey on labour clauses in public contracts (paragraph 118), certification that the contractor concerned has complied with labour law and paid the appropriate social security contributions offers some proof of his past performance but, unlike labour clauses, offers no binding commitment with respect to the performance of future work.

The Committee also recalls that in its previous observation it emphasized that the Convention also requires the fulfilment of other obligations, namely consultation of the employers' and workers' organizations concerned with respect to the terms of the labour clauses (*Article 2(3)*); the posting of notices in conspicuous places at the establishments concerned with a view to duly informing the workers (*Article 4*); and, in the event of failure to observe and apply the labour clauses, adequate penalties such as the withholding of contracts or the withholding of payments to the enterprises concerned (*Article 5*).

***The Committee again expresses the hope that the Government will take the additional measures in the near future that are needed to ensure the full application of the Convention. It requests the Government to keep the Office informed of any further developments in this respect.***

### Argentina

#### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1956)**

*Article 1 of the Convention. Definition of the term "wages".* The Committee notes that a Bill establishing the progressive elimination of "non-remunerative" allowances in the private sector and their incorporation into the wages within a period of six months was recently approved by the Senate and is now pending discussion before the House of Deputies. Moreover, the Committee notes the communication of the General Confederation of Labour (CGT RA), dated 31 August 2011, in which the Confederation expresses its support for the aforementioned Bill. ***The Committee requests the Government to keep the Office informed of further developments in this regard and to provide a copy of the new legislation as soon as it is adopted.*** Furthermore, the Committee notes the CGT's indication that recent jurisprudence has confirmed that all payments to a worker in exchange of his/her work – irrespective of their designation or attributed characteristics – form part of the wage.

However, the Committee notes that the Government once again fails to address the other points raised in its previous observation, namely: (i) the progress made in the negotiations to resolve the dispute between the Ministry of Health of the Government of Buenos Aires and the Federation of Professional Employees of the Government of the autonomous city of Buenos Aires; (ii) the situation with regard to the Bill to amend sections 120 and 147 of the Act on labour contracts on the elements of wages which cannot be attached; (iii) any changes in the situation concerning the payment of wages in the form of locally issued vouchers; and (iv) the current situation regarding wage arrears and other difficulties in the regular payment of wages which may persist in certain sectors or provinces. ***The Committee is therefore bound to renew its request for detailed information on these points.***

## Belgium

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1970)**

*Article 11 of the Convention. Protection of wage claims in the event of bankruptcy.* The Committee notes the joint comments submitted by the Confederation of Christian Trade Unions (CSC), the General Federation of Liberal Trade Unions of Belgium (CGSLB) and the General Labour Federation of Belgium (FGTB) concerning the Act on the Continuity of Enterprises of 31 January 2009, which repeals the Act on Judicial Composition Proceedings of 17 July 1997. The new Act allows enterprises in difficulty to opt for judicial reorganization proceedings so as to continue with all or part of their activities. Under these proceedings, the employer–debtor is granted a moratorium that must not exceed six months, with a view to reaching an amicable agreement with the creditors on a restructuring plan that must specify the periods of payment, the reduction of outstanding debts and, if applicable, the conversion of receivables into shares and the differentiated settlement of certain categories of debts, depending on the extent or nature of these debts. This plan has to be approved by the majority of creditors representing at least half of the claims involved. The CSC, the CGSLB and the FGTB, for their part, state that the conditions for approving the reorganization plan do not guarantee that workers are adequately informed of their rights during the proceedings and tend to benefit other creditors, such as banks or large suppliers, to the detriment of wage earners who, in practice, have to bear a reduction of 50–70 per cent of their wage debts, and sometimes even more, under the majority of plans. On the assumption that wages constitute a vital component guaranteeing the subsistence level of workers and their families, the three trade union organizations believe that wage debts should not be exposed to commercial risk or be conditional upon procedures undertaken from a purely market standpoint. In their observations, the CSC, the CGSLB and the FGTB also point out that wage earners, considered as ordinary creditors, have no privileges whatsoever and that the commercial courts, who are the only ones competent in the matter, systematically refuse to apply the Protection of Remuneration Act of 12 April 1965, citing the principle of speciality. **The Committee requests the Government to submit comments concerning the joint observations by the CSC, the CGSLB and the FGTB.**

## Plurinational State of Bolivia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1977)**

*Articles 4, 6, 7, 8 and 12 of the Convention. Abusive practices in the payment of the wages of indigenous agricultural workers.* Further to its previous comment regarding abusive pay practices with respect to indigenous agricultural workers, the Committee notes the Government's reference to Act No. 3785 of 23 November 2007 and Supreme Decree No. 29432 of 16 January 2008, which extend the coverage of the General Labour Act and social security protection to seasonal agricultural workers. The Committee also notes the Government's reference to: (i) Supreme Decree No. 28159 of 16 May 2005 on a labour regime for the Guaraní communities; (ii) Supreme Decree No. 29215 of 2 August 2007 on regulations concerning national agrarian reform; (iii) Supreme Decree No. 29292 of 3 October 2007 establishing an Inter-ministerial Council on the eradication of servitude and forced labour; and (iv) Supreme Decrees No. 29802 of 19 November 2008 and No. 0388 of 23 December 2009 on servitude and forced labour in agricultural areas. **The Committee asks the Government to elaborate on the practical impact that this legislation has had on the situation of indigenous agricultural workers in the Chaco region, and indicate any targeted programmes or initiatives seeking to improve the pay conditions of the workers concerned. Moreover, noting that a new General Labour Act is currently being drafted, the Committee again requests the Government to take into account the comments made in 2010 under the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).**

As regards the implementation of a national plan of action to eradicate and combat forced labour in all its forms, the Committee notes the information provided by the Government concerning: (i) the establishment of the Fundamental Rights Unit (UDF) under Supreme Decree No. 29894; (ii) the Transitional Inter-ministerial Plan 2007–08 for the Guaraní people (PIT Guaraní); and (iii) the programme to strengthen institutional capacities (FORDECAPÍ) in agreement with the Government of Switzerland. The Committee further notes the Government's indication that the UDF set up an action plan for 2009–10 to enforce fundamental rights of all Bolivian workers, especially indigenous and vulnerable workers, that the PIT Guaraní aimed to guarantee individual and collective rights of the Chaco community and was administered in six components, and that the FORDECAPÍ which addressed all cases dealing with, inter alia, indigenous agricultural workers has been extended until December 2012. **The Committee asks the Government to keep the Office informed of any assessment of the various plans against forced labour and on the working conditions of indigenous agricultural workers as well as any follow-up activities that might be undertaken in this regard.**

The Committee is raising other points in a request addressed directly to the Government.

## Brazil

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1965)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes that the Government's report provides detailed information on the legislation governing the conditions of employment of federal public servants, which are not really relevant to the scope and purpose of this Convention. The Committee recalls that the primary objective of the Convention is to guarantee appropriate levels of wages and decent working conditions for workers employed for the execution of public contracts, that is to say contracts concluded by a government authority and involving the expenditure of public funds. The Convention therefore requires that labour clauses be included in public contracts in order to ensure that the workers concerned enjoy wages and other working conditions not less favourable than those established by law, collective agreement or arbitration award for work of the same nature in the same district. As explained in the Practical Guide prepared by the Office in 2008 (page 17), Convention No. 94 is about procurement contracts in the public sector, not about the employment contracts of public employees. The Committee recalls that it has been drawing the Government's attention to the main requirements of the Convention for more than a decade and has been suggesting measures to supplement the public procurement legislation, especially section 44 of Act No. 8666 of 1993 and Normative Instruction No. 8 of 1994. **The Committee accordingly urges the Government to take action in order to bring its legislation into full conformity with the requirements of the Convention.**

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Bulgaria

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (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:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observation, the Committee notes with **regret** to note that the Government is still not in a position to report any concrete progress in giving effect to the principal obligation of the Convention, i.e. the insertion of the labour clause prescribed by *Article 2* in all public contracts falling within its scope. The Government refers to three different provisions of the Public Procurement Act (SG No. 28/06.04.2004) which transpose corresponding provisions of the EU public procurement directive 2004/18/EC but which bear no or little relationship to the specific requirements of the Convention. More concretely, sections 16c and 26 of the Public Procurement Act deal with situations where States may use procurement operations as a means to pursue broader public policy objectives such as environmental protection or the promotion of employment of vulnerable groups (e.g. persons with disabilities), whereas section 56 of the same Act requires tenderers to declare that in drawing up their offer they have taken into account existing regulations concerning minimum wage levels. As the Committee has pointed out in paragraphs 242 and 248 of its 2008 General Survey on labour clauses in public contracts, even though there is no contradiction between the requirements of ILO Convention No. 94 and the principles set out in the two EU public procurement directives, these directives do not specify a level of employment protection or the working conditions required in the performance of a contract as the Convention does. The Committee further refers to paragraph 46 of the same General Survey in which it observed that Convention No. 94 calls for the insertion of labour clauses of a very specific content which should not be confused with clauses related to equal remuneration and gender equality, such as those including affirmative action measures (e.g. measures to promote the employment of women or addressing discrimination through a system of quotas), or yet other clauses requiring compliance with core labour standards (e.g. those aimed at preventing the use of child labour and anti-union practices).

In view of the Government's continued failure to implement the basic requirement of the Convention, the Committee wishes once again to draw attention to the following: (i) the rationale of the Convention is to ensure – through the insertion of specific labour clauses in all public contracts – that workers engaged in the execution of public contracts enjoy the most advantageous wage and other working conditions among those established by law, collective agreement or arbitration award for work of the same nature in the same district; (ii) since labour laws and regulations normally set out minimum standards which are susceptible of being improved through collective bargaining, it is evident that the mere fact that the general labour legislation applies also to public contracts is not sufficient in itself to ensure to the workers concerned the most advantageous pay and working conditions established for work of the same character in the district concerned; (iii) to ensure compliance with the terms of labour clauses, the Convention requires concrete measures for adequate publicity (posting of notices) and an adequate system of sanctions (withholding of contracts or withholding of payments) that go beyond the enforcement measures often provided for in the general labour legislation. **The Committee therefore urges the Government to adopt without delay the necessary measures in order to give full effect to the requirements of the Convention and recalls that the Government may draw upon the advisory services of the Office to this effect.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Burundi

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (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 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observation, the Committee notes the adoption of Act No. 1/01 of 4 February 2008 concerning the Code on Public Procurement. The new public procurement legislation regulates the award, execution and supervision of all public contracts on the basis of equality of treatment and transparency. It also establishes two organs, the National Directorate for oversight of public procurement operations (DNCMP) and the Regulatory Authority of public procurement (ARMP) which are responsible for ensuring compliance with laws and regulations in respect of public contracting. The Committee regrets to note, however, that the Code on Public Procurement does not provide for the insertion of labour clauses as prescribed by this Article of the Convention. In fact, the only provision which appears to address labour matters in relation to the public procurement process is section 55(1)(a) of the Code which excludes from public tendering persons who have not been regular in the payment of taxes, contributions and other dues of all kinds and who cannot produce a certificate of the administrative authority concerned showing compliance with those obligations. The Committee refers, in this respect, to paragraphs 117–118 of the General Survey of 2008 on labour clauses in public contracts in which it pointed out that the Convention does not relate to some general eligibility criteria of individuals or enterprises bidding for public contracts but requires a labour clause to be expressly included in the actual contract that is finally signed by the procuring entity and the selected contractor. Similarly, certification may offer some proof about tenderers' past performance including respect for social obligations but carries no binding commitment with regard to prospective operations as labour clauses do. **Noting that the Government in its last report had announced its intention to take appropriate action in order to bring its legislation into full conformity with the Convention, the Committee hopes that the necessary steps will be taken without further delay. Noting also that Decree No. 100/120 of 18 August 1990 on general conditions of contract will cease to apply upon the entry into force of the new Code on Public Procurement, the Committee requests the Government to transmit the text of the new general conditions of contract once they have been adopted. Moreover, the Committee requests the Government to clarify whether Presidential Decree No. 100/49 of 11 July 1986 on specific measures to guarantee minimum conditions to workers employed by a public contractor – which reproduces in essence the provisions of Article 2 of the Convention without, however, referring expressly to labour clauses – is still in force and, if so, how the application of section 2 of that Decree is ensured in practice.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Cameroon

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)**

*Article 2 of the Convention. Labour clauses.* The Committee notes the adoption of Order No. 033/CAB/PM of 13 February 2007 issuing the General administrative terms and conditions applicable to public contracts (CCAG) and the Prime Minister's Circular No. 003/CAB/PM of 18 April 2008, concerning compliance with regulations pertaining to Government procurement, enforcement and monitoring. It notes in particular the CCAG applicable to public contracts, section 14.1 of which refers to the employer's obligations to protect the labour force and comply with the social legislation in force. The same section stipulates that the rules for application of these texts shall be established by the Special administrative terms and conditions (CCAP). In this respect, the Committee notes that the regulations established by the CCAG are drafted in very general terms and do not comply with the specific requirements of *Article 2* of the Convention. The Committee recalls that *Article 2* of the Convention requires the inclusion of clauses ensuring that workers in enterprises involved in public contracts enjoy the same working conditions as those established for work of the same character in the trade or industry concerned in the district where the work is carried on. The main aim of the Convention is therefore to guarantee that workers employed by an enterprise and paid indirectly from public funds enjoy – thanks to the inclusion of appropriate labour clauses in public contracts – wages and working conditions that are at least as favourable as wages and working conditions normally assured for the type of work in question, especially when the statutory minimum working conditions are exceeded by collective agreements or specific agreements. **While noting that the Government states that it intends bringing its legislation in line with the Convention, the Committee asks the Government once again to take steps in the very near future to bring the legislation concerning public contracts in conformity with the provisions of the Convention, especially Articles 2 (inclusion of labour clauses), 4(a)(iii) (notices in workplaces) and 5 (withholding of contracts or of payments). It also requests the Government to keep the Office informed of any developments concerning the drafting of the new Public Contracts Code, and to include a copy of the text of the CCAP in its next report.**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 8(1) of the Convention. Deductions from wages.* The Committee notes the comments of the General Union of Cameroon Workers (UGTC), dated 9 September 2011, according to which the National Social Insurance Fund (CNPS) as from August 2009 has been making deductions from the wages of certain employees in violation of section 75 of the Labour Code and section 4 of Decree No. 94/197/PM of 9 May 1994. In this connection, the Committee notes the Government's indication that the Labour Code is currently in the process of revision and section 75 will be brought into line with the Convention with respect to wage deductions (known as "deposits") prescribed by individual labour agreements. The Committee also notes the comments of the Cameroon United Workers Confederation (CTUC) according to which the announced labour law reform would call for the involvement of the National Consultative Labour Commission, which nonetheless has not met for the last two years. **The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the UGTC and CTUC. It also requests the Government to keep the Office informed of any progress made in the process of revision of the Labour Code.**

*Article 12(1). Payment of wages at regular intervals.* The Committee notes the Government's indication that it has recently allocated more than 3 billion CFA francs (approximately US\$6.35 million) to private educational institutions permitting them to pay delayed wages. It also notes the Government's indication that the heavily indebted poor countries (HIPC) initiative of the International Monetary Fund has contributed to the reduction of poverty in the country, for instance, by reducing the existing wage debt in the education and health sectors. In this regard, the Committee notes the comments of the CTUC according to which the report of the meeting with public administrations concerned by the payment of wages arrears by liquidated public and semi-public companies has not yet been finalized and communicated to the social partners. ***The Committee asks the Government to provide more detailed information concerning the persistent problems of accumulated wage arrears that have been highlighted by the Committee in the observations addressed in 2008 and 2009, especially in the public sector, including the total amounts of wage arrears by different branches of the economy, the operation of the special commission set up to calculate and settle wage entitlements and arrears of former employees of state and semi-public enterprises, concrete quantified results of the HIPC initiative with respect to wage arrears, and any other measures taken or envisaged with a view to settling all outstanding payments and preventing the recurrence of similar problems in the future.***

## Central African Republic

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1964)**

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes the adoption of Act No. 08.017 of 6 June 2008 issuing the Public Contracts Act and Decree No. 08.335 of 20 September 2008 on the organization and functioning of the authority to regulate public procurement operations. However, it notes that this new Act, which is aimed at guaranteeing free access to public procurement orders, equality of treatment of tenderers, the economy and effectiveness of the procurement procedure and the transparency of procedures based on their rationalization, modernization and traceability, does not contain any provision on labour clauses which are to be included in public contracts, in accordance with this Article of the Convention. In this respect, the Committee considers it necessary to refer to its 2008 General Survey, which recalls that the essential objective of the Convention is to guarantee to workers employed by an entrepreneur and paid indirectly out of public funds, by placing appropriate labour clauses in public contracts, wages and working conditions that are not less favourable than those normally established for the same type of work, whether they are determined by collective agreement or otherwise. ***While noting that section 83 of Act No. 08.017 referred to above provides for the establishment of specifications determining the conditions for the execution of the contract, which will include general administrative clauses as well as specific administrative clauses, the Committee requests the Government to take any appropriate measures for the inclusion of provisions giving full effect to Article 2 of the Convention in the general administrative clauses of the specifications. The Committee hopes that, when adopting the decrees issued under the Public Contracts Act, the Government will not miss the opportunity to finally bring its legislation into conformity with the Convention, and it requests the Government to provide a copy of any new text as soon as it is adopted.***

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 12 of the Convention. Regular payment of wages.* Further to its previous observation, the Committee notes that the Government's report contains no information regarding the action taken on the Joint Technical Committee's recommendations made in its report of November 2006, for the purpose of setting a time frame for repayment of the wage debt, estimated to amount to 70.05 billion CFA francs (approximately US\$144 million). The Committee nonetheless understands that a plan for the settlement of domestic arrears was produced in 2008 by the Ministry of Finance and the Budget in the context of current efforts to reduce the public deficit. Under the plan, a timetable has been set for the clearance of wage arrears, which, according to a new estimate, amount to 117 billion CFA francs (approximately US\$239 million) and which must be settled in full by 2016. It also understands that the Government has adopted the settlement plan by incorporating it in the 2009 Finance Act. It understands that wage arrears continue to accumulate in the public sector, for example in the postal and savings services, where workers have not been paid for 55 months, and also in the education sector as well as in the defence and security forces. ***As the Committee emphasized in paragraph 367 of its 2003 General Survey on the protection of wages, a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and priority action is therefore needed to put an end to such practices. It accordingly asks the Government to indicate whether a wage debt clearance plan has indeed been adopted and, if so, to report on its implementation, giving particulars of the measures taken and indicating whether and how foreign financial assistance granted for the settlement of wage arrears has been used.***

## Colombia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)**

*Articles 11 and 12 of the Convention. Protection of wage claims in the event of bankruptcy – Payment of wages at regular intervals.* Further to its previous comment, the Committee notes the updated information provided by the

Government concerning the liquidation proceedings of the hospital San Juan de Dios and of the Merchant Navy Investment Company, which have been the subject of numerous communications received previously from trade union organizations. *The Committee requests the Government to keep the Office informed of any progress made for the final settlement of these disputes. Moreover, in the absence of any reply concerning the situation of the Airline Pilots' Provident Fund (CAXDAC), the Committee again requests the Government to keep the Office informed of any developments in this regard.*

In addition, the Committee notes the comments of the Single Confederation of Workers of Colombia (CUT) and the Confederation of Workers of Colombia (CTC), dated 29 August 2011, according to which the constitutional and legislative provisions on wage protection are not applied in practice. The CUT and the CTC allege that the Government has failed to put in place sufficient inspection mechanisms to ensure the regular payment of wages. The two organizations refer to the current level of the minimum wage which is far below the poverty line and they denounce the lack of social dialogue in these matters. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of CUT and CTC relating to inspection mechanisms to ensure the regular payment of wages.*

## Comoros

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1978)

*Article 3 of the Convention. Minimum wage fixing.* Further to its previous observation in which it noted with regret that no progress had been made over the past nine years with respect to the readjustment of the guaranteed interoccupational minimum wage (SMIG), the Committee notes the observations of the Confederation of Workers of Comoros (CTC), dated 31 August 2011, concerning the application of the Convention. The CTC regrets that the compromise monthly minimum wage of 35,000 Comoro francs (KMF) (approximately €70) has still not been made official and that the Higher Council of Labour and Employment (CSTE) has not been reconvened since 2002. The CTC is of the view that the authorities are deliberately blocking the establishment of the SMIG under the pressure of certain employers. In its reply, the Government indicates that the question of a real assessment of the minimum wage will be examined shortly by the CSTE and that following a number of different studies a minimum rate of approximately €70 has been retained and will be proposed for adoption. *The Committee requests the Government to keep the Office informed of any measures taken or envisaged for the determination of the SMIG and the reactivation of the CSTE.*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)**

*Article 12 of the Convention. Regular payment of wages.* In its previous observation, the Committee noted that despite its repeated commitments to put an end to the persistent problem of the deferred payment of wages, especially in the public sector, the Government, hindered by economic and political constraints, had not come forward with any specific measure to pay off the wage debt. In its last report, the Government states that it paid six months of wages in April 2010 and three months of wages in May 2011 to officials affected by the deferred payment of their wages. In this connection, the Committee understands that the Government received financial assistance from international institutions and donor countries in 2010, designed to help it settle its wage arrears. Furthermore, the Committee understands that the amount of time that officials were not paid wages during the 1995–2010 period is estimated to be between 35 and 45 months. Referring to its previous observation and to paragraph 367 of its 2003 General Survey on the protection of wages, the Committee recalls that a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and that priority action is needed to put an end to such practices. *The Committee trusts that the Government will, in the immediate future, formulate a schedule for the prompt and final settlement of all wage arrears. It requests the Government once again to provide detailed information on the extent of the problem, particularly on the overall amount of outstanding wage arrears, the approximate number of workers concerned and the average length of delay in the payment of wages. Finally, the Committee requests the Government to indicate the measures taken or envisaged concerning the use of the foreign assistance it was granted to settle the wage debt.*

The Committee is raising other points in a request addressed directly to the Government.

### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99)** (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 1(1) of the Convention. Minimum wage fixing machinery.* Further to its previous observation, the Committee notes the Government's explanations that confirm that no progress has been made either with respect to the promulgation of the decree fixing the guaranteed inter-occupational minimum wage (SMIG) at 35,000 KMF (approximately US\$110) per month or as regards the reactivation of the Higher Council of Labour and Employment (CSTE). The Government indicates that the draft decree establishing the SMIG rate for the entire private sector, including agriculture, has not yet received the final approval of the President and that the Ministry of Labour is currently taking steps to successfully complete this process. The Government also indicates that tripartite consultations within the CSTE are expected to resume after the adoption of the revised Labour Code which, in turn, is scheduled to be discussed at the next ordinary session of the National Assembly. Regrettably, the Committee is once again obliged to observe that the Convention is presently not applied in either law or practice. *The Committee urges the*

*Government to take the necessary action without further delay with a view to: (i) establishing and implementing the guaranteed inter-occupational minimum wage rate; and (ii) initiating tripartite consultations within the CSTE on its periodic review and adjustment. It also asks the Government to transmit a copy of the revised Labour Code as soon as it is adopted.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Congo

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 12 of the Convention. Payment of wages at regular intervals.* Further to its previous observations concerning accumulated wage debt, especially in the public sector, the Committee notes the Government's indication that all unpaid wages to public employees, which represented the wage bill of 22 months, have now been paid. More concretely, the Government states that wage arrears totalling 240 billion CFA francs (approximately US\$28 million), including both unpaid wages and social security contributions, have been settled. With respect to the payment of the sums owed to the former workers of the Ogooué Mining Company (COMILOG), to which the Committee has been drawing attention for several years, the Government indicates that from July 2008 to March 2009, a total amount of 422 million CFA francs (approximately US\$934,000) has been paid to 319 out of 912 former workers of the company. The Committee notes with *interest* these positive developments and trusts that the Government will continue to closely monitor the process of settling any outstanding payments to the workers concerned. *The Committee asks the Government to provide together with its next report an updated account on the situation regarding the regular payment of wages, including detailed particulars on any persistent difficulties in either the public or the private sector and the measures taken in response to such situations.*

## Costa Rica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)**

*Articles 2 and 5 of the Convention. Inclusion of labour clauses in public contracts – Measures of supervision and sanctions.* Following its previous comment on the scope of the provisions of Executive Decree No. 11430-TSS of 30 April 1980 compared with that of Executive Directive No. 34 of 8 February 2002, the Committee notes the detailed information communicated by the Government concerning the hierarchy of sources in national administrative law. It particularly notes that a directive is an administrative act of general application with no legislative function and that the provisions of Executive Directive No. 34 are incorporated into the requirements of Executive Decree No. 11430-TSS, which is a higher ranking rule of law. The Committee notes the Government's assurances that an amendment of this Directive for reasons of legal certainty does not seem necessary.

In its previous observation, the Committee also raised matters concerning the inclusion of labour clauses in public contracts, which, according to a Government report, are rare. On this point, it notes the Government's comments to the effect that national legislation clearly and specifically establishes the rights of all workers and that any failure to include labour clauses in a public contract does not undermine the obligation to respect labour and social security legislation. The Committee nevertheless recalls the importance of including labour clauses not only in the contract concluded with the contractor selected, but also in the specifications given to the persons tendering for contracts, in accordance with *Article 2(4)* of the Convention. Informing the persons tendering for contracts in advance is intended to make them aware of their social obligations when drawing up their tenders. Furthermore, including labour clauses in the actual contract makes it possible to apply sanctions inherent in public contracts if there is failure to comply with these clauses. In this respect, *Article 5(1)* of the Convention specifically states that adequate sanctions should be applied, by the withholding of future contracts, for failure to observe these labour clauses. Furthermore, under *Article 5(2)*, measures such as the withholding of payments under the contract should be taken to ensure the workers concerned obtain the wages of which they are unduly deprived. *The Committee therefore reiterates its previous observation, when it urged the Government to take the necessary steps to ensure the actual inclusion of the labour clauses provided for under Executive Decree No. 11430-TSS in all public contracts to which the Convention applies.* It notes, in this context, that the Government has contacted the ILO Decent Work Technical Support Team and Country Office for Central America in San José with a view to jointly examining its report on the application of the Convention and, if necessary, to discussing measures that would enable it to ensure the contractors' respect of social legislation in public procurement. *The Committee hopes that the Office will provide the Government with all the necessary technical assistance to ensure the effective implementation of the Convention in practice.*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Articles 6, 8 and 9 of the Convention. Freedom of workers to dispose of their wages – Deductions from wages.* The Committee refers to its previous comment pursuant to observations made by the Union of Workers of the Ministry of Finance and the National Customs Service (SITRAHSAN) concerning the obligation for certain officials to take out an insurance policy (*póliza de fidelidad*) designed to ensure that they duly fulfil their obligations. It notes with *interest* the

detailed information communicated by the Government on the rules for implementing this obligation, and in particular the fact that the amount of insurance premiums paid by the official concerned is relatively low compared to that of their pay.

*Articles 3 and 4. Payment of wages in legal tender and value attributed to allowances in kind.* The Committee follows-up on comments it has been making for many years on the need to amend sections 165 and 166 of the Labour Code. As regards section 165, more particularly the possibility of giving workers on coffee plantations coupons that may later be converted into cash, the Committee notes that the Legal Affairs Department of the Ministry of Labour and Social Security had consultations with the Costa Rican Coffee Institute and the Ministry of Agriculture and Livestock to try to obtain more specific information on the way in which workers involved in coffee harvesting are paid and to take a decision concerning the reactivation of the draft amendment of this provision of the Labour Code. As regards section 166 of the Labour Code, under which the value of the remuneration in kind is fixed at a flat rate of 50 per cent of the wage in cash if another amount has not been fixed by an agreement between the parties, the Committee notes the detailed information provided by the Government on the subject of the criteria used to establish whether the allowances in kind provided by the employer should be qualified as wages or not. It notes that the Government, while indicating that the fixing of the value of remuneration in kind must reflect reality, nevertheless confirms the application of the regulation established under section 166 of the Labour Code. While noting that, according to the Government, no complaint has been lodged with the labour inspection services on this matter, the Committee recalls, as it stressed in its 2003 General Survey on wage protection (paragraph 153), that *Article 4(2)* of the Convention imposes an obligation as to the result to be achieved and therefore requires the adoption of practical measures to ensure that any allowances in kind which may be provided in partial settlement of the wages due are attributed a fair and reasonable value. Determining a flat rate to fix this value, as stipulated under section 166 of the Labour Code, does not seem to be in conformity with the Convention on this point. Furthermore, the absence of specific criteria for the assessment of the value of allowances in kind by the parties concerned carries a degree of risk of abuse in this area. By way of example, some national legislations specify that the value of any payment in kind must normally correspond to the cost price and may in no case exceed its market value. The Committee notes that the Government has reiterated its request for technical assistance from the Office concerning the draft amendments to sections 165 and 166 of the Labour Code. ***The Committee hopes that the Office will provide the technical assistance requested in the very near future so that the Government might take the necessary measures to bring sections 165 and 166 of the Labour Code fully in line with the provisions of the Convention.***

*Articles 8 and 12. Deductions from wages and payment of wages at regular intervals.* The Committee notes with ***interest*** the measures described in the Government's report aimed at strengthening the labour inspection services, particularly the introduction of an electronic system of cases and the institution of a national campaign for the respect of minimum wages. It notes the information on the way in which inspection visits aimed at stopping the irregular payment of wages in enterprises are conducted. Finally, the Committee notes that, according to the Government's report, the problems linked to the unjustified deductions from wages – upon which the Committee had previously commented – have been settled and no complaint has been lodged on this matter.

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1979)**

*Articles 3 and 5 of the Convention. Criteria for determining minimum wage levels – Adequate inspection.* The Committee notes the comments of the Confederation of Workers Rerum Novarum (CTRN), which were received on 31 August 2011 and transmitted to the Government on 22 September 2011, concerning the application of this Convention. The CTRN denounces the low number of labour inspectors resulting in poor compliance with the minimum wage legislation. The CTRN indicates, in this regard, that practically one third of the active population receives wages inferior to the applicable minimum wage rates. In addition, the CTRN draws attention to the need to bring up to date the structure and value of the family basket of goods (rural and urban), to strengthen the National Wages Council and to create within the Ministry of Labour a Technical Unit on Productivity. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the CTRN.***

In addition, the Committee understands that in October 2011, the National Wages Council adopted unanimously changes in the methodology for the annual readjustment of the minimum wage. Whereas since 1998, minimum wage rates were reviewed only on the basis of the recorded inflation rate, in the future they will be adjusted by reference to national productivity levels and the expected inflation rate. ***The Committee requests the Government to provide in its next report additional explanations on the new methodology and its impact on minimum wage rates.***

## **Côte d'Ivoire**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 12 of the Convention. Payment of wages at regular intervals.* Further to its previous comments concerning persistent problems with the timely payment of wages, the Committee notes the Government's statement that even though there are currently no wage arrears in the public and semi-public sector, the situation in the private sector is different with an increasing number of enterprises experiencing difficulties with the regular payment of wages. The Government adds that according to labour inspection reports, infringements of the labour legislation related to the timely payment of wages are observed more and more frequently due to the socio-political crisis in the country but also because of the lack of legal sanctions. In this connection, the Government indicates that one of the major innovations of the new draft Labour Code

currently under examination would be the introduction of penal sanctions against employers who would fail to pay wages on time and in full.

The Committee understands, however, that considerable amounts of wage debts persist in the public sector. It notes, for instance, that in April 2011, a first loan of €200 million was granted by France, aimed at paying accumulated wage arrears to public employees while another loan of €150 million is expected to follow. The Committee also notes that in June 2011, it was announced that unpaid wages owed to postal workers totalled 865 million CFA francs (approximately €1.3 million). *The Committee accordingly asks the Government to provide an updated account on the current wage arrears situation detailing the number of workers concerned, the principal sectors affected, the average delay in the payment of wages, the total amount of unpaid wages and the measures taken or envisaged in order to contain and progressively eliminate such practices which clearly contravene both the letter and the spirit of the Convention. The Committee also asks the Government to keep the Office informed of any further developments concerning the revision of the labour legislation and the introduction of dissuasive sanctions for the delayed payment or non-payment of wages.*

## Cyprus

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 15 of the Convention. Implementing legislation.* The Committee recalls that for a number of years it has been drawing the Government's attention to the absence of legislative provisions giving effect to most of the provisions of the Convention and it has been urging the tripartite Labour Advisory Board and successive technical committees to complete the drafting of new legislation. The Committee notes with *satisfaction* the adoption of the Protection of Wages Act No. 35(I)/2007 which transposes into domestic law all the key principles of the Convention and complies with most of its requirements.

The Committee is raising other points in a request addressed directly to the Government.

## Democratic Republic of the Congo

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the adoption of Act No. 10/010 of 27 April 2010 respecting public contracts. However, it notes that this new Act, which is intended to adapt the system of the conclusion of contracts to the requirements of transparency, rationality and effectiveness which currently characterize this vital sector, does not contain any provision on the labour clauses which have to be inserted in public contracts, in accordance with this Article of the Convention. In this respect, the Committee considers it necessary to refer to its 2008 General Survey, which recalls 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. *While noting that section 49 of Act No. 10/010 provides for the establishment of specifications determining the conditions for the execution of the contracts, which will include general administrative clauses as well as specific administrative clauses, the Committee asks the Government to take all the appropriate measures for the inclusion of provisions giving full effect to Article 2 of the Convention in the general administrative clauses contained in the specifications. The Committee hopes that, when adopting the decrees to apply the Act to public contracts, the Government will not fail to take the opportunity to bring its legislation finally into conformity with the Convention and it requests the Government to provide a copy of any new text once it has been adopted.*

## Djibouti

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1 of the Convention. Establishment of minimum wage fixing machinery.* Further to its previous comments on the abolition of the system of the guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's explanations to the effect that this decision was taken under pressure from the International Monetary Fund (IMF), which required the Government to adopt a raft of measures, including liberalization of the labour market, to be the beneficiary of a Structural Adjustment Programme (SAP). The Government adds that it made the choice of deregulation rather than leave the SMIG in place, since the balance of public finances would have been seriously jeopardized and wages would not have been guaranteed, thereby threatening the social peace and stability of the country. In this regard, the Committee recalls that the establishment of minimum wage fixing machinery outside the system of collective bargaining is essential for ensuring effective social protection for workers who are not covered by the rules of collective agreements, and that the Government must take the

necessary steps to ensure that collectively agreed minimum wage rates are binding and the application thereof is linked to a system of supervision and effective penalties.

The Committee therefore concludes that the situation remains unchanged. Apart from the Government's indication that the matter would be studied by the new National Council for Labour, Employment and Vocational Training (CNT), the Convention is no longer applied either in law or in practice. The CNT was set up pursuant to Decree No. 2008-0023/PR/MESN of 20 January 2008 as a tripartite structure to enable the Government and the social partners to exchange ideas in a free and open manner. In this regard, the Government points out that there is increasing talk of the possibility of reintroducing the SMIG for each branch of economic activity. *The Committee requests the Government to supply detailed information on the planned meeting of the CNT and any decisions regarding the reintroduction of the national minimum wage rate.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1978)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes with *regret* that the Government's report has not been received for the fourth consecutive year. *The Committee asks the Government to submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of recently adopted public procurement legislation, including Act No. 53/AN/09/6ème L of 1 July 2009 establishing the Public Procurement Code and Decrees No. 2010-0083/PRE, No. 2010-349/PRE and No. 2010-0085, all dated 8 May 2010.*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 8 and 12 of the Convention. Deductions from wages and payment of wages at regular intervals.* The Committee has been commenting for a certain number of years on the provision of the Labour Code permitting wage deductions on the basis of individual agreement and also on difficulties experienced in the public sector concerning the timely payment of wages. *The Committee requests the Government to provide up-to-date information on both issues, in the light of the provisions of the Labour Code (Act No. 133/AN/05/5ème L). Moreover, as regards the comments communicated by the General Union of Djibouti Workers (UGTD) in 2007, the Committee requests the Government to refer to comments concerning the application of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)**

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. Minimum wage fixing machinery.* Further to its previous observation in which it noted that the Convention has for all practical purposes ceased to apply following the Government's decision to abolish the system of guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's statement that Djibouti is not an agricultural country. *In addition, as regards the observations made by the General Union of Djibouti Workers (UGTD) in 2007, the Committee asks the Government to refer to its comments made under the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26).*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Dominican Republic**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1973)**

*Articles 8 and 12 of the Convention. Authorized deductions from wages – Final settlement of wages due.* The Committee notes the comments of the National Confederation of Trade Union Unity (CNUS), the Autonomous Confederation of Workers' Union (CASC) and the National Confederation of Dominican Workers (CNTD), which were received on 31 August 2011 and transmitted to the Government on 16 September 2011, concerning the application of this Convention. The three Confederations denounce unauthorized deductions from workers' wages by banking institutions and without the workers' prior consent, especially for the repayment of private loans or in the form of charges for banking transactions. In addition, the CNUS, CASC and CNTD allege that workers in export processing zones (EPZ) are experiencing delays in the payment of their wages while in some cases EPZ enterprises are suddenly closed down and disappear without settling outstanding wage payments. *The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the CNUS, CASC and CNTD.*

The Committee is raising other points in a request addressed directly to the Government.

## Egypt

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1960)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee recalls its previous comment in which it welcomed the issuance of General Circular No. 8 of the Minister of Finance dated 23 June 2008, which adds two new bidding terms to the provisions of the Public Tenders Act No. 89/1998 and its executive decree thus giving effect to the core requirement of the Convention. The Committee notes the Government's explanations that, in the absence of collective agreements, wages are fixed according to the prevailing custom in each region. It also notes the Government's statement that, prior to the issuance of the circular, the matter had been discussed within the Tripartite Consultative Committee and that it was only on that basis that the Ministry of Manpower and Migration requested the Ministry of Finance to issue the circular. Moreover, the Committee notes the Government's indication that all additional steps to ensure the effective implementation of the Convention, particularly as regards the posting of notices with a view to informing the workers of the conditions applicable to them (*Article 4*) and adequate sanctions such as the withholding of contracts or the withholding of payments (*Article 5*), are currently under consideration. **The Committee hopes that the Government will make every effort to take all appropriate action in the very near future to ensure the effective application of the Convention in practice. It also hopes that the Ministry of Manpower and Migration will give the necessary instructions so that the two new bidding terms set out in General Circular No. 8 of 2008 are incorporated as standard clauses into all future public procurement contracts (whether for construction works, supply of goods or performance of services) concluded between public authorities and private contractors.**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 4 of the Convention. Partial payment of wages in kind.* The Committee has been drawing the Government's attention for a number of years to the need to take measures to ensure that allowances in kind, when authorized, are appropriate for the workers' personal use and benefit and that they are fairly and reasonably valued, as prescribed by this Article of the Convention. In this respect, the Committee has observed that section 32(d) of the Labour Code of 2003, which reproduces section 30(d) of the previous Labour Code, fails to give full effect to the requirements of *Article 4(2)* of the Convention. The Committee recalls that the obligation to ensure that allowances in kind are appropriate for the worker's personal use and benefit may be satisfied by exhaustively enumerating the permissible payments in kind, for instance, board and lodging, clothing, use of land or free medical treatment. It also recalls that the obligation to attribute a fair and reasonable value to payments in kind may be met in different ways such as the prohibition to exceed cost price or the ordinary market value, or the price as may be fixed by public authorities. **The Committee accordingly hopes that the Government will take the necessary measures in order to fully implement in law and in practice the requirements of this Article of the Convention.**

*Article 6. Freedom of workers to dispose of their wages.* The Committee notes the Government's renewed reference to section 42 of the Labour Code, which reproduces section 39 of the previous Labour Code, and which prohibits employers from obliging workers to buy food, goods, or services from specific stores or buy goods produced or services provided by them. The Committee is obliged to reiterate that provisions regulating the use of company stores do not cover all the possible ways in which workers can be limited in their freedom to dispose of their wages (one example would be through exerting pressure on workers to make contributions to certain funds). It is therefore necessary for implementing legislation to contain an express provision generally prohibiting employers from restricting the freedom of workers to dispose of their wages. **The Committee accordingly hopes that the Government will consider at the next suitable occasion the possibility of introducing a specific provision laying down a general prohibition upon employers from limiting the freedom of workers to dispose of their wages in any form and manner, directly or indirectly, and not simply in respect of the use of company stores.**

## France

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1951)

*Article 2 of the Convention. Inclusion of labour clauses in public contracts.* The Committee notes that, in reply to its previous comment, the Government asserts that the Public Procurement Code of 2006 does not provide for the formal inclusion of labour clauses in public contracts as national statutory law already establishes the requirement of compliance with such clauses. It notes the Government's reference in this respect to the requirement placed on those concluding public contracts to comply with labour legislation. The Committee further notes the adoption of the new general administrative clause specifications (CCAG), such as those approved by the Order of 19 January 2009 approving the specifications for general administrative clauses in public contracts for ongoing supplies and services, which reiterate this obligation and place the requirement on the contractor to comply with the ILO's eight fundamental Conventions. It notes that, according to the Government, in relation to social issues, it is in the interests of the adjudicating authority to make principal use of the executing clause in section 14 of the Public Procurement Code, which allows it to have the service

performed, under certain conditions indicated in the Government's report, with the inclusion of considerations such as the insertion of persons with few opportunities for employment, the implementation of training activities for them and the promotion of fair trade. The Committee also notes the detailed information contained in the Government's report concerning the recommendations made in this field by the Public Procurement Advisory Commission. It also notes that, under section 55 of the Public Procurement Code, abnormally low offers can be discarded, after requesting tenderers to provide justifications relating to the working conditions applicable where the work is to be performed. In addition, the Committee notes the Government's indications that French labour law requires compliance, by any subcontractor based in France of a principal contractor for public works, with all the collective agreements extended by ministerial order. It further notes that service providers located abroad who are covered by European Directive No. 96/71/EC concerning the posting of workers in the framework of the provision of services, are also required, for a nucleus of mandatory rules, to comply with the content of extended collective agreements. The Committee notes that, according to the Government, the objective of the Convention is achieved in French legislation and that requiring all subcontractors to comply with collective agreements that have not been extended would be contrary to Community law, as established by the case law of the Court of Justice of the European Union (CJEU), and particularly the *Rüffert* ruling of 3 April 2008.

With regard to the requirement for parties to public contracts to comply with labour legislation, the Committee recalls its previous observations, in which it emphasized that the fact that the labour legislation is applicable to all employers and all workers, including those involved in public contracts, does not release the Government from the obligation to require the inclusion of labour clauses in such contracts. Indeed, such clauses retain their full value in cases in which, as in France, the legislation only establishes minimum labour conditions which may be exceeded by general or sectoral collective agreements. Moreover, the Committee notes that the Government refers to section 43 of the Public Procurement Code, which provides for the exclusion from public contracts of economic operators who have been convicted for violations of the rules of the Labour Code, as well as those who are not in compliance with their social and fiscal obligations. It also notes that section 44 of the Public Procurement Code requires tenderers for public contracts to produce, when applying, a statement in which they certify that they are in compliance with their obligations in relation to labour legislation and are not covered by any of the exclusions set out in section 43 referred to above. Moreover, section 46 requires the selected contractors, when signing the contract, to produce certificates issued by the respective social institutions demonstrating that they are up-to-date with their social obligations. In this respect, the Committee wishes to emphasize, as it did in its 2008 General Survey on labour clauses in public contracts (paragraph 118), that the objective of the insertion of labour clauses in public contracts goes beyond simple certification, as its purpose is to eliminate the negative effects of competitive tendering on labour conditions. A mere indication that no violation of legislation has been recorded in relation to work already carried out by the entrepreneur is not sufficient to meet this requirement. Indeed, a certificate bears witness to the previous performance of the tenderer and the fact that the legislation has been respected but, in contrast with labour clauses, does not establish any binding requirement concerning the future work to be undertaken.

With regard to the Government's remarks concerning collective agreements that have not been extended, the Committee emphasizes that *Article 2(1)(a)* of the Convention refers to all the collective agreements concluded between employers' and workers' organizations representative of a substantial proportion of employers and workers in the trade or industry concerned, and not solely collective agreements that have been extended. In its general observation of 1957, the Committee had already observed that it found itself unable to accept the view that, where legislation and collective agreements apply to all workers in a specific country, the Government was freed from the obligation to insert labour clauses in public contracts in accordance with the Convention. It emphasized in that respect that the insertion of labour clauses in public contracts may have positive advantages, particularly where collective agreements are not generally binding. That is the case in France, where not all collective agreements are extended by ministerial order. ***In the light of the above, the Committee requests the Government to keep the Office informed of any development, particularly in legislative terms, relating to the implementation of the Convention at the national level, and to provide a copy of any court decision or relevant official publication.***

## Ghana

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1961)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that it has been commenting on the application of the Convention since its ratification by Ghana and *regrets* that the Government is still unable to indicate any real progress in bringing its national legislation into conformity with the requirements of the Convention. The Government makes renewed reference to section 118 of the Labour Act 2003 even though the Committee has already noted that this provision is not strictly relevant to the subject matter of the Convention and does not give effect to *Article 2 of the Convention* which explicitly requires the insertion of labour clauses in those public procurement contracts meeting the conditions specified in *Article 1* of the Convention. In fact, the general principles set out in the Labour Act regarding minimum wage fixing, maximum working hours or occupational safety and health cannot automatically guarantee to the workers concerned labour conditions which are not less favourable than whichever is the most favourable of the three alternatives provided for in the Convention, i.e. collective negotiation, arbitration or legislation.

As the Committee has stated on a number of occasions, the legislation to which the Government refers in most cases lays down minimum standards, for instance as regards wage levels, and does not necessarily reflect the actual working conditions of workers. Thus, if the legislation lays down a minimum wage but workers in a particular profession are actually receiving higher wages, the Convention would require that any workers engaged in the execution of a public contract be entitled to receive the wage that is generally paid rather than the minimum wage prescribed in the legislation. In other terms, the application of the general labour legislation is not enough in itself to ensure the application of the Convention, inasmuch as the minimum standards fixed by law are often improved upon by means of collective agreement or otherwise.

Moreover, the Government refers once more to the fact that individuals or firms are required to obtain labour clearance certificates before they are allowed to tender for public contracts. In this regard, the Committee is bound to recall that the essential purpose of the insertion of labour clauses in public contracts goes beyond the aims of simple certification, as its purpose is to eliminate the negative effects of competitive bidding on the workers' labour conditions. The Convention seeks to ensure the contractor's commitment to apply high standards of social responsibility in the execution of a public contract which is in the process of being awarded and therefore a mere indication that the contractor concerned has no record of labour law violation in previously completed works is not sufficient to meet its requirements. *As regards the adoption of the Public Procurement Act 2003, the Committee asks the Government to specify the provisions referring to the labour clearance certificate and also forward a copy of the standard tender document used for this purpose.*

*In the interest of maintaining a constructive dialogue, the Committee therefore requests the Government to indicate in its next report any concrete measures taken or contemplated to implement the Convention in law and practice, and recalls in this respect that the inclusion of labour clauses in all the public contracts covered by the Convention does not necessarily call for legislative enactment but may also be effected by means of administrative instructions or circulars.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Greece

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1955)**

*Article 11 of the Convention. Wages as privileged debts.* In its previous observation, the Committee had noted the comments of the Greek General Confederation of Labour (GSEE), which drew attention to section 41 of Act No. 3863/2010 granting the same rank of privilege to workers' wage claims and to those of social security institutions. The GSEE referred to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) – which requires workers' claims to be given a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system – as being the international minimum standard and considered that the Government contravened its obligation to secure full payment of workers' claims before other ordinary creditors establish any claim to a proportionate share of the employer's assets. The Committee notes that, in its reply to the GSEE comments, dated 16 May 2011, the Government makes no reference to the revised order of distribution of liquidated assets, which effectively reduces the practical value of privileged protection of workers' claims to the extent that these claims and those of the social security system now rank equally between themselves.

The Committee recalls, however, that *Article 11(3)* of the Convention requires only that the relative priority of wages and other privileged debts is to be determined by national laws or regulations, and further that Greece has not ratified Convention No. 173, and is therefore not bound by the provisions of Article 8(1) of that Convention, which give a higher priority to workers' claims than to those of the social security system. Also, the Committee notes that a wage guarantee fund – similar to that envisaged by Part III of Convention No. 173 – has been established under Presidential Decree No. 1/1990. In view of the potentially important role of this fund in the context of the major economic crisis facing the country, the ILO high-level mission, which took place in September 2011, noted in its conclusions that the Government was requested to provide additional information on the functioning of the wage guarantee fund but it seems that such information has not been provided so far. *The Committee asks the Government to provide detailed information on the operation of the wage guarantee fund, particularly the number of claims received and amounts paid since the beginning of the current crisis.*

*Article 12. Timely payment of wages – Prompt settlement of wages upon termination of employment.* The Committee notes the reference made in the report of the ILO high-level mission to a potential problem of non-payment or delayed payment of wages as a result of widespread insolvencies and lack of liquidity. According to information obtained by the high-level mission, while small and medium-sized enterprises (SMEs) represent the vast majority of undertakings and account for a major part of employment in the country, 150,000 of them (one in four) have closed down and another 100,000 are expected to close this year. In the public sector, the high-level mission was informed that retroactive measures had been taken by the Government in certain instances, including the case of a former public institution that had maintained public sector wages through collective bargaining after its privatization, whose employees were obliged to pay back the difference in the salaries paid over the last ten years. The Committee notes that, according to several accounts, instances of several months' delay in the payment of wages are rising in sectors such as industry, commerce and health care. The Committee wishes to recall in this regard that, in its General Survey of 2003 on the protection of wages (paragraph 355), it highlighted 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. Inversely, 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.” *The Committee therefore asks the Government to provide documented information on any difficulties experienced in the timely payment of wages, in particular the*

*sectors of activity concerned, the number of workers concerned and the amounts due, and to specify any measures taken or envisaged in order to tackle these problems, including the question of retroactive reimbursement of wages already received.*

Furthermore, the Committee notes that in its comments the GSEE referred to section 75 of Act No. 3863/2010, which authorizes the payment of severance pay in instalments rendering it uncertain and precarious especially in times of financial crisis. In its reply, the Government indicates that part of the severance pay – equal to two months' remuneration – is payable at the time of dismissal and the remaining amount in two monthly instalments, each of which cannot be less than two months' remuneration. The Government also explains that this arrangement aims at facilitating undertakings facing crucial financial problems due to the financial crisis and wishing to make redundancies so that they might avoid bankruptcy. The Committee observes that the possibility of paying the severance pay in instalments may, in some cases – particularly in an environment of recession and widespread liquidity problems – compromise the full and prompt payment of termination benefits and thus limit the workers' right to receive without delay upon termination of employment all sums due to them. ***The Committee accordingly asks the Government to indicate any measures taken or envisaged to ensure that the high numbers of workers who are being dismissed at the present difficult juncture collect swiftly all entitlements due to them.***

More generally, the Committee is concerned about the considerable wage cuts in the public sector decided as part of the austerity measures to reduce the public deficit. According to information obtained by the high-level mission, wages have been reduced through legislative measures by at least 20 per cent, while according to the Confederation of Greek Public Servants' Unions (ADEDY), almost 40 per cent of public employees' income has vanished within the last two years. The Committee considers that by their scale and recessionary effect on the entire economy, these wage cuts represent a major challenge to the notion of wage protection that is at the heart of the Convention and risk undermining its basic objectives (even though, in a strictly legal sense, compliance with the technical standards of the Convention that deal with the modalities of the payment of wages may not be at issue). In this connection, the Committee recalls its Note on the "Relevance and application of ILO wage-related Conventions in the context of the global economic crisis" (paragraph 119 of the Committee's 2010 Report, page 35), in which it emphasized that wage protection takes on particular importance in times of crisis and therefore relevant standards should not be undermined but rather put at the centre of crisis responses, as is underlined in the Global Jobs Pact. It also considered that ILO wages-related standards and principles serve as a reminder of the special nature of wages as the workers' principal, if not sole, means of subsistence, and hence of the need for targeted and priority action in this field, and expressed the hope that ILO member States would act positively in the economic downturn by carrying out the necessary reforms in wage legislation and wage policy consistent with those standards and principles. The Committee also recalls that the Global Jobs Pact insists that action for promoting recovery and development must be guided by the Decent Work Agenda and invites governments to avoid protectionist solutions as well as the damaging consequences of deflationary wage spirals and worsening working conditions in their response to the crisis, and to engage in social dialogue. ***The Committee accordingly requests the Government to provide full particulars on any new anti-crisis measures and policies that impact on wages, including information on the necessary consultations with the employers' and workers' organizations concerned on these measures.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Guatemala

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1952)**

*Articles 2 and 5 of the Convention. Insertion of labour clauses in public contracts – Enforcement measures.* Further to its previous comment, the Committee notes with *interest* the Government's statement that the Ministerial Agreement of 21 November 1985 approving model labour clauses to be included in contracts concluded by public authorities is still in effect. The Committee recalls that for a number of years it has been requesting the Government to provide information on the measures taken to ensure that persons tendering for public contracts are aware of the terms of these labour clauses, for instance by advertising specifications, as required under *Article 2(4)* of the Convention. The Committee considers that informing tenderers of the exact scope and content of labour clauses is all the more important as neither the Public Procurement Act of 1992 nor the Public Procurement Regulations of 1992 contains any express reference to labour clauses. ***In the absence of any reply on this point, the Committee once more asks the Government to take all appropriate measures to give full effect to the requirements of Article 2(4) of the Convention. In addition, the Committee asks the Government to transmit together with its next report: (i) copies of public contracts containing the model labour clauses prescribed by the Ministerial Agreement of 1985; and (ii) documented information on measures to ensure compliance with the labour clauses, including adequate inspection and effective sanctions.***

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1988)**

*Article 3 of the Convention. Criteria for determining the minimum wage.* Further to its previous observation, the Committee notes the Government's detailed explanations concerning the evolution of the national minimum wage during the period 2000–11 as compared to the evolution of the inflation rate, the cost of the basket of essential foodstuff (*canasta*

*básica alimenticia* – CBA) and the cost of the basket of essential goods (*canasta básica vital* – CBV). The Government indicates that, whereas the minimum wage represents the remuneration of an individual worker, the CBA and the CBV are calculated on the basis of a typical household of 5.38 persons, which explains the gap between the respective figures. The Government adds, however, that considering that on average there are two employed persons in every household, the aggregate amount of the minimum wage received covers the basic needs of the household as reflected in the CBA and CBV indicators.

In this regard, the Committee notes the comments made by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG), alleging systematic non-compliance with the requirements of the Convention both in law and in practice. The MSICG denounces the establishment of a lower minimum wage rate applicable to the *maquila* industry as being discriminatory. The trade union organization also refers to large-scale problems of non-payment of the minimum wage, the widening gap between the minimum wage and the CBV, and the participation of non-representative workers' organizations in the National Wages Commission (CNS). ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the MSICG.***

Moreover, the Committee understands that in September 2011 a Bill on the indexation of the minimum wage was introduced before the National Parliament providing for the annual readjustment of the minimum wage to reflect the evolution of the CBV in the same period. ***The Committee requests the Government to keep the Office informed of any developments in this regard.***

***Article 5. Adequate inspection.*** Further to its previous observation on the need to rigorously and effectively enforce the minimum wage legislation, particularly in the agricultural sector, the Committee notes that in his fourth follow-up report to the National Policy of the Government of Guatemala on Food and Nutrition Security, the Human Rights Ombudsman made special reference to the failure to apply the national minimum wage with respect to indigenous workers and agricultural workers. The Committee also notes the conclusions of the UN Special Rapporteur on the right to food from his 2009 country visit to Guatemala (see Doc. A/HRC/13/33/Add.4, paragraphs 28–30), according to which 50.1 per cent of workers currently receive a salary that is below the legally established minimum wage while the labour inspectorate is significantly under-resourced and unable to monitor compliance with labour legislation. ***Noting the persistent widespread violations of the minimum wage legislation in rural areas, the Committee requests the Government to provide additional information on any measures taken or envisaged with a view to reinforcing the labour inspection services and ensuring the effective application of the relevant legislation, particularly with regard to indigenous and agricultural workers.***

## Guinea

### ***Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)*** ***(ratification: 1959)***

The Committee notes with ***regret*** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

***Articles 1 and 3 of the Convention. Introduction of a minimum wage and consultation of the social partners.*** The Committee notes with ***regret*** that, according to the information contained in its last report, the Government is maintaining its decision not to introduce the guaranteed interoccupational minimum wage (SMIG) at the present time in view of the economic situation of the country. It also notes that, as acknowledged by the Government, the introduction of a minimum wage is an important claim of national trade union organizations. The Committee notes in this respect that in November 2005 a 48-hour general strike was called by the National Confederation of Workers of Guinea (CNTG), and that the claims included the establishment of a minimum wage. In this context, it notes with ***concern*** that the inflation rate in Guinea appears to be particularly high, 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.***

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 near future.***

## **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes that the Government's last report contained no reply to its previous comments, but essentially reproduced information already submitted in earlier reports which the Committee had considered to be strictly irrelevant to the scope and content of the Convention. The Committee is once again led to conclude that for the last 40 years there has been practically no progress in implementing the provisions of the Convention in either law or practice. The Committee expresses its deep disappointment about the Government's continued failure to apply the Convention despite the technical assistance provided by the Office in 1981 and the numerous commitments made by the Government ever since as regards the drafting and adoption of specific regulations or legislation concerning public contracts. *Under the circumstances, the Committee hopes that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary measures without further delay in order to bring its national law and practice into conformity with the clear terms and objectives of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Honduras**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)**

*Article 4 of the Convention. Partial payment of wages in kind.* The Committee notes the observations of 31 August 2010 and 31 March 2011 made by the Single Confederation of Workers of Honduras (CUTH), the Workers' General Central Union (CGT) and the Workers' Central Union of Honduras (CTH), as well as the Government's reply of 22 November 2011, concerning the application of the Convention. The observations refer to a draft decree to establish a national anti-crisis plan for job creation, which has since been adopted and is now Decree No. 230-2010 of 4 November 2010. The Committee notes that in its technical comments on the draft decree, the Office observed that it allowed 30 per cent of the basic wage to be paid in the form of allowances in kind. Referring to the Committee's direct request of 2006, the Office pointed out the limited conditions in which partial payment of wages in kind may be authorized. The Committee notes with *interest*, in this connection, that section 6 of Decree No. 230-2010 provides for payment of the basic wage solely in currency of legal tender.

Furthermore, the Committee notes that section 7 of Decree No. 230-2010 provides that workers hired under the anti-crisis programme are subject exclusively to the programme's provisions as regards their rights and obligations and the benefits to which they are entitled. It notes that section 7 also provides that the workers concerned will nonetheless enjoy the fundamental rights established in the Labour Code and the eight ILO fundamental Conventions. In the Committee's view, as currently worded, this provision suggests that only the provisions of the Labour Code relating to freedom of association, the right to collective bargaining, the prohibition of forced labour and child labour and non-discrimination apply to these workers, to the exclusion of the provisions on wage protection among others. This view appears to be confirmed by the Government in its response to the observations of CUTH, CGT and CTH. *The Committee therefore asks the Government to indicate how it is ensured that workers hired under the anti-crisis programme established by Decree No. 230-2010 effectively enjoy the protection afforded by Articles 3 to 15 of the Convention.*

## **Islamic Republic of Iran**

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)**

*Article 12 of the Convention. Payment of wages at regular intervals.* The Committee notes the Government's indication that it continues to massively subsidize enterprises that are experiencing financial difficulties having granted to enterprises with less than 50 workers 18.1 billion Iranian rial (IRR) (approximately US\$1.7 million) in 2010 in the form of social aid. The Committee also notes that according to the Government's report, in 2010, 17,025 cases concerning 19,790 workers were examined by dispute settlement boards. The Committee observes, however, that no precise information is provided regarding the current level of wage arrears by region or sector of economic activity, and the implementation of measures, legislative, administrative or others, aimed at resolving the persistent problems of delayed payment of wages.

*Monitoring the situation of wage arrears – Labour inspection.* The Committee notes the statistical information provided by the Government showing for the period 2009–10 a nine per cent increase in the overall number of periodical labour inspections conducted nationwide. These inspections identified 2,192 establishments with 141,661 workers experiencing problems of delayed payment of wages. The Committee also notes the Government's indications that a new software is used by labour inspection services to monitor the situation of wage arrears and to collect monthly statistics which are then communicated to the Ministry of Labour and Social Affairs. The Government adds, however, that at present the software does not permit to extract exact figures of wage arrears, and therefore, it is being revised and updated. The Committee wishes to emphasize, in this connection, the importance of properly functioning labour inspection services capable of identifying breaches of wage legislation and prosecuting offenders. It also recalls that a proper assessment of the problem in its true dimensions, with its causes and effects, is only possible through the systematic collection of up-to-date statistical information emanating from credible sources. *Noting that in its previous report the Government had*

*indicated that working groups consisting of skilled labour inspectors and inspection officers had been established in each province to monitor the wage arrears situation and to address any issues through various means, the Committee asks the Government to provide more detailed information on labour inspection results, including not only the number of visits carried out but also the number of infringements, the sums due and any amounts of wages recovered.*

*The situation of wage arrears in the sugar cane, textile and metal sectors.* The Committee notes the information provided by the Government concerning the sums paid in 2010 to settle wage arrears in the sugar cane, textile and metal sectors through the social aids programme. It also notes the Government's indication that at the *Haft Tapeh Sugar* enterprise, as of 2010 the payment of wages to all staff has been on time, and all outstanding payments to pensioners have been settled. In contrast, with respect to the textile and metal sectors, the Government's report does not contain any updated figures on the amount of the wage debt or any progress made towards its elimination. More generally, the Government's description of the overall situation of wage arrears remains unclear making it difficult for the Committee to assess the effectiveness of the measures taken to address it. ***The Committee therefore requests the Government to collect and transmit concrete information on the evolving situation of wage arrears in the sectors concerned, including if possible comparative statistics for the last couple of years, to enable the Committee to assess the positive or negative trends over time, especially in terms of number of establishments and workers affected, and amounts of wages due or settled.***

## Iraq

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1986)

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous observation, the Committee notes the Government's statement that public contracts which are carried out by private contractors are obliged to comply with the Labour Code, which, as provided for in section 8, applies to all workers employed in the private, mixed and cooperative sectors. However, as the Committee has already observed in earlier comments, the Convention goes beyond the mere applicability of the general labour legislation to work done in the execution of public contracts and seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitral award or national laws or regulations for work of the same character in the trade or industry concerned in the district where the work is carried out. It is only when the conditions which are laid down in the national legislation constitute both maximum and minimum standards which may not be exceeded by more favourable collective agreements or arbitration awards that a reference in the public contracts to the relevant provisions of the national legislation would be sufficient for the purpose of giving effect to the Convention. The Committee once again recalls that the essential element required for the application of the Convention is that a labour clause, along the terms set out in *Article 2* of the Convention, be incorporated into every public contract whether for works, supply of goods or performance of services. In this regard, the Committee draws the Government's attention to paragraphs 98–121 of the 2008 General Survey on labour clauses in public contracts, which contain detailed explanations on the exact nature and content of this principal obligation.

In addition, the Committee recalls the Government's earlier indication that a tripartite consultative committee had been established and recommended the amendment of the Labour Code in order to bring the national legislation in line with the provisions of the Convention. ***Noting that, in its last report, the Government no longer refers to the work of this consultative committee, the Committee asks the Government to specify whether the tripartite consultative committee is still in operation, and if so, to provide information on any progress made in adopting legislative or administrative measures to give effect to this Article of the Convention. The Committee hopes that the Government will take without delay the necessary measures in order to bring the national legislation into conformity with the Convention.***

## Jamaica

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)** (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee has been commenting for a number of years on the absence of any laws or regulations implementing the provisions of the Convention. In its last report, the Government refers to new Contracts and Standard Bidding Documents and Procurement Regulations which are soon to be issued and which are expected to cover labour aspects of public procurement operations. ***The Committee requests the Government to transmit a copy of these documents as soon as they are finalized.***

The Committee notes that the Revised Handbook of Public Sector Procurement Procedures (RHPP) was issued in December 2008 and has been in use for an interim period pending formal approval by the Cabinet. It notes, however, that the RHPP does not address working conditions of workers employed under public contracts, except for subsection No. S-2120, which provides that deviations from the bidding requirements, including non-compliance with local regulations relating to labour, import taxes and duties, which do not appear at first sight to provide immediate grounds for bid rejection, may be considered

further in the evaluation process. Noting that the Government is still not in a position to report any concrete progress as regards the application of the Convention, the Committee wishes to refer to paragraphs 40 and 44 of its General Survey of 2008 on labour clauses in public contracts, in which it indicated that the purpose of the Convention is to ensure that the workers employed for the execution of public contracts enjoy wages and other working conditions at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. This has the effect of setting as minimum conditions for the contract standards that are already established within the locality. The further aim is that local standards higher than those of general application (this in practice means the most advantageous labour conditions) should be applied, where they exist. In fact, the type of labour clauses prescribed by this Article of the Convention seek to oblige the contractor to apply the most advantageous pay rates, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors, are to be reflected in a standard contractual clause which has to be effectively enforced notably through a system of specific sanctions.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Japan

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)**

*Articles 1, 3 and 4 of the Convention. Minimum wage system.* The Committee notes the comments of the National Confederation of Trade Unions (ZENROREN), which were received on 25 September 2011 and transmitted to the Government on 30 September 2011, concerning the application of the Convention. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of ZENROREN.*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Myanmar

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1954)**

*Articles 1 and 3 of the Convention. Minimum wage fixing machinery.* The Committee notes that the Government is still not in a position to indicate any progress on a number of issues raised in previous comments, including the possible extension of minimum wage protection to industrial sectors other than the rice-milling and cigar- and cheroot-rolling industries, the revision of the minimum wage rates applicable in those sectors, the establishment of new minimum wage councils, the collection of statistical data on the evolution of economic indicators, such as the inflation rate, in recent years compared to the evolution of minimum wage levels, and the effective enforcement of the minimum wage legislation. In its last report, the Government merely indicates that existing labour laws are currently under review to ensure compliance with the Constitution and that any new draft legislation will eventually be submitted to the Parliament. *Recalling the Government's earlier statements that the minimum wage rates in force were no longer in line with market wages and needed readjustment, and also that the determination of minimum wages for the oil and garment industries was under consideration, the Committee asks the Government to take prompt action in this direction and to keep the Office informed of any concrete results.*

## Paraguay

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1966)**

*Articles 3, 4, 6, 7 and 12 of the Convention. Debt bondage of indigenous communities in the Chaco region.* Further to its previous comments concerning the debt bondage situation affecting thousands of indigenous workers in the Paraguayan Chaco, the Committee notes the Government's explanations that it is focusing its efforts on sensitization campaigns and inspections of cattle farms and plantations. The Government adds that as a result of those awareness-raising activities, an unprecedented number of requests have been received concerning the application of labour laws and the protection of workers' rights. The Committee welcomes the measures taken so far, in particular the labour inspection visits to rural establishments suspected of debt bondage practices, but recalls that such measures must be reinforced and lead to systematic action commensurate to the seriousness and extent of the problem. *The Committee therefore asks the Government to provide detailed information on the results of the inspection visits to Chaco estates showing the number and nature of wages-related infringements observed and the sanctions imposed. Recalling that as documented in several ILO studies and official reports of the UN Permanent Forum on Indigenous Issues and the Inter-American Commission on Human Rights, debt bondage situations may result through delayed payment of wages, excessive pricing of company store goods, payment in kind instead of cash wages, and absence of wage records, the Committee requests the Government to specify any targeted action to ensure compliance with the requirements of Articles 3 (payment of wages in legal tender), 4 (partial payment of wages in kind), 6 (freedom of workers to dispose of their wages), 7 (works stores) and 12 (payment of wages at regular intervals) of the Convention. Furthermore, the*

***Committee requests the Government to refer to its comments made under the Forced Labour Convention, 1930 (No. 29) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2012.]***

## **Romania**

### ***Protection of Wages Convention, 1949 (No. 95) (ratification: 1973)***

*Articles 8 and 10 of the Convention. Deductions from wages – Attachment of wages.* The Committee notes the comments of the National Trade Union Confederation (CNS “CARTEL ALFA”) and Block of National Trade Unions (BNS) concerning the application of the Convention. The two workers’ organizations consider that recent austerity measures, such as the 25 per cent reduction in the salaries of public sector employees and the 15 per cent reduction in pension payments which were imposed from July to December 2010, are in violation of the Convention. The BNS indicates that this measure concerned more than 1.3 million employees and affected their standard of living as most of them earned less than 1000 Romanian new leu (RON) (approximately €230) per month.

In its reply, the Government explains that these austerity measures were taken in application of a loan agreement signed with the International Monetary Fund (IMF) and the World Bank. It also indicates that the 25 per cent reduction was introduced by Act No. 118/2010 concerning measures to restore budgetary stability for a limited period of six months. The Government further states that the constitutionality of this law was challenged before the Constitutional Court which by decision No. 872/2010 pronounced itself in favour of the constitutionality of the law in question. The Court upheld the constitutionality of the law principally because of the temporary character of the measures, their non-discriminatory application and their consistency with article 53 of the Constitution that permits limitations to the exercise of rights and liberties in cases of extreme necessity.

The Committee notes the Government’s explanations. It observes that although wage cuts implemented in a context of harsh economic crisis may not be deemed to represent deductions from wages within the meaning of *Article 8* of the Convention nor do they qualify as wage attachment within the meaning of *Article 10*, they may nonetheless effectively challenge the very object and purpose of this Convention depending on their extent and severity. The Committee recalls its Note on the “Relevance and application of ILO wage-related Conventions in the context of the global economic crisis” (paragraph 119 of the Committee’s 2010 Report, page 35) in which it emphasized that wage protection takes on particular importance in times of crisis and therefore relevant standards should not be undermined but rather put at the centre of crisis responses, as is underlined in the Global Jobs Pact, adopted by the International Labour Conference in 2009. It also considered that ILO wages-related standards and principles serve as a reminder of the special nature of wages as the workers’ principal, if not sole, means of subsistence, and hence of the need for targeted and priority action in this field, and expressed the hope that ILO Member States will act positively in the current economic downturn by carrying out the necessary reforms in wage legislation and wage policy consistent with those standards and principles. ***The Committee accordingly requests the Government to provide full particulars on any new anti-crisis measures and policies that impact on wages, including information on the necessary consultations with the employers’ and workers’ organizations concerned on these measures.***

## **Rwanda**

### ***Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)***

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 1 and 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 issuing labour regulations. It also notes that, according to the Government’s last report, sections 42–46 of this Act establish the labour clauses required by the Convention. However, these provisions regulate subcontracting, in which the head of an industrial or commercial enterprise assigns the execution of work or services to a contractor who in turn recruits the necessary workforce, and do not regulate contracts concluded with a public authority. The Committee notes with *regret* that, despite the comments which it has been making for many years, the recent General Survey and the Practical Guide – copies of which were sent to the Government – the Government still does not appear to fully understand the actual concept of public contracts which is the subject of the Convention. The Committee is therefore bound to repeat that a public contract pursuant to *Article 1(1)* of the Convention is a contract: (i) concluded by a public authority; (ii) involving the expenditure of funds by a public authority and the employment of workers by the other party to the contract; and (iii) relating to the execution of public works, the manufacture of materials or the provision of services. It is therefore clear that subcontracting in the form of the specific labour contract governed by the provisions of Chapter II, Title II, of the new Labour Code bears little relevance to public contracts and even less to the labour clauses which such contracts ought to contain.

Moreover, with regard to the 2007 Public Procurement Act, the Committee recalls that the mere fact that the general legislation applies to workers responsible for the execution of public contracts, as laid down by section 96 of this Act, is not sufficient to ensure the observance of the provisions of the Convention. The Convention seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitration

award or national laws or regulations for work of the same character in the trade or industry concerned in the region where the work is carried out. This in practice means the most advantageous labour conditions for the workers concerned, including pay rates, overtime pay, and other working conditions, such as limits on hours of work and paid leave entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors are to be reflected in a standard contractual clause which has to be effectively enforced, notably through a system of specific penalties. Moreover, the Committee recalls that the Convention does not only apply to construction contracts but also to contracts for supplies and services. *In the light of the above, the Committee urges the Government to take all necessary steps without delay to bring national law and practice into conformity with the Convention, and requests it to keep the Office informed of any developments on these matters.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Serbia

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2000)**

*Articles 2 and 5 of the Convention. Binding force of the minimum wage – Adequate inspection.* The Committee notes the comments of the Confederation of Autonomous Trade Unions of Serbia (CATUS), which were received on 27 September 2011 and transmitted to the Government on 3 October 2011 concerning the application of the Convention. *The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of CATUS.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Sierra Leone

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1961)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee notes with *regret* that the Government's report has not been received for the fifth consecutive year. *The Committee asks the Government to submit a detailed report on the state of national law and practice regarding labour clauses in public contracts in the light of recently introduced public procurement reforms, including the adoption of the Public Procurement Act, 2004.*

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 16 of the Convention. Full information on legislative amendments. While recalling that the Government has been referring for the last ten years to the imminent adoption of new labour legislation and also recalling that draft amendments had been prepared with the assistance of the Office more than 20 years ago in order to bring the national legislation into conformity with the requirements of the Convention, the Committee urges the Government to take all the necessary steps without further delay to enact the new law and reminds the Government of the availability of further ILO technical assistance in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Singapore

### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* The Committee recalls its previous comment in which it noted the Government's persistent failure to give effect to the provisions of the Convention in both law and practice, and requested the Government to take the necessary steps without further delay in order to effectively implement the provisions of the Convention. The Committee notes the Government's reply that public contracts are awarded on the basis of "value for money" which refers not only to price but also to the quality and reliability of goods and services provided. Tenderers are also assessed in totality, taking into consideration their financial position, track records, including employment terms and conditions of their workers ensuring that workers' well-being is not undermined. The Government indicates, in this connection, that contractors engaged by the Singapore Ministry of Manpower are required to be part of the bizSAFE programme, which assists companies to manage workplace safety and health. The Government also indicates that it is exploring a debarment framework whereby egregious employers would be barred from tendering for public contracts.

While noting the Government's explanations, the Committee considers, as it has pointed out in paragraph 308 of its 2008 General Survey on labour clauses in public contracts, that the objectives of the Convention are even more valid today that they were 60 years ago and strengthen the ILO's call for fair globalization. The Convention seeks to promote good governance and socially responsible public procurement by requiring bidders/contractors to apply locally established prevailing pay and other working conditions as determined by law or collective agreement. The Convention proposes a common level playing field – in terms of labour standards – for all economic actors so as to ensure fair competition. By

requiring all bidders to respect, as a minimum, certain locally established standards, wages, working time and working conditions may not be used as elements of competition and consequently no downward pressure on wages and working conditions may be exerted.

As for the possibility of screening tenderers through a debarment mechanism, the Committee wishes to refer to paragraphs 117–118 of the abovementioned General Survey in which it pointed out that the Convention does not relate to some general eligibility criteria of individuals or enterprises bidding for public contracts but requires a labour clause to be expressly included in the actual contract that is finally signed by the procuring entity and the selected contractor. Similarly, certification may offer some proof about tenderers' past performance and law-abiding conduct but carries no binding commitment with regard to prospective operations as labour clauses do. *Noting therefore that national legislation appears to contain no provision implementing the requirements of this Article of the Convention (the Executive Resolution of 1952, which previously gave effect to the Convention, having probably fallen into desuetude), the Committee once more expresses the hope that the Government will take all necessary measures to put its legislation in line with the provisions of the Convention and asks it to keep the Office informed of any progress made in this regard.*

## Uganda

### **Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)** (ratification: 1963)

*Articles 1 to 4 of the Convention. Minimum wage fixing machinery.* The Committee notes with *regret* that the national minimum wage remains unchanged since 1984 and that no progress has been made concerning the reactivation of the Minimum Wages Board and Wages Council. In its last report, the Government limits itself to indicating that the Ministry of Gender, Labour and Social Development has been collecting since 2007 data on occupations, wages and hours of work in an effort to address the issue of the minimum wage while this year a Cabinet Memo was prepared with a view to reactivating the tripartite Minimum Wages Board and Wages Council. The Government adds that among the proposed terms of reference for the Board will be to examine and assess wage levels and harmonize them within the framework of the West African Community. The Committee notes, in this connection, that the National Development Plan 2010–11 to 2014–15 of April 2010 defines as one of the objectives concerning labour and employment, the establishment of a minimum wage for decent income, improved productivity and increase in aggregate demand for goods and services. The Committee recalls that the revision of the national minimum wage, as a tool for social protection and poverty eradication, is long overdue and that at present the minimum wage system does not seem to operate in either law or practice. *The Committee therefore asks the Government to take prompt action in order to reactivate the tripartite consultative body for the revision of the national minimum wage and to keep the Office informed of any concrete progress made in this respect.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Ukraine

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)**

*Article 12(1) of the Convention. Payment of wages at regular intervals.* Further to its previous comments, the Committee notes the report of the technical assistance mission to Ukraine which was undertaken from 16 to 19 May 2011 as a follow-up to the discussion at the Conference Committee on the Application of Standards in June 2010. The technical assistance mission was mandated by the Conference Committee to further inquire into the causes and extent of the wage arrears problem in order to better understand the situation, to assess the action being taken to redress the situation, and to collect up-to-date statistical information and documentation. The Committee notes the findings, observations and recommendations of the technical assistance mission which are summarized below:

*Findings – Wage arrears situation.* According to data provided by the Government, the total amount of wage arrears as of 1 April 2011 stood at 1.32 billion Ukrainian Hryvnia (UAH) (approximately €165 million), which represents a 26 per cent decrease from UAH/1.79 billion in 2010. The industrial sector continues to be the sector with the highest amount of accumulated wage arrears representing approximately 56 per cent of the total amount. Wage arrears reached their peak in March 2010, then declined by nearly 30 per cent by January 2011 before increasing again to UAH/1.32 billion by April 2011. The technical assistance mission therefore considered that while the reduction was real, the Ukrainian economy remained vulnerable to the wage arrears problem.

In terms of the structure of the wage debt, between March 2010 and April 2011, wage arrears declined mainly among economically active enterprises, as opposed to bankrupt enterprises. Even among economically active enterprises, however, wage arrears at State-owned enterprises persisted, representing 32 per cent of the total amount of wage arrears. On the other hand, at both private enterprises and communal enterprises, the amount of wage arrears decreased during the same period by 55 per cent. The technical assistance mission accordingly observed that the Government's measures seemed to produce results at the local level among communal enterprises and in the private sector while much remained to be done in State-owned enterprises.

*Activities of labour inspection services.* According to data provided by the State Labour Inspectorate, as of April 2011, 3,483 inspected enterprises experienced wage arrears, the regions most affected being the Donetsk, Lviv and Lugansk regions. In terms of the number of workers, the Kharkiv region is the region with the highest number of workers affected. The State Labour Inspectorate confirmed that the number of violations of the legislation concerning the timely payment of wages and other entitlements increased in the first quarter of 2011 compared to the same period of 2010. As regards the number of industrial action related to wage arrears, the National Mediation and Conciliation Service (NSPP) reported that 49 cases had been filed in 2010, involving 19,200 employees of 102 companies, and 22 cases in the first quarter of 2011, involving 19,400 employees of 26 companies.

*Wage situation at the Nikanor-Nova coalmine.* Based on the results of direct contacts with both the management and trade unions of the mine, the technical assistance mission concluded that there were currently no wage arrears, and that wages were paid on monthly intervals, except for a practically constant one-month delay. The mission indicated, however, that there was a lack of common understanding between the management and the workers about the methodology for determining the applicable wage rate for miners employed for underground work, in particular because the national law, the general collective agreement and the sectoral collective agreement seemed to establish different minimum wage rates. The technical assistance mission concluded that there is obviously a need for further consultations on the interaction between the Act on enhancing the prestige image of coalminers' labour of 2008 and relevant general and sectoral collective agreements, and their implications on wage rates. With respect to general working conditions at mines, the technical assistance mission noted with interest the ratification by Ukraine of the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), and of the Safety and Health in Mines Convention, 1995 (No. 176), which was registered on 15 June 2011, and expressed the hope that these instruments would provide useful guidance for the improvement of safety and health standards in the mine industry.

*Observations and recommendations.* The technical assistance mission noted the decrease of the amount of wage arrears as a positive trend confirming the Government's commitment to tackle the problem. The Government reaffirmed its decision to include the fight against accumulated wage arrears among its priorities and to devote all its energy to the timely settlement of all outstanding payments. In addition, the social partners, also conscious of the gravity of the problem, seemed to be fully engaged in the collective effort towards the eventual eradication of wage arrears. A tripartite working group was established to guide this effort and propose solutions. The mission was also satisfied that there were no difficulties with the flow of information and that statistics were freely disseminated among all those concerned.

The technical assistance mission noted that some policy and legislative measures were under consideration, including: (i) increasing the liability of managers in case of non-payment of wages; (ii) amending the bankruptcy law to grant first-rank priority to wage claims in bankruptcy proceedings; (iii) drafting new legislation on a wage guarantee fund; and (iv) increasing the number of labour inspectors and frequency of inspections. The mission suggested that supervision and enforcement of the national legislation could be improved by introducing sufficiently dissuasive sanctions against the sense of impunity which currently prevailed, and by strengthening the labour inspection services, which would currently visit one company on average every 36 years. The mission referred to problems with the current methodology for collection of statistical data, namely the coverage of monthly survey of the State Statistics Committee, which excluded enterprises with less than 50 employees and the lack of confidentiality in the process of collecting reports from enterprises. It also pointed out the need for adopting a common definition of the term, "wage arrears" especially as regards the one-month delay in payment of wages, which appeared to be currently perceived at certain workplaces as a normal practice.

The technical assistance mission referred to possible technical assistance and knowledge-sharing activities by the Office concerning, for instance, the establishment and operation of a wage guarantee fund, the reform of the bankruptcy law and the improvement of data collection on wage arrears. More generally, the mission expressed the view that the wage arrears problem was structural and called for a holistic approach as part of an overall wage policy, and accordingly suggested that interrelated issues, including informal wage practices such as "envelope wages", should also be addressed.

Having duly examined the report of the technical assistance mission, the Committee notes that the discussions with Government officials, members of employers' and workers' organizations and academic experts were direct, open and constructive. As regards the general situation of wage arrears, the Committee notes with *interest* that the overall amount of wage arrears is generally on a decreasing trend, and that monthly wages are now paid on a regular basis at the Nikanor-Nova coalmine. While noting that the Government announced in September 2011 a further decrease of wage arrears to UAH1.1 billion (approximately €100.7 million), the Committee considers that the situation continues to require rigorous monitoring and possible improvements in the methodology of collecting relevant data.

The Committee also notes various measures taken and considered by the Government in consultation with the social partners, including new legislation and policies. In this regard, while welcoming these measures, it recalls its earlier indication that this was not a problem of legislative conformity but rather a problem of effective implementation of existing legislation. It therefore emphasizes the need to take prompt action to adopt appropriate sanctions and to reinforce the labour inspection services. It recalls, in this connection, the indication by the State Labour Inspectorate made during the technical assistance mission that if the number of inspectors was increased to 5,000, the Inspectorate would be able to visit an enterprise every five years.

*In the light of the foregoing, the Committee hopes that the Government will take concrete steps, as a matter of priority and based on the recommendations of the technical assistance mission in order to: (i) improve data collection methodology in the field of wage arrears; (ii) adopt sufficiently dissuasive sanctions; (iii) strengthen the system of labour inspection; and (iv) address pending issues which directly impact the wage arrears situation, including, for instance, establishing a wage guarantee institution, revising bankruptcy law and eradicating the practice of “envelope wages”. It also asks the Government to keep the Office informed of any progress made in this area and to continue to provide detailed statistics concerning the overall amount of wage arrears disaggregated by economic sector, region, form of ownership and the (in)active status of economic activity.*

### **Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 2006)**

*Articles 2 and 3 of the Convention. Binding force of the minimum wage and periodic review of minimum wages.* Further to its previous observation, the Committee notes the Government’s reply to the comments made by the Independent Trade Union of Miners (ITUM) of the Nikanor-Nova coalmine and the National Forum of Trade Unions of Ukraine (NFTU) concerning the application of the Convention.

With respect to the observations of the ITUM, the Committee notes the Government’s indication that, based on the branch collective agreement for the mine sector, in cases where an enterprise is, for objective financial and economic reasons, unable to implement the minimum pay rate provided for in the applicable collective agreement (i.e. not less than 120 per cent of the legal minimum wage), a lower minimum wage rate may be applied for a period not exceeding six months. This wage rate, however, may not be lower than the legal minimum wage rate, and must be brought back to the rate set out in the mine sector collective agreement at the end of the six-month period. The Government further indicates that the State Inspectorate conducted 35 inspections during the period 2009–10 at various divisions of the state enterprise “Luganskugol”, in particular four inspections at the Nikanor-Nova mine. These inspections identified a number of violations of the labour legislation, including section 95 of the Labour Code concerning minimum wage and section 3 of the Act concerning measures to enhance the prestige of mine work, which provides that employees working underground on a full-time basis must be paid at least 630 Ukrainian hryvnia (UAH) (approximately €54) plus 30 per cent increment per month. The Director of the mine, who was ordered twice to take remedial action, has been prosecuted in accordance with section 188-6 of the Administrative Offences Code. The Director of “Luganskugol” was also ordered to rectify certain contraventions and has since been prosecuted. *The Committee requests the Government to keep the Office informed of the evolution of the situation at the Nikanor-Nova mine, in particular as regards compliance with the applicable minimum wage for the mine sector and the results of any new inspection visits. The Committee also requests the Government to refer to its comments made under the Protection of Wages Convention, 1949 (No. 95).*

Concerning the comments made by the NFTU, the Committee notes the Government’s explanations concerning various provisions of the draft Labour Code, in particular section 208 which provides that the conditions and rate of remuneration of public legal entities must be determined by the Cabinet of Ministers in consultation with the trade unions concerned, and sections 209 and 213 that provide that self-financed enterprises must determine the conditions and rate of remuneration through collective bargaining. *The Committee requests the Government to transmit a copy of the draft Labour Code and explain how the Convention is given effect under the draft Code, in particular Article 4 of the Convention (full and genuine consultations with, and direct participation of, employers’ and workers’ organizations in the establishment, operation and periodic review of the minimum wage fixing machinery).*

In this connection, the Committee understands that the Government intends to introduce in the new labour legislation a “guaranteed salary” for eight categories of workers based on the level of qualifications, the “guaranteed salary” of the first category being equal to the legal minimum wage rate. The Committee also understands that, as from 1 April 2011, the monthly minimum wage was raised to UAH960, and was further increased to UAH985 on 1 October, and to UAH1,004 (approximately €88) on 1 December. The Committee further understands that despite this increase, the national minimum wage remains largely insufficient to cover workers’ basic subsistence needs which are estimated to be in the neighbourhood of UAH2,000 per month. *The Committee would be grateful if the Government would provide additional explanations as to how the “minimum consumer budget” and the “poverty line”, to which reference is made in the Wages Act of 1995, are defined in practice and also how social criteria, such as the relative living standards of different social groups, are considered when determining minimum wage levels.*

## **United Kingdom**

### **British Virgin Islands**

#### **Labour Clauses (Public Contracts) Convention, 1949 (No. 94)**

*Article 2 of the Convention. Insertion of labour clauses in public contracts.* Further to its previous comments, the Committee notes with *satisfaction* that section 183 and the Rules set out in the Schedule of the new Labour Code, 2010 essentially reproduce the main provisions of the Convention and give full effect to its requirements. *The Committee would appreciate if the Government would provide together with its next report general information on the manner in which the Convention is applied in practice.*

## Zambia

### **Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)**

*Article 12(1) of the Convention. Payment of wages at regular intervals.* In its previous comment, the Committee had asked for comprehensive information concerning the overall situation of unpaid wages owed to local council employees in all nine provinces of the country. According to official data published by the Local Government Finance and Audits, as of July 2011, the overall wage debt amounted to 46 billion Zambian kwacha (ZMK) (approximately US\$9.2 million). In its last report, the Government indicates that apart from giving grants to councils in order to resolve the wage crisis, it has re-established in April 2010 the Local Government Service Commission (LGSC) to take over some functions of councils in matters relating to employment and workers' welfare and has also allowed councils to retain 100 per cent of the revenue collected on liquor and trade licences effective 2012 while previously 90 per cent of such revenue was remitted to the Central Government. The Government also indicates that these measures were adopted through social dialogue between the workers' union and the councils' management. The Committee understands that serious problems of accumulated wage arrears are also experienced by teachers and health workers. **Recalling the importance of closely monitoring the evolution of the situation by collecting reliable statistical information, the Committee requests the Government to transmit all available information on the total amount of outstanding payments, wage sums settled, the sectors of economic activity and approximate number of workers affected, and the average delay in the payment of wages. The Committee hopes that the Government will intensify its efforts in order to eliminate the accumulated wage debt and accordingly requests the Government to provide detailed information on any new measures or initiatives taken to this end.**

### **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Angola, Argentina, Bahamas, Barbados, Belarus, Belgium, Belize, Benin, Bulgaria, Burundi, Canada, Colombia, Congo, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, Fiji, Gabon, Ghana, Grenada, Guinea-Bissau, Hungary, India, Ireland, Italy, Jamaica, Sierra Leone, Solomon Islands, Togo, United Kingdom: British Virgin Islands); **Convention No. 94** (Armenia, Bahamas, Belgium, Cyprus, Denmark, Dominica, Finland, France: French Polynesia, France: New Caledonia, Grenada, Guyana, Israel, Italy, Kenya, Nigeria, Solomon Islands, Uganda); **Convention No. 95** (Afghanistan, Albania, Algeria, Armenia, Bahamas, Barbados, Belarus, Belize, Benin, Plurinational State of Bolivia, Botswana, Bulgaria, Burkina Faso, Chad, Comoros, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Dominica, Dominican Republic, France: French Polynesia, Gabon, Grenada, Guatemala, Guinea, Guyana, Hungary, Iraq, Israel, Italy, Kyrgyzstan, Paraguay, Solomon Islands, Togo, Uganda); **Convention No. 99** (Algeria, Australia, Belgium, Belize, Colombia, Côte d'Ivoire, El Salvador, Gabon, Grenada, Hungary, Italy); **Convention No. 131** (Albania, Armenia, Australia, Australia: Norfolk Island, Azerbaijan, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Central African Republic, Chile, Egypt, El Salvador, France, France: French Polynesia, Iraq, Japan); **Convention No. 173** (Albania, Armenia, Australia, Botswana, Bulgaria, Burkina Faso, Chad).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 94** (Austria, Belize); **Convention No. 173** (Austria, Finland).

## Working time

### Argentina

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1933)**

*Article 2 of the Convention. Daily and weekly limits of hours of work. The Committee requests the Government to refer to its comments made under Article 3 of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).*

#### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1950)**

*Article 3 of the Convention. Daily and weekly limits of hours of work.* The Committee notes the comments of the Confederation of Workers of Argentina (CTA), which were received on 1 September 2011 and transmitted to the Government on 16 September 2011, concerning the application of this Convention and of the Hours of Work (Industry) Convention, 1919 (No. 1). The CTA denounces the laxity and inefficiency of the system of labour inspection with respect to working time and indicates that in 2010 the proportion of workers who worked more than 8 hours a day exceeded 35 per cent. According to the CTA, the highest number of working time irregularities are recorded in the sectors of commerce (especially retail shops and supermarkets) and road transport but the system of control and supervision is deficient. Moreover, the CTA refers to section 1 of Act No. 11544 of 12 September 1929, which provides that the hours of work may not exceed eight in the day or 48 in the week, and considers that in its current wording (eight-hour day, or – instead of and – 48-hour week) it appears to authorize the so-called “compressed workweek” (i.e. four consecutive workdays of 12 hours followed by three days off). Furthermore, in the view of the CTA, shift work arrangements are known to be most harmful to the workers’ health and family life and are not consistent with either the letter or the spirit of Conventions Nos 1 and 30. *The Committee requests the Government to transmit any comments it may wish to make in response to the observations of CTA.*

In addition, the Committee draws the Government’s attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

### Canada

#### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1935)**

*Articles 2, 5 and 6(1)(b) of the Convention. Limits for daily and weekly hours of work – Federal legislation.* Further to its previous comment in which the Committee expressed concern at the many discrepancies between the national legislation and the provisions of the Convention, the Committee notes the Government’s statement that the Convention is not on the list of up-to-date ILO Conventions and that workplaces, production methods and workforce demographics have changed significantly since the Convention was adopted in 1919. In the Government’s view, the ILO should therefore consider tripartite discussions with respect to updating this instrument. The Government recognizes that there is a continuing need to regulate hours of work but considers that balancing employers’ needs for flexibility and employees’ needs for work-life balance requires some flexibility in the regulation of hours of work. In this connection, the Committee wishes to recall paragraph 328 of its 2005 General Survey on hours of work in which it concluded that Convention No. 1 warranted revision but noted that it did not have a mandate to make concrete proposals to this end. It also wishes to draw the Government’s attention to paragraph 332 of the same document in which the Committee suggested, among other elements to be taken into account if a decision were to be taken to consider revision, the need to ensure that the new instrument does not result in a reduction of the level of protection currently afforded by existing instruments.

Further to its previous comments with respect to the ongoing review of Part III of the Canada Labour Code, the Committee notes (i) the report authored by Professor Harry W. Arthurs, *Fairness at Work: Federal Labour Standards for the 21st Century* (the Arthurs’ report), published in October 2006 by the Federal Labour Standards Review Commission setting out the Commission’s recommendations for legislative changes and (ii) the resulting *Discussion Paper on the Review of Labour Standards in the Canada Labour Code*, published in February 2009, framing discussions with interested organizations and individuals based on those recommendations. The Committee further notes the comments of the Canadian Labour Congress (CLC) in response to the recommendations set out in the Arthurs’ report and the discussion paper by the Human Resources and Skills Development Canada (HRSDC) dated July 2009. The Government indicates that, in addition to the above material, consultations were held with a wide range of stakeholders on the potential modernization of Part III, and that 63 written submissions were received. It further indicates that it is currently considering

the results of the written submissions and stakeholder consultations before deciding on a course of action. ***The Committee hopes that in the ongoing review process of Part III of the Canada Labour Code based on the recommendations of the Arthurs' report and the ensuing consultations with stakeholders, the Government will not fail to take into consideration the various issues the Committee has been raising for several years. The Committee requests the Government to keep the Office informed of any further developments in this regard and to transmit copies of any new texts once they have been finalized.***

*Provincial legislation – Alberta.* The Committee notes that section 21(b) of the Employment Standards Code provides that overtime provisions apply to an employee's hours of work in excess of 44 hours in the work week, but observes once more that the Code does not set an overall limit for weekly hours.

*Prince Edward Island.* The Committee notes the Government's indication that industries such as heavy equipment and seasonal highway construction, industrial sandblasting, fish processing, trucking and peat moss industry are altogether exempted from the standard work week of 48 hours and recalls that such general exceptions do not meet the conditions of any of the permissible exceptions under the Convention.

*Nova Scotia.* The Committee notes the Government's explanations that the absence of limits for daily or weekly hours is due to the fact that employees in low-paid jobs needed to work additional hours in order to earn a decent living. The Government adds that following recent increases in the minimum wage, the need for minimum wage earners to work overtime will be reduced and a comprehensive review of the Labour Standards Code is expected to address these issues over the next couple of years. The Committee is obliged to note, however, that at present the general labour legislation fails to give effect to basic requirements of the Convention.

*Newfoundland and Labrador.* The Committee notes the Government's indication that the standard work week is 40 hours, and not 48 hours, but recalls that there is no other limitation on working hours than the minimum eight-hour daily rest.

*Fixing limits to daily and weekly hours of work.* The Committee once again draws the Government's attention to the provincial legislation which fails to implement the requirement of *Article 2* of the Convention, i.e., that the standard working hours are to be limited to eight a day and 48 a week. More concretely, (i) the Employment Standards Act of New Brunswick sets no limit either on daily or on weekly hours of work; (ii) the Employment Standards Act of Prince Edward Island does not regulate daily working hours; (iii) the Employment Standards Code of Manitoba sets a standard working day of eight hours, allowing to fix a different limit by collective agreement, regulation or by permission of the Employment Standards Director; (iv) the legislation of Ontario allows to set by collective agreement a working day of up to 13 hours and, subject to administrative authorization, a working week in excess of 60 hours; and (v) the legislation of Nova Scotia sets standard working time at 110 hours over a two-week period in the construction sector.

*Compressed work week.* The Committee once again draws the Government's attention to the fact that *Article 2(b)* of the Convention allows weekly hours of work to be spread unevenly, i.e., in a compressed working week, but only if the length of the working day does not exceed nine hours. In this respect, the Committee again notes that the Employment Standards Code of Alberta permits recourse to a compressed work week which allows a working day of up to 12 hours. It also notes that the Labour Standards Act of Nunavut permits work days of up to ten hours.

*Averaging of hours of work.* The Committee refers once again to *Article 5* of the Convention which allows averaging of work hours only in exceptional cases where it is recognized that the normal limit of eight hours a day and 48 hours a week cannot be applied, and observes that the legislation of Alberta and Manitoba authorize averaging with no restriction and that working time arrangements of this kind are also allowed by the relevant legislation of Quebec, Saskatchewan and British Columbia and Nunavut.

*Overtime.* The Committee recalls that in Nova Scotia, Quebec and Saskatchewan, overtime seems to be authorized under any circumstances provided that hours worked are paid at a higher rate whereas *Articles 3* and *6(1)(b)* of the Convention permit temporary exceptions to normal hours of work only in very limited and well-circumscribed cases.

***In light of the foregoing analysis, the Committee asks the Government to take the necessary measures to ensure the conformity of law and practice with the provisions of the Convention both at the federal and the provincial level.***

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Costa Rica

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)**

*Article 2 of the Convention. Maximum hours of work.* The Committee notes the comments sent on 22 August 2010 by the Rerum Novarum Workers' Confederation (CTRN) concerning the application of the Convention and the Government's reply dated 30 March 2011.

In its comments, the CTRN refers to several bills aimed at making labour legislation more flexible, including with regard to hours of work. The Committee notes the Government's indications that only one of these bills is currently before Parliament, namely Bill No. 17351 concerning employment protection in times of crisis. It also notes that, according to the Government, this Bill has not yet been placed on the agenda of Parliament for discussion and that the Ministry of Labour made a number of negative comments, one of the grounds being that the proposed measures were not based on any technical study. The Committee notes that Bill No. 17351 aims to enable the employer, in the event of an economic crisis and subject to certain conditions, to take temporary measures designed to preserve employment. These measures include the possibility of obliging the workers concerned to take their annual holiday in advance, replacing the system of working hours in force with another system authorized by the labour legislation, and reducing hours of work by one third. The Committee notes that the last measure, known as a system of short-time work in some countries, may constitute a relevant response to the current global economic crisis and at any rate does not raise issues with regard to maximum limits on working hours. The obligation on workers to take their holidays in advance does not pose any problem either as regards the application of the Convention. On the other hand, more detailed information is required on the scope of the provisions allowing employers to replace the existing system of working hours with a different one. The Committee notes the legal and economic report drawn up by the technical departments of the Legislative Assembly on 24 September 2009, which contains an important critique of the Bill. It also understands that this legislative text has not been discussed in Parliament for two years. ***The Committee therefore requests the Government to indicate the current status of Bill No. 17351 and to provide further information on the type of system of working hours which an employer would be authorized to put in place under section 8 of the Bill.***

*Articles 2 and 6(1)(b). Hours of work and overtime for bus drivers.* The Committee notes that the CTRN refers in its comments to the situation of bus drivers employed by transport companies affiliated to the National Chamber of Transport, alleging that these workers are subjected to exhausting working days of 16 to 18 hours, often without payment for the overtime worked. The CTRN also makes allegations concerning other practices to which bus drivers are exposed, such as the lack of a rest period for meals, the obligation to clean the vehicle at the end of the working day without payment for the additional time worked, etc. It also refers to a study conducted by the tripartite National Council for Occupational Health concerning the exhausting working days experienced by these drivers, the excessive stress that they suffer and the increased risk of accidents. The Committee notes the Government's indications that, further to the aforementioned study published in 1997, Executive Decree No. 27298-MTSS of 2 September 1998 was adopted concerning the conditions of work and occupational health of bus drivers. In reply to the CTRN allegations, the Government indicates that workers in the transport sector are not deprived of protection given that, further to the repeal in 1997 of section 146 of the Labour Code, which allowed special rules to be fixed concerning hours of work in the transport sector, the enterprises concerned have reduced working time to 8 hours per day. The Government also refers to the information sent by the National Chamber of Transport in reply to the CTRN allegations. This organization argues that overtime is required occasionally, in order to respond to shortages of workers and that, further to the repeal of section 146 of the Labour Code, transport enterprises have increased the length of rest periods to allow their employees time for meals. The Government also emphasizes that any infringement of the applicable labour and occupational health standards with regard to bus drivers would be examined by the National Directorate of Labour Inspection and Social Security, regardless of any legal action taken. It indicates that in 2010 the labour inspection services undertook 99 inspections in transport enterprises. No infringements were reported in 26 enterprises, and another 37 applied the measures recommended by the labour inspectors. The Committee notes with *interest* the efforts of the labour inspectorate to enforce the regulations applicable to bus drivers as regards hours of work. ***However, the Committee requests the Government to carry out the necessary inquiries into the allegations made by the CTRN regarding the daily hours of work of bus drivers, overtime pay and the question of remuneration for time spent cleaning the vehicle, and to send any other observations that it may wish to make in reply to the comments of the CTRN.***

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Dominican Republic

### **Night Work Convention, 1990 (No. 171) (ratification: 1993)**

*Article 3 of the Convention. Protective measures for night workers.* For the last 18 years, the Committee has been drawing the Government's attention to the need to adopt measures – legislative or others – implementing the specific requirements set out in *Articles 4* (free medical assessment), *6* (workers certified as unfit for night work), *7* (maternity protection), *9* (social services) and *10* (consultation of workers' representatives) of the Convention. The Committee recalls once more that these provisions of the Convention call for concrete protective measures in view of the inherent risks of night work. For instance, *Article 4* provides that night workers are entitled to request a free health assessment before they take up an assignment, at regular intervals during such assignment and whenever they experience health problems during the assignment, and also to receive advice on how to reduce or avoid health problems associated with night work. *Article 6* provides that workers who are medically certified as unfit to work at night – but may not necessarily be unfit for day work – have to be either transferred to a similar job for which they are fit, or, if their transfer to an alternative position proves impracticable, granted the same benefits (for instance, unemployment, sickness or disability benefits) as those day workers who are generally unfit for work. *Article 7* requires that an alternative to night work (e.g. similar or equivalent day work) be available to women workers for a period of at least sixteen weeks, of which at least eight weeks before the expected date of childbirth, or for longer periods if this is medically necessary for the health of the mother or child. **Recalling that the provisions of the Convention may be implemented by laws or regulations, collective agreements, arbitration awards or court decisions, a combination of these measures or in any other manner appropriate to national conditions and practice, the Committee urges the Government to take prompt action in order to give full effect to the abovementioned requirements of the Convention.**

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Equatorial Guinea

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 6 of the Convention. Permanent and temporary exceptions.* In reply to the comments the Committee has been making since 1994, the Government indicated that the regulations applying section 49 of Act No. 2/1990 were still being examined with the parties concerned, particularly in the oil sector. **The Committee asks the Government to provide information on the progress made in this matter. The Government is also invited to communicate information on the organizations of employers and workers consulted in the preparation of the abovementioned regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the manner in which effect is given, in practice, to the provisions of section 49 of Act No. 2/1990 on overtime.**

The Committee is raising other matters in a request addressed directly to the Government.

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 7 of the Convention. Permanent and temporary exceptions.* In reply to comments that the Committee has been making since 1994, the Government indicated that the regulations to implement section 49 of Act No. 2/1990 are still being examined with the parties concerned, particularly in the oil sector. **The Committee requests the Government to report on progress in this process. The Government is also asked to provide information on the employers' and workers' organizations consulted in the preparation of these regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the way in which the provisions of section 49 of Act No. 2/1990 on overtime are applied in practice.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Honduras

### **Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)** (ratification: 1960)

*Article 6 of the Convention. Right to weekly rest.* The Committee notes the observations of 31 August 2010 and 30 March 2011 made by the Single Confederation of Workers of Honduras (CUTH), the Workers' General Central Union (CGT) and the Workers' Central Union of Honduras (CTH) as well as the Government's reply of 22 November 2011, concerning the application of the Convention. These comments refer to a draft decree to establish a national anti-crisis plan for job creation, which has since been adopted and is now Decree No. 230-2010 of 4 November 2010. The Committee notes that section 7 of the Decree provides that workers hired under the anti-crisis programme are subject exclusively to the programme's provisions as regards their rights and obligations and the benefits to which they are entitled. It notes that section 7 also provides that the workers concerned will nonetheless enjoy the fundamental rights established in the Labour Code and the eight ILO fundamental Conventions. In the Committee's view, as currently worded, this provision suggests that only the provisions of the Labour Code relating to freedom of association, the right to collective bargaining, the prohibition of forced labour and child labour and non-discrimination apply to these workers, to the exclusion of the provisions on weekly rest among others. This view appears to be confirmed by the Government in its reply to the observations of CUTH, CGT and CTH. ***The Committee therefore asks the Government to indicate how it is ensured that workers hired under the anti-crisis programme established by Decree No. 230-2010 effectively enjoy their right to weekly rest in accordance with the provisions of this Convention.***

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## India

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)**

*Article 2 of the Convention. Limitations on daily and weekly working hours.* The Committee notes the Government's reply to its previous comments concerning the observations made by the Centre of Indian Trade Unions (CITU) and the Bharatiya Mazdoor Sangh (BMS) union, concerning the application of the Convention. It notes the Government's indications that the information technology sector is not governed by the Factories Act, but by the provisions of the Shop and Establishment Acts of the respective state governments. The Committee wishes to specify that the comments of the above trade union organizations referred to two different points: firstly, the BMS alleged the existence of violations of the legislation on working time in certain sectors, and particularly information technology, without referring to the Factories Act; second, the CITU alleged, without mentioning any specific sector, that the provisions of the Factories Act limiting weekly working hours to 48 were among those most frequently violated. ***The Committee therefore once again requests the Government to reply to the observations made by the above trade union organizations on the two points indicated above. It also requests the Government to provide information on any complaints that may have been filed under the Factories Act and results of those complaints.***

With regard to violations of the legislation on working time in Special Economic Zones, which were also alleged by the BMS, the Committee notes the Government's indications that it has sought information from the various state governments. ***The Committee requests the Government to provide the Office with any information that is received concerning any violations of the legislation on working time in the Special Economic Zones.***

Furthermore, with regard to the possible revision of the legislation to raise the limits on working hours to 12 in the day and 60 in the week, the Committee notes the Government's indications that there is no information on such an initiative. The Committee, however, observes that the Economic Survey for 2008–09, published by the Ministry of Finance, makes explicit reference to the need to amend the Factories Act as indicated above. ***The Committee therefore requests the Government to provide additional clarification in this regard.***

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

The Committee is raising other points in a request addressed directly to the Government.

## Kenya

### **Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1979)**

*Article 5(2) of the Convention. Minimum period of service.* The Committee notes that the Government's report does not contain any reply to its previous comment regarding the period of service required to qualify for an annual holiday with pay. It recalls that section 28(1)(a) of the Employment Act fixes the minimum period of service to qualify for an annual holiday with pay at 12 months, whereas *Article 5(2)* of the Convention limits this minimum period of service to no more than six months. **The Committee requests the Government to take the necessary steps to bring its legislation into conformity with this provision of the Convention.**

*Article 5(4). Definition of the period of service giving entitlement to an annual holiday with pay.* The Committee notes the Government's indications that the application of this provision of the Convention is ensured by sections 8, 9(2) and 12 of the general regulations on wages. The Committee notes, however, that these sections do not refer to the inclusion of absences from work for reasons beyond the control of the worker concerned in the qualifying period for an annual holiday with pay. **With reference to its previous comments, the Committee again requests the Government to insert a provision in its legislation ensuring the implementation of the Convention on this point.**

*Article 6. Exclusion of public holidays and periods of incapacity for work from the annual holiday with pay.* The Committee notes that section 9(2) of the general regulations on wages provides that the annual paid holiday of 21 working days is in addition to public holidays, weekly rest days and additional holidays, whether provided for by law or by an agreement. **The Committee requests the Government to state whether the additional holidays referred to in this provision also include days of sick leave, as prescribed by the Convention.**

*Article 7(2). Payment of remuneration relating to the annual paid holiday.* The Committee notes the Government's indications that, although the legislation does not make the advance payment of remuneration relating to the paid holiday obligatory, as required by the Convention, in practice workers receive this remuneration before the start of their annual holiday. However, the Committee recalls that payment in advance is compulsory, unless otherwise provided for in an agreement between the employer and the worker concerned. **In order to ensure uniform application of this rule, the Committee requests the Government to take the necessary steps to insert such an obligation in its legislation.**

*Article 10. Time at which the holiday is taken.* The Committee notes the indications in the Government's report that the period of annual holiday is determined by the employer in consultation with the worker concerned. It draws the Government's attention to the fact that *Article 10(2)* of the Convention provides that, in fixing the time at which the holiday is to be taken, work requirements and the opportunities for rest and relaxation available to the employed person shall be taken into account. In other words, the employer must take account not only of his/her own needs but also of the interests of his/her employees and their families when fixing the period of annual holiday with pay. **The Committee therefore requests the Government to take the necessary steps to ensure the implementation of this provision of the Convention.**

*Article 12. Prohibition of agreements to relinquish the right to the minimum annual holiday with pay.* The Committee notes the Government's reference in its report to section 26 of the Employment Act, which states that the provisions of this Act relating to conditions of employment (especially annual holiday with pay) constitute minimum standards and that if a collective agreement, an agreement between the parties or a court decision establish more favourable conditions, it is these conditions which will be applicable. However, the Committee notes that this provision of the Employment Act does not give effect to *Article 12* of the Convention since it does not stipulate that any agreement to relinquish the right to the three-week annual paid holiday or to forgo such a holiday shall be null and void or be prohibited. **The Committee therefore requests the Government to insert a provision in the legislation stating explicitly that such agreements shall be null and void or be prohibited.**

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Kuwait

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1961)**

*Articles 1 and 2 of the Convention. Scope of application.* The Committee notes with *interest* that following the adoption of the new Labour Law No. 6 of 2010 on work in the private sector, which repeals Law No. 38 of 1964, casual workers engaged in seasonal work not exceeding six months and owners of non-mechanical enterprises employing fewer than five workers are now covered by the provisions on working time. It notes, however, that under section 5 of Labour

Law No. 6 of 2010, these provisions do not apply to workers whose employment and working conditions are regulated by other laws. **The Committee requests the Government to specify the categories of workers who are exempted from the application of the new Private Sector Labour Law No. 6 of 2010, and to provide a copy of the legal provisions regulating the working hours of those workers.**

*Article 6(1)(b). Temporary exceptions.* The Committee notes that section 66 of the Private Sector Labour Law No. 6 of 2010, which essentially reproduces section 34 of the previous Labour Law No. 38 of 1964, provides that employees may be requested to perform overtime if this is necessary for avoiding a certain loss or completing such work exceeding the daily required work. The Committee wishes to draw the Government's attention to the fact that *Article 6(1)(b)* of the Convention permits the introduction of temporary exceptions to the normal hours of work only when industrial establishments need to deal with exceptional cases of pressure of work, whereas section 66 of the new Private Sector Labour Law does not seem to limit recourse to additional hours to exceptional situations. **The Committee therefore requests the Government to take the necessary measures in order to bring the national legislation into full conformity with the requirements of Article 6(1)(b) of the Convention and to keep the Office informed of any further developments in this matter.**

*Article 6(2). Limit on the number of additional hours.* The Committee notes that under section 66 of the Private Sector Labour Law No. 6 of 2010, additional hours are permitted up to a maximum of 180 hours per year. Furthermore, the Committee notes once again that sections 3 and 4 of Ministerial Order No. 34/77 concerning overtime in the public sector do not specify the maximum number of additional hours that may be authorized in the case of temporary exceptions to the normal hours of work. In this regard, the Committee wishes to refer to paragraph 144 of its 2005 General Survey on hours of work in which it noted that even though the establishment of specific limits to the total number of additional hours is left to the competent authorities, this does not mean that such authorities have unlimited discretion in this regard. Such limits must be reasonable and they must be prescribed in line with the general goal of the Convention, namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life. It appears from the preparatory work that led to the adoption of Convention No. 1 that the limits considered to be permissible amounted to 150 hours per year in the case of temporary exceptions. **In light of the preceding observations, the Committee hopes that the Government will take without further delay all necessary measures in order to establish a reasonable limit on the number of authorized additional hours in case of temporary exceptions both in the private and the public sectors and to keep the Office informed of any progress achieved in this respect.**

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1961)**

*Article 1 of the Convention. Scope of application.* **The Committee requests the Government to refer to its comments made under Articles 1 and 2 of the Hours of Work (Industry) Convention, 1919 (No. 1).**

*Article 7(2)(b) and (d). Temporary exceptions.* The Committee notes that section 66 of the new Private Sector Labour Law No. 6 of 2010, which essentially reproduces section 34 of the Previous Law No. 38 of 1964, provides that employees may be requested to perform overtime if this is necessary for avoiding a certain loss or completing such work exceeding the daily required work. The Committee recalls that under *Article 7(2)* of the Convention temporary exceptions may only be granted in specific and narrowly-defined circumstances, including the need to prevent the loss of perishable goods or avoid endangering the technical results of the work; as well as enable establishments to deal with cases of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures. In contrast, the formulation used in section 66 of the private sector labour law appears too broad as compared to the authorized scope of temporary exceptions under the Convention. **The Committee therefore requests the Government to take the necessary action to ensure that the exceptions provided for in section 66 of the new Private Sector Labour Law No. 6 of 2010 are strictly limited to the exceptions provided for in Article 7(2) of the Convention.**

*Article 7(3). Limit on the number of additional hours.* **The Committee requests the Government to refer to its comments made under Article 6(2) of Convention No. 1.**

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their

health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Nicaragua

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)** (ratification: 1934)

*Article 3 of the Convention. Limits on daily and weekly hours of work.* The Committee notes the comments of the Trade Union Unification Confederation (CUS) dated 30 August 2011 alleging that the Ministry of Labour does not monitor or control working time violations and that in the interest of preserving their employment workers in most commerce and offices are obliged to work more than eight hours per day and 48 hours per week. In particular, the CUS denounces the situation in “call centres” where workers are asked to work more than eight hours a day, without being paid overtime in exchange of employment stability. **The Committee requests the Government to transmit any comments it may wish to make in response to the observations of CUS.**

Moreover, the Committee draws the Government’s attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Panama

### **Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)** (ratification: 1959)

*Article 7 of the Convention. Temporary exceptions – Annual limit on the number of additional hours and overtime pay.* The Committee notes with **regret** that in reply to its numerous comments the Government merely repeats its previous indication that section 36(4) of the Labour Code cannot be amended to conform with the provisions of the Convention owing to a lack of consensus among the social partners. The Committee once again draws the Government’s attention to the fact that, while tripartite consultations are indeed necessary prior to any legislative reform, the Government bears the ultimate responsibility for the fulfilment of its international obligations, including the implementation of ratified ILO Conventions. **The Committee again urges the Government to amend section 36(4) of the Labour Code in order to fix a reasonable annual limit to the number of additional hours authorized in the context of temporary exceptions and thereby bring the national legislation into conformity with the Convention on this point.**

In addition, the Committee notes the observations made by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) concerning the Forced Labour Convention, 1930 (No. 29), received on 25 August 2011, which refer to overtime work in the public sector, and which are therefore also relevant to Convention No. 30. It also notes the Government’s reply received on 14 November 2011, in particular the reference to Act No. 43 of 30 July 2009, which amends Act No. 9 of 20 June 1994 regulating the administrative career service. The Committee will examine in detail the observations of the FENASEP as well as the Government’s response at its next session. **In the meantime, the Committee requests the Government to provide any supplementary information which may be available concerning the measures taken or envisaged in order to ensure that: (i) public employees are authorized to perform additional hours only in the limited cases provided for in Article 7(2) of the Convention; (ii) an annual limit is introduced on the number of additional hours authorized, as required under Article 7(3) of the Convention; and (iii) additional hours are paid at not less than one and a quarter times the regular rate, as prescribed by Article 7(4) of the Convention.**

Finally, the Committee draws the Government’s attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

## Romania

### **Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)**

*Article 6(2) of the Convention. Overtime pay.* The Committee notes the observations made by the Block of National Trade Unions (BNS) concerning the application of the Convention, which were received on 1 September 2010, and also the Government's reply to these observations, which was received on 18 January 2011. According to the BNS, even though weekly hours of work are clearly regulated by the Labour Code and the relevant European Union (EU) directive, there is a worrying failure to observe these provisions, especially in the imposition, in breach of the regulations, of overtime hours that do not qualify for compensatory rest or for extra payment. It notes that the Government in its reply recalls the provisions of the Labour Code relating to compensation for overtime and points out that any infringement of these provisions is liable to incur a fine and that any employee who considers that his/her rights have been infringed may take legal action. The Committee recalls its previous comment concerning the application of *Article 6(2)* of the Convention, in which it emphasized that, regardless of whether compensatory rest is granted, the rate of pay for overtime must in any case be at least 25 per cent higher than the normal rate. The Committee drew the Government's attention to the fact that the Labour Code only provides for a higher rate of pay if the worker concerned has been unable to take paid rest during the 30-day period following the overtime worked. It notes that Act No. 40/2011 of 31 March 2011 has increased this period from 30 to 60 days. **The Committee requests the Government to provide detailed information in its next report in reply to its direct request of 2008 concerning the application of Article 6(2) of the Convention, and also regarding the steps taken to ensure the observance of the corresponding provisions of the Labour Code in practice.**

The Committee also notes the more general remarks made by the BNS concerning the draft amendments to the Labour Code, which were under examination at the time. It notes that the BNS described as worrying the Government's intention to make the Labour Code more flexible, including with regard to the regulation of hours of work. It notes the Government's indication in reply to these remarks that the draft amendments formed part of the commitments made by Romania vis-à-vis the EU. The Committee notes that these amendments have been adopted since then, becoming Act No. 40/2011 of 31 March 2011. It notes that the Act, apart from extending the period in which overtime can be compensated, as referred to above, also extends the reference period from three to four months during which maximum weekly working hours (including overtime) can be averaged. The Committee notes that the Office, in its technical comments on the draft amendments, sent to the Government in January 2011, emphasized the fact that the planned amendments to the Labour Code did not deal with the issues raised by the Committee in its comments of 2008. Moreover, the Committee understands that Act No. 40/2011 was adopted by Parliament under an accelerated procedure and that the draft Act was criticized by both employers' and workers' organizations. **The Committee requests the Government to supply information on the consultations held with the social partners concerning the provisions of the aforementioned draft Act relating to hours of work. Finally, the Committee requests the Government to reply in detail to the observation and direct request of 2008 and indicate the measures it plans to take on these issues in order to ensure that the national legislation is in full conformity with the Convention.**

Finally, the Committee draws the Government's attention to the conclusions of the ILO Tripartite Meeting of Experts on Working Time Arrangements, held in October 2011, according to which the provisions of existing ILO standards relating to daily and weekly hours of work, weekly rest, paid annual leave, part-time and night work, remain relevant in the twenty-first century, and should be promoted in order to facilitate decent work. The Experts also emphasized the importance of working time, its regulation, and organization and management, to: (a) workers and their health and well-being, including opportunities for balancing working and non-work time; (b) the productivity and competitiveness of enterprises; and (c) effective responses to economic and labour market crises.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Sierra Leone

### **Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1961)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Articles 1 and 8 of the Convention. Right to annual holidays with pay.* The Committee notes the statement in the Government's last report that section 63(6) of the draft Employment Act would provide that any agreement to relinquish the right to minimum annual holiday would be null and void. The Committee hopes that the Act will be adopted in the near future, bringing section 12(a) of Government Notice No. 888, which the Committee has repeatedly highlighted as being in need of amendment, into conformity with the Convention. **The Committee requests the Government to provide a copy of the full text of the revised legislation as soon as it is adopted.**

The Committee also takes this opportunity to recall that, on proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that Convention No. 101 is outdated and has invited States parties to that Convention to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132), which is not deemed to be fully up to date but remains relevant in certain respects (see GB.283/LILS/WP/PRS/1/2, paragraph 12). Acceptance of the obligations of Convention No. 132 in respect of persons employed in agriculture by a State party to Convention No. 101 involves

the immediate denunciation of the latter. *The Committee requests the Government to keep the Office informed of any decision it may take in this respect.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 1** (Equatorial Guinea, Guinea-Bissau, India, Pakistan); **Convention No. 4** (Lao People's Democratic Republic); **Convention No. 14** (Burundi, Congo, Côte d'Ivoire, Guinea-Bissau, Ireland, Mauritius, Pakistan, Solomon Islands, Togo); **Convention No. 30** (Equatorial Guinea); **Convention No. 41** (Côte d'Ivoire); **Convention No. 52** (Albania, Burundi, Comoros, Côte d'Ivoire, Uzbekistan); **Convention No. 89** (Burundi, Congo, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Madagascar); **Convention No. 101** (Burundi, Comoros, Djibouti); **Convention No. 106** (Djibouti, Guinea-Bissau, Kuwait); **Convention No. 132** (Guinea, Ireland); **Convention No. 153** (Ukraine); **Convention No. 171** (Albania, Luxembourg, Madagascar); **Convention No. 175** (Albania, Guyana).

## Occupational safety and health

### Algeria

#### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1962)**

The Committee notes that, in addition to referring information already stated in previous reports, the Government refers to the provisions of the recently adopted Decree No. 05–08 of 8 January 2005 on specific requirements concerning preventive measures for the handling of locally produced or imported hazardous substances, preparations or products at the workplace. According to article 3 of this Decree, such hazardous substances, preparations or products are classified in 11 different categories, including those that are harmful, toxic, carcinogenic and dangerous for the environment, and according to its article 4 these categories are to be further defined by ministerial decree. The Committee notes that while the adoption of the present Decree represents a step forward, it does not constitute the specific provisions required to give effect to the Convention. The Committee again deplores the fact that the Government has not yet taken the necessary measures to secure the application of the Convention. The Committee is therefore bound to recall the main principles of the Convention: (i) the prohibition of the use of white lead and sulphate of lead in the internal painting of buildings; (ii) the regulation of the use of white lead in artistic painting; (iii) the prohibition of the employment of young men under 18 years of age and all women in any painting work involving the use of white lead; and (iv) the regulation of the use of white lead in painting work for which its use is not prohibited. **Finally, the Committee requests the Government to provide statistics with regard to lead poisoning among working painters, as required by Article 7 of the Convention. The Committee requests the Government to take all the necessary measures without delay to bring the national law and practice into conformity with the terms and objectives of the Convention and to provide detailed information in this respect.**

#### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1969)**

With reference to its previous comments the Committee notes, with *concern*, that in its most recent report, the Government makes no reference to the process to revise Act No. 88-07 of 26 January 1988 and to adopt implementing regulations to ensure compliance with the Convention – a process that the Government has reported on for the past 20 years. It recalls that the Government in its previous report specifically referred to a draft executive decree that would reflect all the relevant provisions of the Convention, as well as those of the Recommendation. **Recalling the constitutional obligations of the Government to implement the provisions of Conventions it has ratified the Committee urges the Government to adopt the draft executive decree referred to above without delay so as to give effect to the various provisions of the Convention and to report to the Committee on any progress in this respect.**

In the meantime, the Committee is bound to recall the following points:

*Article 2(3) and (4) of the Convention.* The Committee recalls that section 8 of Act 88-07 of 26 January 1988 which prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery or parts of machinery that do not correspond to current national and international health and safety standards does not determine the machinery that is considered to be dangerous, nor the parts thereof which are likely to present danger, in accordance with the requirements of *Article 2(3) and (4)* of the Convention. It recalls that it had noted that the provisions of Executive Decree No. 90-245 of 18 August 1990, applicable to gas pressure machinery and of Executive Decree No. 90-246 of 18 August 1990, applicable to steam pressure machinery, met the requirements of *Article 2* of the Convention, but that similar measures of general application to machinery covered by the Convention as a whole were needed. **In this regard the Committee wishes to reiterate its previous comments that the objective of Article 2 of the Convention is to guarantee that machines are safe before they reach the user, whereas the provisions of Executive Decree No. 91-05 of 19 January 1991 respecting general safety provisions concerning the guarding of machinery once it is in use.**

The Committee again draws the attention of the Government to paragraphs 73, et seq., of its General Survey of 1987 on safety and the working environment, where it indicates that it is essential for the effective application of Part [I] of the Convention that national legislation designate those parts of machinery that present danger and require appropriate guarding (paragraph 82), and that, until there has been a determination of the machinery and parts thereof that present danger, the prohibition of the sale, hire, transfer in any other manner and exhibition of machinery contained in *Article 2* of the Convention remains ineffective. **The Committee recalls its previous reference to paragraph 85 of the 1987 General Survey, op. cit., to indicate that the definition of dangerous machinery and parts thereof should as a minimum cover all those parts enumerated in Article 2 of the Convention.**

*Article 4.* Further to its previous comments, the Committee notes the Government's reply that the responsibility referred to in paragraph 2 of the Committee's previous comments was provided for in section 37 of Act No. 88-07 of 26 January 1988, which prescribed sanctions in cases of violations of sections 8, 10 and 34 of the same Act. The Committee recalls once again that, while section 8 of Act No. 88-07 prohibits the manufacture, exhibition, putting up for sale, sale, import, hire or transfer in any other manner of machinery that is dangerous, with a view to its use, section 10 of the same Act explicitly lays down the responsibilities only of those who are involved in the manufacture, import, cession and use of the machinery (manufacturer and importer) and not of the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and their respective agents. The Committee once again refers to paragraphs 164–175 of its 1987 General Survey, op. cit., in which it observes that the general prohibition from manufacturing, selling, hiring or transferring in any other manner machinery which is dangerous is inadequate if it is not accompanied by a provision explicitly requiring these provisions to be applied to the manufacturer, vendor, the person letting out on hire or transferring the machinery in any other manner or their respective agents, in order to comply with *Article 4* of the Convention which expressly establishes the responsibility of these persons, and to avoid any ambiguity. **The Committee urges the Government to take the necessary measures to ensure that the responsibility of the**

*categories of persons mentioned in Article 4 is explicitly established in national legislation and that sanctions are applicable in the event of the violation of these provisions.*

*Articles 6 and 7.* Further to its previous comments concerning the responsibility of the employer, the Committee notes the Government's indication that this responsibility is established in section 38 of Act No. 88-07. The Committee notes that the provisions of Act No. 88-07, including section 38, do not fully respond to its previous comments that the use of machinery, any parts of which, including the point of operation, is without appropriate guards, is not explicitly prohibited in law. It reiterates its previous indications that sections 40–43 of Executive Decree No. 91-05, while requiring the dangerous parts of machines to be guarded, do not explicitly prohibit the use of machinery, the dangerous parts of which are not guarded. The Committee refers once again to paragraph 180 of its 1987 General Survey, op. cit., in which it indicates that *Article 6(1)*, of the Convention is formulated as a general prohibition to be included in the national legislation and that, in order to observe this provision, it is not enough to require the guarding of machines while in use, without at the same time requiring that the use of machines without appropriate guards is forbidden. The Committee wishes to reiterate the need for the legislation to establish clearly that the obligation to ensure compliance with this prohibition rests on the employer, in accordance with *Article 7* of the Convention.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120)** (ratification: 1969)

The Committee notes the Government report and the attached legislation. The Committee also notes that the Government report does not contain replies to the questions raised in its previous comments and does not indicate the measures taken, in law and in practice, to ensure the application of *Articles 14 and 18 of the Convention*. It must therefore once again repeat its previous observation which read as follows:

*Article 14 of the Convention. Suitable seats for workers.* The Committee notes the information provided by the Government indicating that labour legislation is currently being reviewed, and that the obligation to provide suitable and sufficient seats for workers has been taken into consideration in the provisions of the future Labour Code. *The Committee once again requests the Government to adopt, as soon as possible, appropriate measures in law and practice to ensure that all workers covered by the Convention have sufficient and suitable seats, and the possibility of using them, and to keep the Office informed of any progress achieved in this respect.*

*Article 18. Protection against noise and vibrations.* The Committee notes the reference by the Government to sections 15 and 16 of Executive Decree No. 91/05 of 19 January 1991 which states the obligations of employers to reduce the impact of noise on workers' health, and where this is not possible, to provide such workers with personal protective equipment. *The Committee reiterates its request that the Government adopt, as soon as possible, appropriate measures in law and practice to give effect to the provisions of this Article with regards to vibrations, and to keep the Office informed of any progress achieved in this respect.*

*Part IV of the report form. Application in practice.* With reference to its previous comments, the Committee notes the Government reference to the body in charge of the enforcement of the Convention, the Labour State Inspectorate. However, the information provided does not allow for a general appreciation of the manner in which the Convention is applied to the country. *The Committee accordingly requests once again the Government to provide information on the manner in which the Convention is applied in practice, for example by supplying extracts from inspection reports and, where such information exists, the number of workers covered by the legislation; the number and nature of the contraventions reported; and the number, nature and cause of accidents reported.*

*The Committee takes this opportunity to invite the Government to request ILO technical assistance with the view to ensure an effective application of the Convention. The Committee hopes that such technical assistance can be carried out and asks the Government to provide information on any steps taken in this respect with the relevant ILO bodies.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## **Argentina**

### **Safety and Health in Agriculture Convention, 2001 (No. 184)** (ratification: 2006)

*Article 4(1) of the Convention. Formulation, implementation and periodical review of a coherent national policy on safety and health in agriculture after consulting the representative organizations of employers and workers concerned.* The Committee notes with *interest* the Argentinian Occupational Safety and Health Strategy 2011–15, adopted on 27 April 2011, with the signature of the Government and the representative organizations of employers and workers, which contains references to the present Convention: Decision No. 11/2011 establishing requirements for the housing of temporary, cyclical and seasonal agricultural workers, which gives effect to *Article 19(b)* of the Convention; and the approval by the National Congress and the promulgation by the executive authorities, on 24 August 2011, of Acts Nos 26693 and 26694 approving the ratification of the Occupational Safety and Health Convention, 1981 (No. 155), its Protocol of 2002 and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which are key occupational safety and health (OSH) instruments, as determined by the Governing Body in March 2010 in the Plan of Action to achieve widespread ratification of the three abovementioned instruments. The Committee considers that the adoption of the Strategy and the decision to ratify the above instruments constitutes progress in public OSH policies

and facilities the application of the other sectoral and thematic OSH Conventions, such as the present Convention. It hopes that it will facilitate the adoption of the national OSH policy for the agricultural sector and the adoption of the respective legislation.

*The Committee hopes that the Government will communicate in the near future the registration of the ratification of these instruments. The Committee requests the Government to provide information on the formulation, implementation and periodical review of a coherent national policy on safety and health in agriculture after consulting the representative organizations of employers and workers concerned; on the consultations held during the period covered by the report; on the basic principles of the national policy; and on the manner in which the periodical review envisaged by this Article of the Convention is carried out.*

*Article 4(2)(b). Specification of the rights and duties of employers and workers with respect to occupational safety and health in agriculture.* The Committee notes that a new draft National Agrarian Work Regime, which will replace the legislation that is in force, is currently before the Chamber of Deputies. The Committee notes that this draft text incorporates certain Articles of the Convention, but does not give effect to others. *The Committee requests the Government to ensure that the above legislation, or any other relevant legislation, gives effect to the provisions of the Convention, to take into account for this purpose the comments made by the Committee and to provide information on this subject, with an indication, if the draft text is approved, of the changes made by the new legislation as it relates to the provisions of the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Barbados

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1967)**

*Comments by the Barbados Workers Union (BWU).* The Committee notes the comments transmitted by the BWU on 1 September 2011 which were communicated to the Government on 19 September 2011 and that no response thereto has been received from the Government. The Committee notes that the BWU reiterates its call to institute its previously suggested measures so as to mitigate the probability and severity of any incidents relative to radiation exposure, that the BWU on several occasions has requested that the Advisory Committee be reactivated, maximum admissible radiation exposure doses be fixed and a compulsory annual examination be instituted, among other measures and that according to the BWU workers in a number of establishments have, of late, made calls for the aforementioned measures relating to radiation protection to be implemented without delay. *In the light of these comments, the Committee requests the Government to take all appropriate measures to ensure full application of the Convention. It also reiterates its request to the Government to its previous observations which read as follows:*

The Committee notes the information contained in the Government's report and the reply to its direct request. It notes that, despite comments it has reiterated for several years, the Government's report contains no new information and that, according to the Government's replies, no follow-up has been given to the Committee's comments. The Committee also notes that the Government's report refers to observations submitted by the "Barbados Workers' Union" which requests the Government to reactivate the Advisory Committee on Radiation Protection (ACRP); to establish legislative measures to afford protection to workers exposed to ionizing radiation, particularly by fixing the maximum admissible radiation exposure doses; to take appropriate measures to prescribe a compulsory medical examination – not merely optional – for workers exposed to radiation; and to provide alternative employment allowing them to maintain their income for persons who can no longer work in zones exposed to radiation. *In view of the above, the Committee is bound to reiterate its observations on the following matters.*

*Articles 2 and 4 of the Convention.* The Committee noted the Government's indication that the regulatory body to monitor the exposure of workers to ionizing radiation has not been established yet. *It further notes that the ACRP has not yet given directives regarding protective measures to be taken against ionizing radiation, or time limits for the application of such measures. Referring to its introductory comments, the Committee urges the Government to take the appropriate steps to make the ACRP operational and thus creating the framework for the monitoring of workers' exposure to ionizing radiation and the issuing of directives regarding protective measures, which falls, according to the Committee's understanding, in the area of competence of the ACRP.*

*Articles 3 and 6.* With regard to the fixing of maximum permissible doses of ionizing radiation, necessary in order to comply with the requirement to ensure effective protection of workers in the light of "knowledge available at the time" and in the light of "current knowledge", the Committee noted from the Government's report that the radiation protection officer, being a hospital physician and the chairperson of the ACRP, is well aware of the recent revised dose limits of the International Commission on Radiological Protection (ICRP). In this regard, the Government indicates that reports on the doses of ionizing radiation received by workers show that the limits recommended by the ICRP were not exceeded. However, in particular cases recorded for cardiac catheterization doctors and one radiologist, the dose of radiation absorbed was beyond this limitation, which subsequently has been brought to their attention. *The Committee, noting that the observance of the dose limits for ionizing radiation, as recommended by the ICRP in 1990, do not seem to set a problem to the Government in practice, requests therefore the Government to reconsider the possibility to fix maximum permissible dose levels of ionizing radiations with legally binding effect in order to guarantee by means of enforceable provisions an effective protection of workers exposed to ionizing radiations, in accordance with Articles 3 and 6 of the Convention.*

*Article 5.* With regard to the installation of a computerized system, type "Selectron HDR", in 1990 which reduces the number of workers dealing with radiation sources to an extent that the probable exposure to radiation would turn to zero, the Committee noted the Government's indication that this system is used in the treatment of cancer of the uterine cervix and related problems. However, its use in other medical disciplines has to be planned since logistical problems regarding the necessary

equipment and the movement of staff working in related disciplines need to be resolved. *The Committee hopes that the Government will take the necessary action to enable the use of the "Selectron HDR" system in all medical disciplines where appropriate in order to restrict the exposure of workers to the lowest practicable level and to avoid any unnecessary exposure of workers. The Committee requests the Government to supply information on experiences already collected in applying the system in the field of the treatment of cancer of the uterine cervix.*

*Article 7.* The Committee noted the Government's indication that no legislation is in place to set a lower limit on the age of radiation workers. However, since it is a very fundamental issue, it is hoped that it will appear in the amended Radiation Act. In the meantime it belongs to the radiation protection officer's tasks to ensure that adequate structural shielding in place is provided, such as area monitoring, warning lights or alarm where appropriate and that only qualified workers are employed to operate machines producing radiation. In this respect, the Committee notes again the Government's indication provided with its 1998 report to the effect that the minimum age for engagement in radiation work was 16. *Recalling the provision of Article 7(2) of the Convention which provides for a minimum age of 16 to become engaged in work involving ionizing radiation, the Committee requests again the Government to specify the legal basis providing for the prohibition to engage young persons under 16 years of age in work involving exposure to ionizing radiations.* Moreover, the Committee recalls the provision of *Article 7(1)(a)* of the Convention, providing for the fixation of appropriate levels of exposure to ionizing radiations for workers who are directly engaged in radiation work and are aged 18 and over. *The Committee therefore asks the Government once again to indicate the measures taken or contemplated in order to fix appropriate levels for this group of workers. Since the Committee understands from the Government's indication that an amendment of the Radiation Act is intended, it would invite the Government to consider the possibility to incorporate such appropriate levels in the amendment of the above Act.*

*Article 8.* With regard to dose limits to be set for workers not directly engaged in radiation work, the Government indicated that the reports on radiation received by these workers show either negligible or zero doses. While the Committee noted this information with interest, it nevertheless wishes to point out that *Article 8* of the Convention obliges every ratifying State to fix appropriate levels of exposure to ionizing radiations for this category of workers, in accordance with *Article 6*, read together with *Article 3(1)* of the Convention, that is in the *light of knowledge available at the time*. In this respect, the Committee would draw the Government's attention to paragraph 14 of its 1992 general observation under the Convention, as well as to section 5.4.5 of the *ILO Code of Practice on the Radiation Protection of Workers* (ionizing radiations) of 1986, explaining that the employer has the same obligations towards workers not engaged in radiation work, as far as restricting their radiation exposure is concerned, as if they were members of the public with respect to sources of practices under the employer's control. The annual dose limits should be those applied to individual members of the public. According to the 1990 ICRP Recommendations, the annual dose limit for members of the public is 1 mSv. *The Committee therefore asks the Government to indicate the measures envisaged to fulfil its obligation under this Article of the Convention.*

*Article 9.* The Committee noted the information supplied with the Government's report on the functions of the alarm systems used in those units at hospitals where radiation treatment is carried out. It also notes the existence of appropriate warning signs fixed on the doors to indicate the presence of hazards arising from ionizing radiations. However, with regard to adequate instructions of workers directly engaged in radiation work, the Committee calls again the Government's attention to section 2.4 of the 1986 *ILO Code of Practice on the Radiation Protection of Workers* (ionizing radiations) which contains general principles for informing, instructing and training of workers. *The Government is requested to indicate the measures taken or envisaged to ensure that workers are adequately instructed in the precautions to be taken for their protection in conformity with Article 9(2) of the Convention.*

*Article 11.* The Committee noted the Government's indication to the effect that the workers designated to perform radiation work are presently monitored by TLD radiation monitoring badges supplied by the universities of the West Indies. *The Committee requests the Government to explain more in detail the characteristics of this specific monitoring and the manner in which it is carried out.*

*Article 12.* With regard to appropriate medical examination of workers directly engaged in radiation work, the Government indicated that a medical examination is still a prerequisite for an appointment to the public service. In addition, all workers assuming duties at the hospital are tested subsequently after they have taken up their work on a voluntary basis. In this respect, the Committee wishes to underline that subsequent medical examinations of workers directly engaged in radiation work have to be carried out on a mandatory basis and thus cannot be left to the discretion of the workers concerned whether or not they want to undergo a medical examination once they have been employed. *The Government is accordingly requested to indicate the measures taken or envisaged ensuring that all workers engaged in radiation work are obliged to undergo appropriate medical examinations, not only prior to their employment, but also subsequently at appropriate intervals.*

*Article 13.* With regard to the measures to be taken in emergency situations, the Government indicated that no such measures are in place yet, but that it is hoped that the development of emergency plans will be one of the tasks of the proposed regulatory body. In this respect, the Committee states that the ACRP is responsible, inter alia, to prepare a detailed radiation protection programme for Barbados (point (3) of the Advisory Committee on Radiation Protection – Terms of reference). The Committee thinks that the preparation of measures to be taken in emergency situations would form an integral part of its task. The Committee therefore hopes that the ACRP will resume its functions in the near future and that it will, within the framework of its duties, elaborate plans for emergency situations. *To this effect, the Committee invites the Government again to refer to its 1987 general observation under the Convention as well as to paragraphs 16-27 of its 1992 general observation under the Convention concerning occupational exposure during and after an emergency which intend to give guidance regarding the measures to be taken in emergency situations. The Committee hopes that the Government will report on any progress made in this respect.*

*Article 14.* In absence of any additional information regarding alternative employment of workers with premature accumulation of their lifetime dose, the Committee requests once again the Government to indicate whether and, if so, under which provisions, it is ensured that a worker who is medically advised to avoid exposure to ionizing radiations is not assigned to work involving such exposure, or is transferred to another suitable employment if he or she has already been assigned.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Belize

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)**

The Committee notes the information provided that the issues raised by the Committee would be addressed in a new National Occupational Safety and Health Act. This act was not, however, attached to the report and according to available information it has not yet been adopted. *The Committee requests the Government to submit a copy of this new legislation as soon as it has been adopted.* In the meantime, the Committee must repeat its previous observation which read as follows:

*Articles 3(1) and 6(2) of the Convention. Maximum permissible doses of ionizing radiation.* With reference to its previous comments, the Committee notes the Government's response indicating that on 13 March 2009, the Labour Advisory Board was re-activated and that its main duty is the revision of national labour legislation. The Committee notes that the Ministry is currently in the process of identifying a consultant that will work with the Labour Advisory Board to conduct the revision of the legislation, and that comments made by the Committee will be submitted to the Board. *The Committee hopes that in the course of the ongoing revision of national labour legislation due account will be taken on the exposure limits adopted by the International Commission on Radiological Protection in its 1990 Recommendations, to which the Committee referred to in its 1992 general observation under the Convention, in order to ensure the effective protection of workers exposed to ionizing radiation in the course of their work.*

*Article 14. Provision of alternative employment.* The Committee notes the Government's response indicating that there is no provision in the Labour Act for the transfer of pregnant women from their work involving exposure to ionizing radiation to another job. The Committee notes, however, the Government's statement that that the National Occupational Safety and Health Policy, adopted by Cabinet on 9 November 2004, can provide a suitable framework for drafting legislation that could make provision for such transfer and that legislation is drafted in consultation with the Labour Advisory Board. *The Committee hopes that in the course of the ongoing revision of the national labour legislation due account will be taken of the need to ensure that suitable alternative employment opportunities, not involving exposure to ionizing radiations, be provided for workers having accumulated an effective dose beyond which detriment to their health considered unacceptable is to arise, as well as for pregnant women, who may be faced with the dilemma that protecting their health means losing their employment.*

*Occupational exposure during an emergency.* The Committee notes that there is currently no provision within the Labour Act laying out the circumstances in which exceptional exposure is authorized. *With reference to paragraphs 16–27 and 35(c) of its 1992 general observation under the Convention, and paragraphs V.27 and V.30 of the International Basic Safety Standards issued in 1994, the Committee requests the Government, in the course of the ongoing revision of the national labour legislation, to take due account of the need to determine circumstances in which exceptional exposure is authorized, and to make protection as effective as possible against accidents and during emergency operations, in particular with regard to the design and protective features of the workplace and the equipment, and the development of emergency intervention techniques, the use of which in emergency situations would enable the exposure of individuals to ionizing radiations to be avoided.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future. [The Government is asked to report in detail in 2013.]*

## Benin

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1998)**

*Article 2 of the Convention. Legislation and adoption of a national policy on occupational safety and health.* The Committee notes with *satisfaction* the adoption of Decree No. 207-410 of 31 August 2007 approving the national occupational safety and health (OSH) policy for Benin as well as a five year (2010–14) Action Plan concerning OSH. The Committee notes that, together with other legislative measures taken, including relevant provisions in the Labour Code (Act No. 98-004 of 27 January 1998), the National OSH Policy and Action Plan constitute a comprehensive framework for implementation of the Convention and a progressive improvement of occupational health services in the country giving effect to *Article 2* of the Convention. The Committee notes, however the absence of information regarding the consultations held with the representative organizations of employers and workers in the elaboration of this Plan of Action. *The Committee invites the Government to provide further information on the consultations held with representative organizations of employers and workers in the elaboration of the National OSH Policy as well as on progress in relation to its implementation.*

*ILO Plan of Action on occupational safety and health (2010–16).* The Committee notes that the national OSH policy referred to above paves the way for a future ratification not only of the three key instruments in the area of OSH namely the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), but also of more specific Conventions such as the Chemicals Convention, 1990 (No. 170). The Committee would like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the three key instruments referred to above, and that, under this Plan of Action, the Office is available to provide assistance to Governments, as appropriate, to bring their national law and practice in conformity with these key OSH Conventions in order to promote their ratification and effective implementation. *The Committee invites the Government to provide further information on any needs for technical assistance it may have in this respect.*

The Committee is raising other points in a request addressed directly to the Government.

## Plurinational State of Bolivia

### **Benzene Convention, 1971 (No. 136) (ratification: 1977)**

*Situation in occupational safety and health (OSH).* The Committee notes that the Government's report does not reply to most of the matters raised by the Committee in its observation of 2009. The Committee notes that the Government refers to general problems in OSH. The Government indicates that the 1979 Occupational Safety and Health Act is currently in force but despite the period it has been in force it has not been implemented effectively since occupational safety has still not been incorporated into management criteria. In addition, employers and workers still consider that the introduction of systems for prevention and improvement would constitute expenditure, not investment, enabling improvements in production and efficiency and reductions in social costs. In light of this situation, and on the basis of the new Constitution, the State has focused its efforts on establishing bodies to promote advances in this field and on adopting legislation. On 18 November 2008, the Government established the National Council for Occupational Safety, Health and Welfare, under the supervision of the Director-General of Labour and Industrial Safety at the Ministry of Labour. The Council is a tripartite body whose main function is to formulate policy in this field as well as advising the State authorities. In addition, the Ministry of Labour, Employment and Social Welfare promoted the drawing up of draft legislation in OSH, within the framework of the new Constitution. The Committee notes the Government's indication that the draft legislation seeks to lay down guidelines for immediate action for the handling and use of benzene and the adoption of necessary protection measures. The Committee notes the efforts made by the Government in setting up the abovementioned body and the drawing up of the draft legislation. ***With regard to the National Council for Occupational Safety, Health and Welfare, the Committee requests the Government to supply information on the activities undertaken by this body with respect to the application of this Convention. With regard to the draft legislation, the Committee requests the Government to ensure that the legislation gives effect to this Convention and to the other OSH Conventions which it has ratified, to take account of the Committee's comments on the application of these Conventions, and to supply information on any developments in this respect, and recalls that the Government may seek technical assistance from the Office if necessary. The Committee requests the Government to provide a general description of the manner in which it ensures that the Convention is applied and to respond to the comments made by the Committee in 2009 and provide detailed information in this respect.***

*Plan of Action (2010–16).* The Committee wishes to take this opportunity to inform the Government that in March 2010 the ILO Governing Body adopted a Plan of Action to achieve widespread ratification and effective implementation of the key instruments in OSH, namely: the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (GB.307/10/2(Rev.)). Noting the Government's willingness to adopt a global approach to OSH in consultation with the social partners and the fact that the Government has not ratified the three key instruments indicated in this paragraph, the Committee wishes to draw the Government's attention to the fact that these instruments could make an effective contribution towards establishing an appropriate and coherent tripartite framework for the management of OSH, which would also facilitate the application of the ratified Conventions. The Committee wishes to draw the Government's attention to the fact that, under the terms of the Plan, the Office is available to provide the necessary technical cooperation and assistance to facilitate the application of the ratified Conventions and the ratification of Convention No. 155, its Protocol and Convention No. 187. ***The Committee requests the Government to supply information on any need for technical assistance and cooperation that it may have in this respect.***

*Part IV of the report form. Application in practice.* ***The Committee requests the Government to provide a general description of the manner in which the Convention is applied in practice, including documents and material by way of illustration.***

***[The Government is asked to reply in detail to the present comments in 2013.]***

## Brazil

### **Benzene Convention, 1971 (No. 136) (ratification: 1993)**

*Rio Grande Do Sul Petrochemical Sector. Article 5 of the Convention. Effective protection of workers exposed to benzene. Article 6. Measures 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. Periodical medical examinations and exceptions. Article 14(c). Labour inspection.* In its previous comments, the Committee took note of a communication from the Union of Workers in the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande Do Sul (SINDILÍQUIDA/RS) and of the Government's report. It noted that the communication alleged breach of the abovementioned provisions in the petrochemical sector, particularly by Petrobras Distribuidora SA, Shell Brazil and Distribuidora de Produtos de Petróleo Ipiranga SA, with special reference to "driver-operators". The trade union said that some products handled by workers in the sector contain more than 3 per cent of benzene and that the workers are exposed to serious risks, particularly "driver-operators" in view of the absence of prevention and protection measures. The driver-operators are not as a rule employees of the enterprises concerned since their legal status as employees varies and they perform the tasks of loading and

unloading without protection and without any supervision by the appointed employees in the enterprises. The union also asserted that since 2003 these enterprises have not adopted the necessary technical measures to give effect to this Article of the Convention despite instructions from the labour inspectorate and convictions in the courts. Lastly, the organization asserts that the fact that inspection exists but produces no improvement amounts to a “legal fiction” and an instance of failure to apply *Article 14(c)* of the Convention.

*Government’s report. Labour inspection.* The Committee notes that, at the Government’s request, in September 2011 the Office again sent the Government the documents appended to the SINDILQUIDA/RS communication, including reports by the Regional Labour Delegation of Rio Grande Do Sul, that the union had sent as an attachment to the communication and which the Office forwarded to the Government on 8 November 2007. The Committee also notes that the Government emphatically refutes the union’s assertion that there is supervision by the labour inspectorate but that it is a “legal fiction”, and denies that matters may be at a standstill. The Government states that the labour inspectorate of Brazil is respected worldwide and that when an enterprise breaks the law, the democratic system can resort to instruments such as administrative and judicial sanctions, to be applied in observance of due process, and if the system proves inadequate, the solution is to get parliament to pass stricter laws. ***The Committee invites the Government to send its comments on the reports of the Regional Labour Delegation attached to the SINDILQUIDA/RS communication.***

*Labour inspectorate’s work relating to the issues raised in the communication.* The Committee notes with *interest* the information sent by the Government on the labour inspectorate’s work relating to the enterprises and issues referred to in the communication. The Government indicates that Petrobras, Shell Brazil and Ipiranga were inspected regularly in 2009 in connection with the regulatory standards on occupational safety and health (OSH), as well as on general issues, individual protective equipment, and programmes on environmental risk prevention and health conditions and amenities at the workplace. The Government reports on infringements that were remedied and others that were reported after it was found that the enterprise failed to apply adequate risk-prevention measures; failed to develop adequate planning measures; failed to specify strategies and methodologies and overlooked the views of the workers; disregarded the need for joint measures where two or more employers carry on activities simultaneously in the same workplace; and failed to ascertain the absence of any risks and to carry out proper supervision. The Committee also notes that, according to the Government, two Petrobras units were inspected: Petrobras Transporte SA – TRANSPETRO and Petrobras Distribuidora in Canoas, Rio Grande do Sul. TRANSPETRO was inspected in connection with regulatory standards on general aspects of OSH, individual protective equipment, medical occupational health supervision programmes, environmental risk-prevention programmes, unhealthy activities, and operations. These inspections also involved the State Benzene Committee (CNBz). The Government also indicates that in March 2009, Petrobras Distribuidora was inspected and deficiencies that had been found were put to right. ***The Committee requests the Government to continue to provide information on the impact of the work done by the labour inspectorate on the issues raised in the communication, including on other enterprises mentioned in the communication, such as Shell.***

*Court cases.* The Committee notes the information sent by the Government on judicial proceedings under way as a result of reports of infringements submitted by the labour inspectorate. As regards compliance with Decision No. 00075-2003-024-04-00-0 of the District Labour Court No. 24 of Puerto Alegre, referred to by the union in its communication, the Committee notes that a hearing of 22 August 2008 dealt with the execution of the decision, and that SINDILQUIDA/RS concedes that the enterprise (Petrobras Distribuidora) is complying as regards the issues mentioned. An extract of the hearing record, provided by the Government, states that the drivers of the service providers are no longer carrying on activities outside the scope of their occupation as lorry drivers, having concluded a contract the latter capacity with the company Servale. The enterprise also submitted programmes for risk-prevention in the workplace which recommend the use of respirators for workers responsible for unloading lorries. The Government also reports a court case against Shell Brazil in Esteio, Rio Grande do Sul where a prohibition was sought on safety grounds; a case against Ipiranga in which the Public Prosecutor for Labour, assisted by SINDILQUIDA/RS, applied to have the lorry drivers barred from the tasks of loading and unloading regardless of whether they were employees of the enterprise, or of subcontractors or self-employed. The case is still pending. Referring to the latter case, the Government indicates that the judges deemed the issue of driver-operators to be a “highly controversial” one. ***The Committee asks the Government to continue to provide information on developments in these cases and to indicate why the courts deem the driver-operator issue to be “highly controversial”, insofar as the matter relates to the application of the Convention or any other ratified Convention on occupational safety and health.***

*Part IV of the report form. Application in practice.* ***The Committee requests the Government to send its comments on the effect given to the Convention by enterprises in the petrochemical sector, including in the Rio Grande Do Sul region. Please provide information on the manner in which the Articles of the Convention cited at the beginning of this comment apply to persons engaged in the loading and unloading of fuels, whether they are employed directly by enterprises in the sector or by subcontractors, as in the case of the enterprise Servale referred to by the Government in its report on the Occupational Cancer Convention, 1974 (No. 139). The Committee also asks the Government to state whether it envisages the possibility of examining, together with the social partners and in the course of the reviews provided for in Article 7 of the Occupational Safety and Health Convention, 1981 (No. 155), how application of the Convention is faring in the petrochemical sector.***

*Programmes for the prevention of occupational exposure to benzene (PPEOB).* In its previous comments, the Committee asked the Government to provide copies of a few PPEOB together with information on the manner in which they are applied in practice, including in the enterprises mentioned in the communication. The Committee notes that in its report, the Government indicates that the labour inspectorate is responsible for supervising implementation of such programmes and that information on such programmes may not be forwarded for examination by third parties because copies may not be provided to any institutions, except in the case of court rulings. **The Committee requests the Government to provide information allowing it to ascertain whether the programmes are effectively applied in the petrochemical industry, including in the enterprises mentioned in the communication.**

The Committee is raising other points in a request addressed directly to the Government.

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1990)**

*Article 1 of the Convention. Carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization. Periodic updating.* Further to its previous comments, the Committee notes the Government's indication that the list of carcinogenic substances and agents to which occupational exposure shall be prohibited is not periodically updated. The Committee reminds the Government that according to *Article 1(1)* of the Convention, the Government is required to determine periodically the carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control, and those to which other provisions of this Convention shall apply. This Article provides expressly for periodic updating because new substances and agents that may be carcinogenic are constantly coming on to the market. **The Committee requests the Government to take the necessary steps to give effect to this Article of the Convention and to provide information in this regard.**

*Mechanism to reduce under-notification and broaden the scope of application.* In its previous comments, the Committee noted that Decree No. 6042/07 establishes a list of etiological agents or occupational risk factors in which a series of substances is recognized as carcinogenic. The Decree also creates a new mechanism for establishing a causal link between the ailment and the work performed, regardless of whether or not the enterprise has notified the incident. The Committee notes with *interest* the Government's statement that the set of instruments to apply the Decree, including INSS/PRES Directive No. 31 of 10 September 2008, has enabled under-notification to be reduced and that in 2007, 514,135 occupational accidents and diseases were notified through the Communication of Occupational Accidents (CAT) system and 138,955 through the new system, in other words there has been a 21.28 per cent increase in cases recognized. The Government also states that prior to the Decree, a CAT was necessary in order for a preliminary medical examination to qualify incapacity for work as due to occupational accident or disease, whereas since the Decree has been in force, the benefit can be awarded without a CAT. **The Committee requests the Government to provide information on accidents and diseases relating to this Convention that were notified through the CAT and on cases that were not so notified.**

*Articles 4 and 5. Information on carcinogenic substances and agents and measures to be taken, medical examinations and monitoring of workers' state of health.* In its previous comments, the Committee referred to a communication from the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of Río Grande Do Sul (SINDILIQUIDA/RS) concerning workers in the Río Grande Do Sul petroleum sector and particularly driver-operators. The organization stated that in practice, these provisions of the Convention are not applied; that no information is provided on the hazards of carcinogenic products such as benzene; and that in innumerable cases no suitable medical examination is carried out to assess exposure or state of health as they relate to occupational hazards, and cited as an example two specific cases from a report by the Río Grande Do Sul labour delegation, which involve Petrobrás, Shell and other enterprises in the sector. The Committee notes that according to the Government, in 2009 in Río Grande Do Sul alone 5,280 establishments were inspected in connection with NR-01 (general provisions); 8,009 establishments with NR-07, establishing the Occupational Health Medical Programme (PCMSO); and 2,224 establishments in connection with NR-09 on the Environmental Hazards Programme (PPRA). **Noting that the information gives no detail of the results of the inspections pertaining to the application of these Articles of the Convention, the Committee requests the Government to provide information on the results of the inspection visits, together with all other available information, including number of workplaces where incidents, number of citations issued, follow-up action pertaining solely to the application of these Articles of the Convention, including inspections conducted in the petroleum sector and pertaining in particular to the drivers referred to in the communication.**

*Part IV of the report form. Application in practice. Article 6(c). Labour inspection service.* The Committee notes the information supplied by the Government to the effect that the labour inspectorate has 2,882 inspectors, 900 of whom deal primarily with occupational safety and health. The Committee notes in particular the information supplied by the Government regarding Civil Proceedings No. 00075-2003-024-04-00-0 of the 24th Labour District of Porto Alegre, to the effect that in the hearing of 22 August 2008, SINDILIQUIDA/RS is recorded as acknowledging that the enterprise Petrobrás Distribuidora is complying with the law and as quoting from the record of the hearing referring to the recommendation regarding use of respirators for benzene loading operations and as indicating that the drivers of service providers have stopped performing tasks that exceed their occupational activity of driving lorries, a contract with the enterprise Servale having been concluded for this purpose. **The Committee requests the Government to indicate the manner in which the Convention is applied to the workers of the abovementioned enterprise who carry on activities that fall within the scope of application of the Convention, including the use of respirators.**

As regards the other issues in dispute, the parties undertook to continue negotiating. The Government also indicates that the court is monitoring issues pending and that in 2010 it confirmed that it had received no further information regarding the meeting scheduled for 16 December 2009, and that this shows that the State is monitoring application of the relevant rules. It also indicates that as a result of inspection visits to Shell Brazil, in the municipality of Esteio in Rio Grande Do Sul, six contraventions were reported, all of which concerned the prevention of environmental hazards, since it was found that risk prevention by the enterprise was inadequate. ***The Committee requests the Government to continue to supply information on the application of the Convention in practice, including in the petrochemical sector.***

The Committee is raising other points in a request addressed directly to the Government.

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)**

*Article 5(4) of the Convention. Right of workers' representatives to accompany labour inspectors on their supervisory visits and Part IV of the report form. Application in practice.* With reference to its previous comments, the Committee notes with **interest** the efforts made by the labour inspection services to ensure compliance in practice with this Article of the Convention. In this respect, the Government indicates that, according to the data extracted from the computerized system of supervision of the labour inspectorate from July 2005 to June 2010, this matter was covered by 632 inspection reports, with action being taken to ensure compliance in 579 cases, with 13 violations reported. It adds that in July 2009 inspections were carried out in Petrobrás Transporte SA, with the participation of the State Benzene Commission, which includes among its members the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILÍQUIDA/RS). The Committee will continue to examine any matters relating to the communication in its comments on the application of the Benzene Convention, 1971 (No. 136), and Occupational Cancer Convention, 1974 (No. 139). ***The Committee requests the Government to continue providing information on the application of this Article in practice and, insofar as possible, to provide its assessment in this respect.***

*Article 6(1) and (2). Requirement of collaboration where several employers undertake activities simultaneously. Articles 10, 13 and 16. Personal protection equipment, the requirement to provide information, appropriate penalties and appropriate inspection. Article 12. Notification to the competent authority of the use of processes, substances, machinery and equipment which involve the exposure of workers to occupational hazards in the working environment due to air pollution.* The Committee notes the information provided in reply to the points raised previously.

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1992)**

*Articles 4 and 8 of the Convention. Formulation, implementation and periodic review of a coherent national policy for occupational safety and health (OSH), in consultation with the representative organizations of employers and workers.* Referring to its previous comments, the Committee notes that on 22 February 2010 the Tripartite Committee on Occupational Safety and Health (CTSST) approved the national OSH policy. It notes with **satisfaction** that on 7 November 2011 the President of the Republic promulgated Decree No. 7602, whereby Brazil adopted its national OSH policy. The Committee notes the information concerning the extensive participation of the social partners in the formulation of this policy and that the policy is based on five principles: universality, prevention, precedence of promotion, protection and prevention over assistance, rehabilitation and reparation, social dialogue and comprehensiveness. Moreover, it notes that the mandate of the CTSST includes the periodic review of the national OSH policy, the formulation, monitoring and periodic review of the National Plan, the dissemination thereof and the coordination of OSH networks. ***The Committee requests the Government to continue to supply information on the application of its national policy and on the National Plan.***

*Articles 1 and 2. Application of the Convention to all branches of economic activity and to all workers in the branches concerned.* In its previous comments the Committee noted a communication from the Single Confederation of Workers (CUT), indicating that informal work is a persistent problem, since a large number of workers are not declared and that, accordingly, policies are not geared to the real number of workers who should normally be covered by them. It also noted the Government's reply indicating that the labour inspectorate plays a key role in taking action against undeclared work and asked the Government to continue to provide information on the measures taken, in consultation with the social partners, to extend OSH protection to all Brazilian workers. The Committee notes the Government's indication that the issue of work in the informal economy is extremely complex and a source of concern for all sectors and that the economic revival of the country has enabled an increase in the formal economy, which in itself extends protection. It indicates that the health system is universal but that social security and protection relating to employment are mainly features of the private formal sector. The Government indicates that efforts have been made to extend the scope of application in certain aspects, for example with a view to extending social security cover for individual contributors without a formal employment relationship, and also through the creation of the "simplified plan for inclusion in the social security system" of Decree No. 6042 of 12 February 2007, which reduced the rate of social security contributions from 20 to 11 per cent of the minimum wage, thus benefiting self-employed contributors and reducing under-registration, as stated in its report on the application of the Occupational Cancer Convention, 1974 (No. 139). The Committee also refers to its comments on the application of the Safety and Health in Construction Convention, 1988 (No. 167), in which it notes

similar comments from the trade unions and the Government's statement concerning the drawing up of an indicator of real unemployment, which would contribute towards better identification of the number of workers who should be covered by the Convention. As regards the issue raised by the CUT regarding the extension of health coverage to workers in the informal economy, the Government indicates that this is not applicable under the existing system in which companies pay a tax as a way of partially financing employment injury benefits, and indicates that the abovementioned Decree created a bonus system for the reduction of contributions from enterprises which reduce their sickness and accident rate. The Committee notes that the national policy provides in its guidelines for the universality of its actions and provides for the adoption of a national plan on OSH, the formulation of which will begin this year. ***While noting the measures communicated by the Government to extend the scope of employment injury benefits, the Committee requests the Government to provide information on the manner in which its national plan on OSH takes account of workers in the informal economy, both in the estimation of the number of workers and in the proposed OSH measures.***

*Article 9(1). Adequate and appropriate system of labour inspection to secure the enforcement of laws and regulations concerning OSH. Petrochemical industry. Communication from the Rio Grande do Sul Union of Workers for the Road Transport of Liquids and Gases, Oil Derivatives and Chemicals (SINDILÍQUIDA/RS).* In its previous comments the Committee noted the communication from SINDILÍQUIDA/RS and the labour inspection reports attached by the trade union. It noted the indications in these reports that, despite the vigilance of the labour inspection services of Rio Grande do Sul to enforce the relevant legislation, enterprises persist in failing to give effect to the laws and regulations relating to OSH, and this raised doubts as to whether the inspection system is appropriate and efficient. The Committee asked the Government to provide its assessment of the effectiveness of the means that exist to address the issues raised by SINDILÍQUIDA/RS. The Committee notes that, as regards the Petrobrás company and compliance with the obligations established by Ruling No. 00075-2003-024-04-00-0 of the 24th Labour Division of Porto Alegre, to which the Committee referred in its previous observation, the Government provides a transcription of part of the record of the judicial hearing of 22 August 2008, noting that Petrobrás is complying with the points relating to the Articles mentioned above, and that the company has adopted prevention programmes. Furthermore, the Government indicates that it is taking follow-up action and that, according to a statement of 26 February 2010 from the Director of the Secretariat of the 24th Division which brought the case, there had been no statement to date from the parties concerned regarding the meeting that had been planned for 16 December 2009. As regards the Shell company, the report indicates that, as a result of action by the inspectorate in February 2009, six writs of infringement were issued for persistent non-compliance. The Committee notes with *interest* the work carried out by the labour inspectorate, whose reports show that there is up-to-date and detailed follow-up action in the situation which was the subject of the communication. ***The Committee will continue to follow up in future on the specific issues arising from this communication in its comments on the application of the Benzene Convention, 1971 (No. 136), and of Convention No. 139.***

*General issues relating to the application of this Article.* The Committee refers to information in a report by the Government of 14 December 2007 which it noted in its comments on the application of the Chemicals Convention, 1990 (No. 170). On the one hand this report indicates that SINDILÍQUIDA/RS supports its complaints by referencing the labour inspection reports and this therefore endorses the quality of the actions of the labour inspectorate. It also indicates that the penalties established in the legislation are insufficient, that the judiciary has, on occasion, overturned emergency measures ordered by the labour inspectorate, by accepting the employers' argument that stoppage of the plant concerned would cause serious economic damage, without duly recognizing the hazards that continuation of these activities represents, and examples are quoted such as a judicial decision in Minas Gerais which determined that regulatory standards Nos 7, 9 and 18 did not apply to the members of the Trade Union of Major Construction Works (SICEPOT) in Minas Gerais. The document also indicates that the solution called for to obtain greater efficiency lies outside the competence of the Secretary of Labour Inspection, which has spared no effort to perform its task. The Committee wishes to emphasize that the application of the Convention, including this Article, is the Government's responsibility and this requires joint efforts from both the legislative bodies and the law enforcement bodies. ***The Committee requests the Government to provide its assessment concerning whether the penalties established in law may be inadequate and concerning any court decisions which may constitute possible obstacles to the application of the measures prescribed by the Convention. The Government is also requested to provide information on the measures taken or contemplated in this regard.***

*Article 11(c). Occupational accidents and diseases – Notification procedures and annual statistics.* In its previous comments the Committee invited the Government to take account of the issues raised by the CUT regarding the impact of undeclared work on occupational accidents statistics and to provide detailed information on the measures taken or contemplated to address the problems in this sphere, including in the construction, petrochemical and metallurgy industries. The Committee notes the detailed information from the Government concerning analysis of occupational accidents and the work of the labour inspectorate in the abovementioned sectors. It notes that, as regards the latter's activity in OSH, 17.23 per cent was devoted to civil construction, whereas 0.05 per cent took place in the petroleum industry. As regards the system for the notification of occupational accidents, the Government indicates that information relating to the formal sector is based on notifications of occupational accidents (CAT) to the social security bodies, that the single health system (SUS) registers accidents involving workers covered by this system, and that the labour inspectorate always examines complaints of under-notification. ***The Committee requests the Government to continue to supply information on the new measures taken to address the issue of under-notification, including with regard to***

**workers in the informal economy, with special emphasis on the sectors in which the labour inspectorate has recorded a high accident rate, such as the construction industry, and requests it to supply information on the continuing impact of measures for notification apart from the CAT system, to which it referred in its comments on Convention No. 139.**

*Article 15. Coordination between various authorities. Communication from the Union of Teachers, Federal District (SINPRO-DF).* The Committee refers to the communication from the union and to the information supplied by the Government concerning the measures taken to settle the issues raised, which shows that the union has the possibility of intervening actively in discussions on OSH policies for its sector. The Committee also refers to the communication from the Union of Forensic Experts of the State of São Paulo (SINPCRESP) and the Government's reply. The Committee notes that these cases appear to indicate – together with those to which it referred in 2009 – the existence of problems of application of the Convention in the public administration in various states in Brazil or in the various administrations. **While remaining aware of the problems that the application of the Convention may pose in the federal states, the Committee emphasizes that the Government must adopt the appropriate measures to guarantee the application of ratified Conventions throughout its territory, and requests the Government to provide information on the measures taken to ensure the application of the Convention to the staff in all administrations and states, and to continue to supply information on the application of the Convention to the workers referred to in these two communications.**

*Article 17. Collaboration between enterprises engaged in activities simultaneously at one workplace.* Referring to its previous comments, the Committee notes the Government's indication that Regulatory Standard No. 9 concerning the Environmental Hazard Prevention Programme (PPRA) states in clause 9.6.1 that whenever several employers are engaged in activities simultaneously at the same workplace, they shall be obliged to take coordinated action to apply the measures provided for in the PPRA for the protection of all workers exposed to the environmental hazards concerned. **The Committee requests the Government to indicate whether this standard applies to all workers in all branches of activity and to provide information on its application in practice.**

The Committee is raising other points in a request addressed directly to the Government.

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1990)**

*Articles 5 and 8 of the Convention. Occupational health services with functions that are adequate and appropriate to the occupational risks of the undertaking. Cooperation and participation on an equitable basis of the employer, the workers and their representatives. Communication from the Union of Teachers, Federal District (SINPRO-DF).* In its previous comments, the Committee referred to a communication from the SINPRO-DF stating that: the health situation of teachers in the Federal District (DF) was very serious; there was a lack of preventive measures; very many illnesses were connected with the work administration, but they were not recognized by the medical services as being occupational illnesses; and the number of judicial proceedings relating to this subject had already exceeded 1,000. The Committee notes that, according to the Government, changes were made in the second half of 2010 in the district government, and the new Government published Decree No. 32795 establishing a new organizational structure made up of an under-secretariat of health, safety and welfare for public officials, a coordinating unit of occupational safety and health (OSH), an administrative unit promoting workers' health, an administrative unit for mental health and preventive measures, and an administrative unit for workers' safety. The statutes of these departments and the OSH policy are still being elaborated. The Committee notes with **satisfaction** the general and specific measures adopted by the Government in follow-up to the issues raised by the SINPRO-DF. As part of the general measures, the Government indicates that, in the sector of public teachers, there has been an increase in the participation of teachers and their representatives in the current administrative structure, and that this may be verified on the Internet site of the educational secretariat of the Federal District and that of SINPRO-DF. For example, various plenary meetings have been held on proposals for the democratic administration of education, resulting in a number of commitments from the education secretariat, such as the adoption of a more person-centred approach by the occupational safety and health directorate and a decentralization of its activities; the SINPRO-DF drafted a bill relating to the democratic management of education, considered an historical event for the workers; at the district level, a conference on democratic management was held, during which records of the discussions on the bill were drawn up, and subsequently discussed with deputies of the District Legislative Chamber. As part of the special measures, the Committee notes that, according to information submitted by the education secretariat of the DF, by means of official communication No. 477 of 3 May 2011, improvements have been made in the sector, such as: actions designed to improve precarious working conditions in 309 schools; protective, corrective and preventive actions in 14 regional teaching directorates, covering 657 teaching establishments; and finally the introduction of a health plan for all workers in the sector from January 2012 onwards. The Government concludes by stating that adjustment measures for the occupational health services for public servants in the Federal District in general, and teachers in particular, are under way. **The Committee requests the Government to continue sending information on any developments in this respect including on the health plan for the sector, which, according to the report, will enter into effect in 2012 and, in particular, on the functions of the health services listed under Article 5 of the present Convention.**

The Committee is raising other points in a request addressed directly to the Government.

### **Asbestos Convention, 1986 (No. 162) (ratification: 1990)**

*Articles 3(2) and 10 of the Convention. Review of national laws and regulations in the light of technical progress and advances in scientific knowledge. Replacement and prohibition of asbestos.* The Committee notes the

communication, including various annexes, provided by the Brazilian Association of Industries and Distributors of Fibrocement Products (ABIFibro), which was duly forwarded to the Government. The communication asserts that there has been technical progress in Brazil and the development of scientific knowledge which today allow the replacement of asbestos and that the time has therefore come for Brazil to prohibit any type of asbestos, and that the legislation needs to be revised in this respect, in accordance with *Article 3(2)* of the Convention. ABIFibro adds that the prohibition of asbestos would not eliminate jobs, because the industries have demonstrated their capacity for adaptation to new technologies without losing jobs. ABIFibro argues that the reasons justifying the use of chrysotile in Act No. 9055/95 respecting the use of asbestos are no longer valid. ***The Committee will examine this communication, together with the comments that the Government considers it appropriate to provide, in its next comment.***

The Committee is raising other points in a request addressed directly to the Government.

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2006)**

*Article 1 of the Convention. Scope of application. Article 3. Consultation of the most representative organizations of employers and workers concerned regarding the measures to be taken to give effect to the provisions of the Convention.* In its previous comments the Committee referred to communications from the Union of Workers in the Lumber, Civil Construction and Furniture Industries of Altamira and the Surrounding Region (SINTICMA) and the Single Confederation of Workers (CUT). Both communications referred to the growth in the construction industry and, within the industry, to non-registered workers and the serious problems that this situation presented with regard to the application of the Convention. The main points of the communication from the CUT were as follows: (a) occupational safety and health (OSH) policies and measures for the construction industry do not take account of the informal sector and are therefore not realistic; (b) the method for recording occupational accidents does not take account of non-registered workers and so the accident figures contained in official records do not reflect reality; and (c) very few occupational accidents are investigated. SINTICMA stated that the enterprises operating in the Altamira region do not observe labour legislation relating to documentation of workers, that the conditions of work in construction are subhuman, that the workers do not enjoy any of the rights established by the legislation, including with regard to OSH, and that labour inspection is inadequate. The Committee asked for information on the manner in which account is taken of these workers with a view to: (a) formulating OSH policies for the construction industry; (b) recording occupational accidents; and (c) training in OSH. The Committee notes the statement in the Government's report that work in the informal sector is extensive but follows the growth trends in the formal sector. In the first six months of 2010, a total of 1.47 million jobs were created, which corresponds to the highest figure recorded in the General Register of Employment and Unemployment (CAGED). Between January and May 2011, the number of new jobs created was 1,171,796 (up 3.26 per cent), which was only slightly less than the increase indicated for 2010. The Government states that although the construction industry shows problems with regard to informal work, there has also been a high rate of growth in the formal sector in recent years. In order to gain a more precise estimate of informal employment in the country, the Ministry of Labour and Employment announced the creation of an indicator for the end of 2011, based on CAGED data and the Annual Report on Labour Issues (RAIS). The new indicator, called the "real unemployment rate", will focus on the employment market in the informal economy. According to the Labour Minister, the current unemployment indicators do not reflect the reality in the informal sector, in self-employment or in the liberal professions. The Committee notes with ***interest*** the development of the real unemployment indicator since this can contribute to a more accurate identification of the number of informal workers in the sector covered by the Convention and contribute towards the application of the Convention to all construction workers. ***The Committee requests the Government to supply information on the statistics obtained in the construction industry on the basis of this indicator, stating the number of registered workers and the estimated number of non-registered workers.***

*Other measures.* The Government also previously indicated that the most effective means of tackling informal employment in Brazil is the action taken by the labour inspectorate, whose objectives in civil construction include prevention (avoiding occupational accidents and diseases) and enforcement, including taking action against informal employment. The Committee notes the Government's detailed information on the action of the labour inspectorate, indicating that in 2010 labour inspectors registered 57,883 workers in civil construction and 18,918 workers in heavy construction and that from January to May 2011 a total of 22,771 workers were registered in civil construction and 8,619 workers in heavy construction. The Committee also notes the Government's statement that, under Government policy, civil construction is one of the priority sectors for the labour inspectorate and that in 2010 a total of 20.4 per cent of inspections in the sector concerned safety and health. As preventive measures, 2,781 seizure orders were issued in cases involving a serious and imminent danger to the workers, 17,244 reports of infringements were issued and 387 investigations into serious and fatal accidents were undertaken. The Government also provides information on action undertaken in heavy construction. The Committee also refers to the information provided by the Government concerning the measures to reduce under-notification and those which it noted in its comments relating to the Occupational Cancer Convention, 1974 (No. 139), and the Occupational Safety and Health Convention, 1981 (No. 155). ***Noting the efforts of the labour inspectorate to ensure the application of the Convention to all workers in the sector, the Committee recalls that a fundamental mechanism for giving effect to the Convention is Article 3, under the terms of which the most representative organizations of employers and workers concerned must be consulted on the measures to be taken to***

*give effect to the provisions of the Convention. The Committee requests the Government to undertake such consultations, including on the measures to be adopted to give effect to the provisions of the Convention with respect to registered and non-registered workers, and to supply information in this regard. The Government is also requested to supply practical information on the registration of occupational accidents in the construction sector and on training in OSH.*

*Part VI of the report form. Application in practice and Article 35. Labour inspection.* In its previous comments the Committee noted that, according to SINTICMA, working and OSH conditions in civil construction in the trans-Amazonian region are subhuman and the labour inspectorate does not have the means to address this situation. The union indicated that there is one Ministry of Labour and Employment assistant's post for 40,000 workers seeking help from ten towns in the trans-Amazonian region and that the labour inspectorate is unable to monitor these enterprises because the work is temporary and it only visits the region every two or three years. It notes that the Government only refers in its report to Article 10 of the Labour Inspection Convention, 1947 (No. 81). The Committee indicates that, according to *Article 35* of the present Convention, each Member shall provide appropriate inspection services to supervise the application of the measures to be taken in pursuance of the Convention and provide these services with the resources necessary for the accomplishment of their task. ***The Committee requests the Government to provide information on the action of the labour inspection services with regard to the OSH issues raised by SINTICMA in the trans-Amazonian region and to clarify whether these services are equipped with the necessary means to enforce the application of the Convention in that region.***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1996)**

*Article 4 of the Convention. Formulation, implementation and periodic review of a coherent policy on safety in the use of chemicals at work, in consultation with the most representative employers' and workers' organizations.* The Committee notes the Government's statement concerning the procedure for the drawing up of regulatory standards for technical details, which complement international and domestic standards on occupational safety and health (OSH). The Government indicates that in Brazil the first stage in the drafting or amendment of a regulatory standard is the definition by the Standing Joint Tripartite Committee (CTPP) of the subjects to be discussed, and then a technical group is established which submits a draft to a tripartite working group (GTT), which draws up the proposal to be presented to the CTPP. It also mentions the technical cooperation agreement signed between the Ministry of Labour and the National Institute of Metrology, Standardization and Industrial Quality. The Committee notes that this system enables consultations regarding the formulation or modification of a standard but also recalls that this Article of the Convention also requires consultations with the social partners during implementation and review and establishes that this must take place at intervals in order to ensure a follow-up mechanism capable of taking the necessary corrective action that arises from the application of that policy in practice. ***The Committee requests the Government to indicate whether a tripartite group exists for follow-up on the application of the Convention and also to indicate the arrangements for periodic review and consultation under this Article of the Convention during the reporting period.***

*Article 12. Exposure to chemicals and assessment thereof. Article 13. Assessment of the risks arising from the use of chemicals at work, exposure limits and measures to deal with emergencies. Article 15. Information and training for workers. Petrochemical industry.* In its previous comments the Committee referred to the observations made by the Rio Grande do Sul Union of Workers for the Road Transport of Liquids and Gases, Oil Derivatives and Chemicals (SINDILÍQUIDA/RS), alleging the violation of the abovementioned Articles and according to which the Petrobrás Distribuidora enterprise had neither formulated nor implemented a programme for the prevention and control of occupational exposure to chemicals, nor had it implemented any measures for the prevention of occupational accidents or to prepare for emergencies, including the training of workers to that end, nor had it carried out any biological controls with regard to workers. The union also indicates that this situation is duplicated in other enterprises in the sector. The Committee notes with *interest* the detailed information supplied by the Government concerning the action of the labour inspectorate to ensure the application of the provisions of the Convention, stating that Petrobrás Distribuidora handed over a CD at the judicial hearing containing the enterprise's hazard prevention plans and an extract included by the Government stating that SINDILÍQUIDA/RS admitted that there was compliance with the abovementioned points. The Committee also notes the detailed information from the Government concerning the action taken by the labour inspectorate in the petrochemical industry, including at the Petrobrás Transporte SA (TRANSPETRO), Petrobrás Distribuidora, Shell Brasil and Ipiranga companies, and in particular the action taken to comply with the present Articles of the Convention. The Committee will continue to follow up on any specific issues which may arise relating to the abovementioned communication in its comments on the Benzene Convention, 1971 (No. 136), and the Occupational Cancer Convention, 1974 (No. 139). The Committee further notes that, according to a document enclosed from the Labour Inspection Department of 14 December 2007 (Case No. 46011.000096/2007-62), other major obstacles to the effectiveness of the labour inspectorate are decisions issued by the judiciary and legislature, which often interfere in the results of inspection activity without due commitment to the safety and health of the workers. According to this document, the judiciary has overturned emergency measures, accepting the employers' argument that plant stoppages would cause serious economic damage, without taking due account of the hazard represented by continuation of the work, and examples are provided. Finally, the document indicates that the labour inspectorate duly complies with its obligations and that the solution to this situation of legal ineffectiveness lies outside the scope of the competence of the Labour Inspection

Secretariat. The Committee observes that the labour inspectorate in Brazil is thorough in its tasks and considers that the labour inspectorate can contribute to the application of the Convention but that the responsibility for ensuring the application of the Convention lies with the Government and not just with one entity. Furthermore, the present Convention requires coherent national policies such as those established in *Article 4* and the harmonization of the various bodies and authorities involved in its application. **The Committee hopes that the Government will take all the necessary measures to ensure that all state authorities are in a position to contribute to the full application of the Convention and requests it to continue to supply information on the application of the Articles listed at the beginning of this paragraph.**

*Part V of the report form. Application in practice. Articles 6 and 7. Criteria for the classification of chemicals and assessment of hazardous properties of mixtures. Article 16. Cooperation between employers and workers with respect to safety in the use of chemicals. Article 17. Duty of workers to cooperate with their employers in the discharge by the employers of their responsibilities. Article 18(3). Rights of workers and their representatives.* The Committee notes that the report contains information on the activities of the labour inspectorate. The Committee indicates that this Convention involves the activity of various competent authorities and that the application of specific Articles goes beyond the scope of the enterprise and the labour inspectorate, as, for example, in the case of *Article 6* of the Convention. **The Committee requests the Government to provide a general description of the manner in which the Convention is applied in practice, including the Articles referred to in this paragraph. The Committee again requests the Government to provide information on the number of workers exposed to chemicals and on the trends observed regarding the type of violations specifically relating to the provisions of the Convention.**

## Bulgaria

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1965)**

*Article 6(2) of the Convention. Establishment of a system of sufficiently dissuasive penalties.* The Committee notes with **satisfaction** that information that the penalties for violations of the labour law are provided for in articles 413, 414, and 415(c) of the Labour Code and that the size of these penalties has been increased in 2006 and 2008. **The Committee requests the Government to continue to provide information on the system of dissuasive penalties in the country.**

*Part IV of the report form. Application in practice.* The Committee notes the information that as a result of systematic application of coercive measures by the controlling bodies in recent years, a high degree of compliance with the Health and Safety at Work Act has been achieved. It also notes that the Government indicates that further efforts need to be deployed in order to increase the awareness of the fact that successful enterprise policies for safety and health are directly dependent on collective agreements at the enterprise level. The Committee also notes the statement by the Government that an essential element of prevention is effective systems for occupational safety and health training and qualifications of workers and managers and that the labour inspectorates have noted the good practice of conducting annual tests of the qualifications of the staff in this respect in large enterprises engaged in mining, manufacturing of chemical products, construction and cement production, and also in the manufacture of various chemicals, the printing and food industries, but that this practice was not yet applied in the case of small enterprises. It also notes the information that in 2009 the number of workers found to work in unhygienic conditions had nonetheless decreased by 5 per cent since 2008. **The Committee requests the Government to continue to provide information on the application in practice of national occupational safety and health legislation and to indicate measures taken to address the reported lack of appropriate working conditions in small enterprises and to provide information on the impact of such measures.**

## Burkina Faso

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 1997)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information in the Government's reports submitted in 2007, including the reference to various legislative and regulatory texts.

*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.**

*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(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.***

*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.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Burundi

### Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1963)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information contained in the Government's report and the statistical data. It notes with regret that, despite the comments it has been making for a number of years, the legislation to apply the Convention has not been changed.

*Article 4 of the Convention. Inspection system.* Further to its previous comments, the Committee notes from the information provided that the Government will explore possibilities for training labour inspectors to monitor safety prescriptions in the building sector. The Government nevertheless points out in its report that managers in charge of occupational risk prevention at the National Social Security Institute (INSS) are qualified to carry out inspections in the building sector and that they give useful instructions to the employers concerned. ***The Committee requests the Government to provide information in its next report on the practical application of this provision of the Convention.***

*Articles 6–15.* With reference to its previous comments, the Committee notes that, according to the Government, the legislation governing occupational safety has not been repealed and that Rwanda-Urundi (ORU) Ordinance No. 21/94 of 24 July 1953 establishing the legal framework for occupational safety in the building industry has not been revoked, and that the Government is envisaging its re-dissemination. ***The Committee requests the Government to provide clarification on the legislation in force to enable it to assess how the Convention is applied in Burundi.***

*Part V of the report form.* Further to its previous comments, the Committee notes the statistical data in the Government's report showing trends in the number of active workers and the numbers receiving occupational risk benefits between 2000 and 2004, and the distribution of enterprises according to size and branch of economic activity at 31 December 2004. ***The Committee requests the Government to provide further information in its next report regarding trends in accidents in the building industry, together with any other relevant information allowing the Committee to assess how the safety standards established in the Convention are applied in practice.***

*Revision of the Convention.* The Committee draws the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises Convention No. 62 of 1937 and could well be better adapted to the current situation in the building sector. It again points out that the ILO Governing Body invited States parties to Convention No. 62 to envisage the ratification of Convention No. 167, which entails, ipso jure, immediate denunciation of Convention No. 62 (GB.268/8/2). ***The Committee requests the Government to provide information on any action taken on this suggestion.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Cambodia

### White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1969)

The Committee notes with *interest* the information in the Government's report concerning the signature and publication by the Minister of Labour and Vocational Training of a first Occupational Safety and Health Master Plan 2009–13, including six action areas with concrete strategies and specific targets set. The Committee notes, inter alia, that Action No. 1.6, entitled “Apply ILO OSH standards and prepare for ratification”, targets the Labour Inspection Convention, 1947 (No. 81), the Plantations Convention, 1958 (No. 110), the Occupational Safety and Health Convention, 1981 (No. 155), the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Agriculture Convention, 2001 (No. 184), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the ILO *Guidelines on occupational safety and health management systems (ILO-OSH 2001)*. Welcoming these developments, the Committee would like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the key instruments in the area of OSH, Convention No. 155, its 2002 Protocol and Convention No. 187, (document GB.307/10/2(Rev.) 2010–16). The Committee would like to bring to the Government's attention that under this plan of action, the Office is available to provide assistance to governments, as appropriate, to bring their national law and practice into conformity with these key OSH Conventions in order to promote their ratification and effective implementation. ***The Committee invites the Government to provide information on any developments regarding the implementation of the Occupational Safety and Health Master Plan 2009–13 and on any needs for assistance it may have in this respect.***

*Application of the Convention.* With reference to its previous comments and the Government's brief report, the Committee notes the information that while no other action has been taken yet to implement this Convention due to the lack of material and human resources, some training about the effect of the use of white lead has been held with 24 provincial labour inspection officers. *With reference to the foregoing and that the Government in its 1994 report indicated that the use of white lead has been very widespread in the country, particularly during the period of reconstruction, the Committee again urges the Government to take appropriate action to give full effect to the Convention and requests the Government to indicate in its next report any progress made in this regard.*

## Cameroon

### **Asbestos Convention, 1986 (No. 162) (ratification: 1989)**

The Committee notes that the Government does not contain any new information on legislation adopted to implement the Convention and that the Government reiterates its request for technical assistance from the Office in the development of legislation to give effect to the provisions of this Convention. The Committee also notes that the Order No. 051 on diseases caused by exposure to asbestos adopted on 22 September 2009, has not been made available. *The Committee urges the Government to take all required measures to ensure a full application of the Convention, including requesting technical assistance from the Office for the development of the required legislation. The Committee also requests the Government to submit copies of all existing relevant legislation.*

*Part V of the report form. Application in practice.* The Committee notes that, although reference is made to the fact that inspectors ensure control over hazardous and corrosive substances and that relevant statistical and other data will be collected by the National Labour Observatory (ONT), no such information was included in the report. With reference to its previous comments the Committee again refers to the communications of the General Confederation of Labour–Liberty of Cameroon (CGT–Liberté), transmitted to the Government on 8 November 2005, indicating that, while asbestos is not produced in the country, it has been used to create firewalls in certain buildings and there is a general lack of awareness of the dangers related thereto. *The Committee asks the Government to respond to the communication by the CGT–Liberté and to give a general appreciation of the manner in which the Convention is applied in the country, and to attach extracts from inspection reports and, where such statistics exist, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, and the number, nature and cause of accidents and occupational diseases reported.*

*[The Government is asked to report in detail in 2013.]*

## Canada

### **Asbestos Convention, 1986 (No. 162) (ratification: 1988)**

The Committee notes the detailed information provided by the Government in its latest report in response to the comments by the Canadian Labour Congress (CLC) in 2010, to the conclusions of the Conference Committee in 2011, as well as to the comments by the CLC and by the Confederation of National Trade Unions (CSN) attached to the Government's 2011 report.

### **Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference 100th Session, June 2011)**

The Committee notes that, following the discussion of this case in the Conference Committee on the Application of Standards, which highlighted the importance of adopting the strictest standards limits for the protection of workers' health as regards exposure to asbestos and noted that the Convention placed an obligation on governments to keep abreast of technical progress and scientific knowledge, which was particularly important for a country like Canada which is one of the main producers of asbestos. It also requested the Government to continue to provide all relevant information to the Committee of Experts for its review, including statistical data on health protection measures and cases of occupational diseases caused by exposure to asbestos and invited the Government to engage in consultations with the employers and workers' organizations on the application of *Articles 3(3), 4 and 10 of the Convention*, in particular taking into account the evolution of scientific studies, knowledge and technology since the adoption of the Convention, as well as the findings of the World Health Organization (WHO), the ILO and other recognized organizations concerning the dangers of exposure to asbestos.

*Legislative measures and other measures undertaken.* The Committee notes the information provided by the Government regarding legislative developments in British Columbia and Ontario. According to this information in British Columbia Schedule B of the Workers Compensation Act has been modified to provide for presumptions in favour of workers who have primary-site lung cancer where there is airborne exposure to asbestos dust associated with bilateral diffuse pleural thickening over 2 mm thick and who have been exposed to airborne asbestos dust for a period of ten years or more of employment in one or more of the following industries: asbestos mining, insulation or filter material production, construction (where there is disturbance of asbestos-containing materials), plumbing or electrical work, pulp mill work, shipyard work, and long shoring. It notes further that Ontario Regulation 833 Respecting Control of Exposure

to Biological or Chemical Agents under the Occupational Health and Safety Act has been amended to provide for an exposure limit to all forms of occupational exposure to asbestos of 0.1 f/cc and that firefighters and fire investigators are also subject to the exposure limits prescribed for asbestos.

*Article 3(1–2) of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos and periodical review in the light of technical progress and scientific knowledge. Article 4. Consultations with the most representative organizations of employers and workers. Article 10. Replacement of asbestos and total or partial prohibition of the use of asbestos.* The Committee notes the detailed information provided by the Government regarding measures taken to prevent and control health hazards due to occupational exposure to asbestos in Alberta, British Columbia, New Brunswick, Newfoundland, Labrador, Manitoba, Ontario and Saskatchewan.

The Committee further notes that the Government states that, in conducting reviews and updating laws and regulations related to workplace asbestos exposure, provincial governments rely on available scientific data and technical knowledge including the most up-to-date information from the American Conference of Government Industrial Hygienists and from other scientific sources which may be cited by participating worker and employer representatives and technical experts and that in all Canadian jurisdictions, reviews of occupational safety and health laws and regulations are undertaken in consultation with representatives of workers and employers, in full compliance with *Article 4* of the Convention. The Government refers to the current federal review of Part X of the Canada Occupational Health and Safety Regulations on Hazardous Substances being conducted by a tripartite working group, which includes representatives of the CLC. The federal Workplace Hazardous Materials Information (WHMIS), implemented in 1988, was developed by a tripartite steering committee with membership representing the federal and all the provincial and territorial governments, industry and labour. New Brunswick has established a Technical (Stakeholder) Committee to review occupational hygiene issues including threshold limit values for asbestos and the regulation on a code of practice for working with material containing asbestos. Nova Scotia's occupational safety and health legislation and regulations are reviewed on a periodic basis by the Occupational Health and Safety Advisory Council which is made up of both employer and worker representatives and is mandated to advise the Minister. Similarly, Manitoba's legislation requires a review of legislation every five years by a Tripartite Advisory Council. Under Saskatchewan's legislation, the Occupational Health and Safety Council reviews the act and regulations at least once every five years, including Part XXIII of the regulations which establish the requirements for the use, inspection, handling, disposal and training of employees in the handling of asbestos.

With specific reference to the application of *Article 10(b)* of the Convention, the Government states that the use of manufactured products containing asbestos in construction is very limited and is regulated by the Hazardous Products Act; that Schedule I of this Act and the Asbestos Products Regulations generally prohibit asbestos products that are destined for application by spraying, and prohibits the use of products containing crocidolite fibres and that similar provisions are also included in provincial and territorial legislation, as for example in section 37 of Manitoba's Workplace Safety and Health Regulation. The Government also indicates that Ontario encourages the substitution of hazardous substances with less hazardous ones where possible; that the Nova Scotia Building Code bans the use of any form of asbestos that could enter ventilation systems; and that section 41 of the Occupational Safety and Health Regulations in Quebec prohibits the use of crocidolite, amosite and any product containing either one of these substances unless their replacement is not reasonably and practically feasible.

The Committee notes that the CLC and the CSN consider that the state of current scientific and technical information point to a need for a total ban of asbestos and that the Government has not taken due account of this information. According to the CSN, the fact that the Convention does not provide for an outright ban on the use of asbestos is merely a reflection of the fact that it relies on scientific knowledge at the time and that this knowledge was not as developed in 1986 as it is now. In support for their positions regarding current scientific and technical information, the CLC and the CSN both refer to the conclusions of the Conference Committee and the cited authorities. The CSN also refers to research and studies carried out by the National Public Health Institute of Quebec (INSPQ) and that INSPQ considers that, based on current knowledge, there is no threshold level where workers exposed to asbestos can be protected from cancer. The CSN further indicates that based on two studies covering exposure to asbestos in the periods 1982–96 and 1988–2003, the INSPQ concluded in 2005 that chrysotile asbestos must be considered to be a carcinogen and that the safe use of asbestos is difficult, if not impossible, in sectors such as construction, renovation and transformation of asbestos. The CSN also refers to a statement published in 2009 by medical doctors, toxicologists, industrial hygienists and epidemiologists that the scientific evidence that chrysotile asbestos causes asbestosis and cancer deaths is now irrefutable and that this conclusion is supported by the International Agency for Research on Cancer (IARC). The CSN further cites a study by the Workplace Safety and Health Committee in Quebec of occupational diseases of workers above 45 years of age for the period 1999–2008 which concluded that the fatality rate had increased and the fatalities recorded were mostly related to exposure to asbestos as seven out of ten fatalities were attributable to asbestos. In support of the position that the Government has not taken due account of the ILO and the WHO positions, the CLC refers to a statement by the Government in the House of Commons in Canada that chrysotile can be used safely in a controlled environment. The CSN further affirms that a total of 11 research reports published by the INSPQ since 2003 contradict this official Canadian policy that asbestos can be used safely.

In response to these arguments, the Government refers to the extensive information it has provided in the current and previous reports demonstrating that all provincial governments have adopted and enforced laws and regulations that prescribe measures to be taken for the prevention and control of and the protection of workers against health hazards due to occupational exposure to asbestos. In response to the CSN comments regarding the situation in the Province of Quebec, the Government states that the most recent data provided by the Canadian Society of Safety Engineering indicates 90 fatalities caused by exposure to asbestos (mesotheliomas asbestosis and cancers) were recorded in 2010 and that in 94 per cent of these cases, exposure had been initiated prior to 1980. Among the 20 workers who had died from cancer, 14 had a cumulative exposure time of 20 years and 18 of them had been exposed before 1980, whereas the exposure in the remaining two cases were initiated in 1982 and 1983 respectively. The Government emphasizes that all these cases predate the awareness of the dangers related to exposure to asbestos which subsequently led to the development of national programmes for the control and monitoring of exposure to asbestos, including in Quebec, as well as, at the international level, the development and adoption of this Convention in 1986. The Government also maintains that relevant laws and regulations in Quebec including section 3.23.3 of the Act on Security in Construction (c. S-2.1, r.6) and section 41 of Occupational Safety and Health Regulations are in full conformity with the provisions of the Convention as they provide that the use of crocidolite, amosite or any products containing either one of these substances is prohibited unless their replacement is not reasonable and practicable. The Government also underscores that, according to section 12 of the Occupational Safety and Health Regulations, the employer has an obligation to ensure that a reduced minimum level of exposure to asbestos for workers applies even when the prescribed threshold limit values are applied.

In their submissions, the CSN and CLC both express their view that Canada should follow up on the recommendation by the Conference Committee to engage in consultations with representative organizations of employers and workers on a review of national legislation regarding exposure to asbestos and that, in this context, account should be taken of the evolution of scientific studies, knowledge and technology since the adoption of the Convention. They also maintain that, in this context, account should be taken of the findings of the WHO, the IARC and the International Programme on Chemical Safety, the ILO and the United Nations Development Programme which should lead to a ban on the use of asbestos and to the implementation of a transitional programme including retraining for workers in this industry. The CLC adds that such consultations should be included in the periodical review of laws and regulations which is called for in *Article 3(2)* of the Convention.

As regards the tripartite consultations held in application of *Article 4* of the Convention, the Government affirms its strong commitment to tripartite consultation and involvement of the social partners in all aspects of occupational safety and health. The Government underscores that *Article 4* requires that “the competent authority” shall consult the most representative organizations of employers and workers concerned on the measures to be taken to give effect to the provisions of this Convention and that, accordingly, in all jurisdictions in Canada, reviews of occupational safety and health laws are undertaken with representatives of workers and employers. The Government also indicates that, in the province of Quebec, the Government has recently benefited from an exchange of views with the relevant stakeholders including the local authorities in the context of the reopening of the Jeffery Mine, in Asbestos, and that most trade unions, the largest of which in Quebec is affiliated with the CLC, supported the reopening of the mine, while reiterating their commitment to the safe use of chrysotile asbestos.

*In light of the comments of the CLC and of the CSN, and the Government’s response, taking into account that Canada is one of the main producers of asbestos and that Canada is required to adopt the strictest standards limits for the protection of workers’ health regarding exposure to asbestos, the Committee requests the Government to continue to provide further information on consultations held with the most representative organizations of employers and workers pursuant to Article 4 of the Convention on measures taken to give effect to the Convention, in particular regarding the provisions in Articles 3(2) and 10, taking into account the evolution of scientific studies, knowledge and technology since the adoption of the Convention, as well as the findings of the WHO, the ILO and other recognized organizations concerning the dangers of exposure to asbestos.*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Central African Republic

### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)**

With reference to its previous comments, the Committee yet again *regrets* to note that the Government reiterates, as it has done since 1992, that no statistics are available on morbidity and mortality resulting from lead poisoning among working painters. *With reference to its comments in relation to the application by the Government of the Occupational Safety and Health Convention, 1981 (No. 155), this year, the Committee urges the Government to make every effort to take the necessary action in the near future and to provide information in this respect.*

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1964)**

The Committee welcomes the information regarding the newly adopted Labour Code Law No. 09.004 of 29 January 2009 including the reference made to its section 300 which provides, inter alia, that the Ministry of Labour together with

the Ministry of Health shall adopt regulations concerning occupational safety and health in consultation with the National Council for the Prevention of Occupational Hazards. The Committee notes that this provision paves the way for the adoption of the legislation required for implementation of the provisions of the present Convention. The report is silent, however, as to whether any such regulations have been or are being prepared. With reference to the request for information on the practical application of the Convention, the Committee notes that the Government reiterates that the Ministry of Labour does not currently have at its disposal reliable statistics in this field.

Against this background, the Committee is bound to repeat its previous observation which read as follows:

*Introduction into national legislation of the standards set forth in ratified Conventions.* In its previous comments, the Committee drew the Government's attention to the need to adopt measures in laws and regulations to give effect to the provisions contained in the Convention even if, as stated by the Government, under the Constitution of 4 January 1995, international agreements, treaties and Conventions that are duly ratified by the Republic have the force of national law.

The Committee recalls that the incorporation into national legislation of the provisions of ratified Conventions, from the mere fact of their ratification, is not sufficient to give effect to them at the national level in all cases in which the provisions are not self-executing, that is where they require special measures for their application, which is the case, at least, for Part I of the Convention. Furthermore, special measures are also needed to establish penalties for non-observance of the standards set forth in the instrument, which is the case of *Article 3(c) of the Convention*.

The Committee once again draws the Government's attention to *Article 1(1)* of the Convention, in accordance with which each Member which ratifies the Convention undertakes to maintain in force, laws or regulations which ensure the application of the General Rules set forth in Parts II–IV of the Convention. In this respect, the Committee recalls that draft texts were prepared following the direct contacts which took place in 1978 and 1980 with the responsible government services. The Committee is bound to express the firm hope that the relevant texts will be adopted in the very near future.

The Committee recalls that, under this Article of the Convention, each Member which ratifies the Convention undertakes to communicate the latest statistical information indicating the number and classification of accidents in an enterprise or sector. ***The Committee once again hopes that the Government will soon be in a position to indicate the measures which have been taken to give effect to the Convention on this point and to supply the appropriate statistical information.***

*Article 6 of the Convention. Statistics of accidents.* For a number of years, the Committee has been noting the absence, in the Government's reports, of statistical information relating to the number and classification of accidents occurring in the building sector. In its last report, the Government states that the Labour Department does not currently have at its disposal reliable statistics in this field.

***With reference to its comments in relation to the application of the Government of the Occupational Safety and Health Convention, 1981 (No. 155), this year, the Committee urges the Government to make every effort to take the necessary action in the near future and provide detailed information in this respect.***

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)**

The Committee notes with *concern* that the Government's report contains no new information regarding the comments that the Committee has been making for numerous years on the application of *Articles 2(3) and (4), 10(1) and 11* of the Convention and that the announced revision of General Order No. 3758 of 25 November 1954 with a view to ensuring compliance with the provisions of the Convention has still not been adopted. The Committee reiterates that the International Labour Office is disposed to assist the Government in the preparation of the relevant texts. ***With reference to its comments in relation to the application of the Government of the Occupational Safety and Health Convention, 1981 (No. 155), this year, the Committee urges the Government to make every effort to take the necessary action in the near future.***

The Committee is raising other points in a request addressed directly to the Government.

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 2006)**

The Committee notes that the Government does not attach the requested legislative texts to its most recent report, and notes with *concern* that the report contains no new information regarding the longstanding comments by the Committee on the application of the Convention. Against this background, the Committee is bound to repeat its previous comment which read as follows:

The Committee notes the adoption of Act No. 009-004 of 29 January 2009 issuing the Labour Code, repealing Act No. 61-221 of 2 June 1961, certain provisions of which are relevant to the application of the Convention. The latter Act was made available to the Committee. The Committee also notes the reference made by the Government to Order No. 005/MFPESFP/CAB/SG/DGTEFP of 11 July 1994 establishing and regulating the operation of health and safety committees in the Central African Republic, and Order No. 008/MFPTSS/CAB/SG/DGTE/DESTRE of 26 June 1986 respecting general safety and health measures applicable in agricultural, forestry, industrial and commercial enterprises, as well as in similar public and para-public enterprises. The two Orders have not been made available to the Committee. ***The Committee requests the Government to provide a copy of the two Orders referred to above with its next report, as well as of any other relevant legislative texts adopted or envisaged under the new Act issuing the Labour Code so as to enable it to examine the manner in which effect is given to the provisions of the Convention, with particular reference to Articles 5, 6(1) and 19.*** The Committee also draws the Government's attention to the following points.

*Article 10 of the Convention. Temperature of workplaces. Article 16. Information on provisions ensuring that underground or windowless premises comply with appropriate standards of hygiene. Article 18. Protection against vibrations.* The Committee notes that the Government refers briefly to General Order No. 3758 of 25 November 1954 respecting general safety and health measures applicable in agricultural, forestry, industrial and commercial enterprises and similar administrative establishments in French Equatorial Africa (AEF). However, the Committee observes that no precise reference is made to the

relevant provisions of the Order which give effect to these provisions of the Convention. *The Committee requests the Government to provide additional information on the relevant provisions of the Order which give effect to Articles 10, 16 and 18 of the Convention.*

*Part IV of the report form. Application in practice. The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in the Central African Republic, including, for example, extracts from the reports of the inspection services and, where available, information concerning the number and nature of the contraventions reported and the measures taken as a consequence, etc.*

*With reference to its comments in relation to the application by the Government of the Occupational Safety and Health Convention, 1981 (No. 155), this year, the Committee urges the Government to make every effort to take the necessary action in the near future.*

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2006)**

*Legislation.* The Committee welcomes the adoption of the new Labour Code Law No. 09.004 of 29 January 2009 including Section 300 which provides, inter alia, that the Ministry of Labour together with the Ministry of Health shall adopt regulations concerning occupational safety and health in consultation with the National Council for the Prevention of Occupational Hazards. The Committee notes that this provision paves the way for the adoption of the legislation required for implementation of the provisions of the present Convention. The report is silent, however, as to whether any such regulations have been or are being prepared. With reference to its previous comments the Committee notes it had requested the Government to submit copies of the following legislation: Decree No. 05.006 of 12 January 2005 concerning the organization and operation of the Ministry of the Public Service, Labour, Social Security and the Vocational Integration of Young Persons and establishing the responsibilities of the Minister, Decree No. 005/MFPSSFP/CAB/SG/DGTEFP of 11 July 1994 concerning the establishment and operation of safety and health committees in the Central African Republic, Decree No. 008/MFPTSS/CAB/SG/DGTE/DESTRE of 26 June 1986 concerning the general safety and health measures applicable in agricultural, forestry, industrial and commercial enterprises as well as in similar public and para-public enterprises and General Order No. 3758 of 25 November 1954 on the general health and safety measures applicable in agricultural, forestry, industrial and commercial enterprises as well as in similar administrative establishments in French Equatorial Africa, as well as all other relevant legislative texts. It notes that the Government's report does not contain copies of the referenced legislation as requested. ***In order to enable the Committee to be able to examine how effect is given to the provisions of the Convention, the Committee requests the Government to provide copies of the abovementioned texts with its next report.***

The Committee also notes that the report submitted in 2011 is identical to the reports submitted in 2008 and that it contains no new information in response to the comments by the Committee. The Committee is therefore forced to repeat its previous comments which read as follows:

*Articles 4, 7 and 8 of the Convention. Obligation to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.* The Committee notes the information that the newly created Department of Occupational Medicine is in the process of formulating a coherent national policy on occupational safety, occupational health and the working environment based on the country's needs, while taking into account the country's economic situation and development. The Committee recalls that this work is to be carried out in close association with the country's most representative employers' and workers' organizations, and that these organizations shall also be involved in the process of periodically reviewing this policy in the light of the progress made, changes in society and technological developments. Furthermore, the Committee invites the Government to ensure that the policy is coherent and that it aims to prevent accidents and injury to health arising out of, linked with or occurring in the course of work. ***The Committee requests the Government to keep the Office informed of any progress made with regard to the formulation, implementation and periodic review of the national policy in accordance with Article 4 of the Convention.***

*Articles 13 and 19(f). Right to removal.* The Committee notes the information provided by the Government that there are no legislative provisions ensuring the protection provided for by these Articles. The Committee wishes to point out that *Articles 13 and 19(f)* are complementary provisions and both refer to situations in which an individual worker decides to remove themselves from work situations which they have reasonable justification to believe presents an imminent and serious danger to their life or health. ***The Committee requests the Government to indicate measures taken or envisaged to ensure that no worker will suffer undue consequences as a result of such action, in accordance with Article 13, and to indicate the arrangements which have been made to ensure that an employer cannot require the worker to return to a work situation where there is continuing imminent and serious danger to life or health, as provided for by Article 19(f).***

*Article 14. Measures for the inclusion of questions of occupational safety and health at all levels of education and training.* The Committee notes the information that the measures provided for by this Article come within the remit of the Department of Occupational Medicine in accordance with the provisions of the abovementioned Decree No. 05.006 of 12 January 2005. ***The Committee requests the Government to inform it of the manner in which effect is given to this provision, in particular, the measures taken to promote in a manner appropriate to national conditions and practice, the inclusion of questions of occupational safety and health and the working environment at all levels of education and training, including higher technical, medical and professional education, in a manner meeting the training needs of all workers.***

*Article 15. Measures to ensure coordination between various authorities and bodies.* The Committee notes the Government's indications that the obligations provided for by this Article have been assigned to the Department of Occupational Medicine under the provisions of Decree No. 05.006 of 12 January 2005. ***It requests the Government to indicate what institutions and institutional structures are available to ensure the necessary coordination between the competent national authorities and the bodies responsible for giving effect to the Convention and also to indicate the stage at which the most representative employers' and workers' organizations are consulted.***

*Part V of the report form. Application in practice and labour inspection. The Committee requests the Government to provide a general appreciation of the manner in which the Convention is applied in the country and attach extracts from inspection reports and, where such exists, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, the number, nature and causes of the accidents reported etc.*

*Plan of Action (2010–16).* Against this background the Committee would like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a Plan of Action (2010–16) to achieve widespread ratification and effective implementation of the key instruments in the area of OSH, the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (Doc. GB307/10/2 (Rev.)). The Committee would like to bring to the Government's attention that under this Plan of Action, the Office is available to provide assistance to Governments, as appropriate, to bring their national law and practice in conformity with these key OSH Conventions in order to promote their ratification and effective implementation. *The Committee invites the Government to provide information on any needs it may have in this respect as well as in relation to the application of other instruments on occupational safety and health also adopted by the Government such as the White Lead (Painting) Convention, 1921, (No. 13), the Safety Provisions (Building) Convention, 1937 (No. 62), the Guarding of Machinery Convention, 1963 (No. 119), and the Hygiene (Commerce and Offices) Convention, 1964 (No. 120).*

## China

### Macau Special Administrative Region

#### **Radiation Protection Convention, 1960 (No. 115) (notification: 1999)**

*Article 7(2) of the Convention. Prohibition to engage workers under 16 years of age in work involving ionizing radiation.* The Committee notes with **satisfaction** the information provided in the Government's report regarding the adoption of the List of Work Forbidden to Minors (Chief Executive Dispatch No. 344/2008) giving effect to *Article 7(2)* of the Convention.

The Committee is raising other points in a request addressed directly to the Government.

## Colombia

#### **White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1933)**

The Committee notes the communication from the General Confederation of Labour (CGT) sent by the Government on 19 September 2011, indicating that section 242 of the Labour Code prohibits the employment of young persons under 18 years of age and women in painting work of an industrial character involving the use of white lead, sulphate of lead or other products containing these pigments. The CGT calls on the Government and Parliament to prohibit the use of white lead for all persons on the basis of the principle of equality. However, the Committee indicates that this request, which can be examined at national level, is outside the scope of the present Convention.

*Communication from the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC).* In its comments of 2010, the Committee noted the abovementioned communication and indicated that it would deal with it in 2011. The Committee notes that the Government has not made any comments in this respect. The communication refers to the following issues.

*Article 1 of the Convention. Prohibition on the use of white lead, sulphate of lead and all other products containing these pigments, in the internal painting of buildings.* The Committee indicates that, under the provisions of article 53 of the National Constitution, the international labour Conventions ratified by Colombia have the force of national law. It indicates that, apart from the above and the regulations concerning young persons and women, and also the definition of lead poisoning as an occupational disease, there are no other regulations in Colombia which govern the use of prohibited substances. Moreover, the low level of unionization and the control of occupational health committees by the employers, and the lack of guarantees from the labour inspectorate, means that it is extremely difficult to verify the effects of harmful substances.

*Article 2(2). Obligation to define the limits of various forms of painting, and to regulate the use of white lead, sulphate of lead or other products containing these pigments.* The trade union federations state that the regulation of these standards is practically unknown by the workers, that there are no coordinated legal provisions, and that the employers do not provide information on the content of the materials used.

*Article 5(1) and (2). Obligation to regulate the use of white lead, sulphate of lead and all products containing these pigments, in operations for which their use is not prohibited, on the principles set forth in the abovementioned paragraphs.* The CUT and the CTC state that there are no special regulations, that the vast majority of workers engaged in painting work of an industrial character are in the informal sector or work in small enterprises or craft workshops which are not subject to any legal controls. The union indicates that the risks in this kind of painting work are high but they are not apparent because of the low level of registration in the social security system.

*Article 5(3) and (4). Notification of cases of lead poisoning and of suspected lead poisoning. Medical examination. Instructions.* The trade union federations state that there are no reliable statistics, there is no monitoring by the competent authorities, and the labour inspectorate and the health authorities are not functioning. They add that there are no awareness-raising activities in this respect.

*Article 6. Adoption of measures that give effect to the regulations prescribed in the previous Articles, after consultation with the employers' and workers' organizations concerned.* The CUT and the CTC indicate that the consultation provided for in this Article does not take place, since the regulation referred to by the previous Articles do not exist.

*Article 7. Statistics* The communication indicates that there are no tables of statistics in the painting industry concerning workers suffering from lead poisoning. The union refers to a 1996 study which indicates, among other things, that there has been insufficient evaluation of the real magnitude of the health problems resulting from occupational exposure to lead in the informal sector. It states that lead poisoning affects 35 per cent of workers employed in battery factories, and 14 per cent of workers employed in smelting, printing and ceramics.

***The Committee draws the Government's attention to the fact that Articles 1, 2 and 5 of the Convention require the adoption of legislative measures and requests the Government to provide information on the manner in which effect is given in law and in practice to these Articles of the Convention, including the statistical information referred to in Article 7 of the Convention. The Committee also requests the Government to send any comments that it considers relevant in reply to the observations made by the CUT and the CTC.***

### **Occupational Health Services Convention, 1985 (No. 161) (ratification: 2001)**

The Committee notes the Government's report in reply to its observation of 2010, in which it referred to a communication of the Single Confederation of Workers (CUT), and the Confederation of Workers of Colombia (CTC). It also notes two new communications, one from the CUT and the CTC and the other from the General Confederation of Workers (CGT), containing comments on the Government's report, which were forwarded to the Government on 19 September 2011.

*Article 2 of the Convention. Formulation, implementation and periodical review of a coherent national policy on occupational health services. Article 4. Consultation of the most representative organizations of employers and workers on the measures to be taken to give effect to the Convention.* In its previous comments, the Committee noted the Government's indications concerning the national occupational safety and health policy, and it pointed out to the Government that the national policy referred to in the present Convention is the national policy on occupational health services, as defined in *Article 1* of the Convention, namely services entrusted with essentially preventive functions and which are responsible for advising the employer, the workers and their representatives in the enterprise of the requirements for establishing and maintaining a safe and healthy working environment and the adaptation of work to the capabilities of workers. The Committee requested the Government to provide further information on the content of its national health services policy and to indicate whether the policy was formulated, implemented and reviewed in consultation with the social partners. The Committee notes that the report does not contain specific information on the policy on occupational health services. The Government indicates that there exist in the country forums for the participation of workers and employers, such as the National Council on Occupational Risks, the National Occupational Health Committee and commissions in various sectors. It further notes that, according to the report, the issue of the coherent national policy on occupational health services will be raised in the National Council for Occupational Risks, and the necessity will be reviewed of adopting a specific policy on health services. The CUT and the CTC indicate that the report contains a good proposal, but no tangible measures to identify and prevent the high rate of accidents, especially in activities such as mining, which involve exposure to chemicals and other high-risk products. They add that the Government does not indicate or specify in its report the measures that have to be adopted. They emphasize that there is no dialogue with the various social actors. The Committee reminds the Government that the requirement of a national policy on health services is a fundamental element of the application of the Convention, and that this involves, in the first place, the formulation of the policy, the monitoring of its implementation and, based on the results achieved, the review of the policy at appropriate intervals, all of which is to be undertaken in consultation with the most representative organizations of employers and workers. ***The Committee therefore requests the Government to: (1) indicate whether the most representative organizations of employers and workers are represented on the National Council on Occupational Risks, the National Occupational Health Committee and other bodies that are operational; (2) indicate the forum for consultation with the most representative organizations of employers and workers; and (3) indicate the consultations held on the formulation, implementation and review of the national policy and the measures to be taken to give effect to the provisions of this Convention, and on the outcome of such consultations.***

*Article 3. Progressive development of health services for all workers.* The Committee notes that, according to the report, in over 50 per cent of workplaces evaluated, occupational safety activities are carried out and that it is hoped that this figure will increase with the implementation of the Quality Control System of the General Occupational Risks System. The Committee notes that the Government bases the establishment of occupational health services on Resolution No. 1016 of 1989, which regulates the organization, operation and structure of the occupational health programmes that are to be developed by employers in the country and by the administrators of the General System of Occupational Risks

(ARP). The Committee notes that, according to the CUT and CTC, Resolution No. 1016 of 1989 is not a solution, and that it demonstrates the withdrawal of the State, which transfers to employers the responsibility for allocating the indispensable physical and financial resources for the development and implementation of occupational health programmes. They add that, although legislation exists in Colombia, it is not precise and does not determine clearly the parameters established by the legislation governing occupational health services. They add that the will is lacking for the implementation of the Convention, under state responsibility and direction, and that the system that prevails in the country is not based on prevention as, when a worker is already ill, the ARP, which have been privatized since 1993, begin to provide services, but do not play a preventive role. The Committee draws the Government's attention to the fact that its information on occupational health activities is more general than occupational health services. The latter are defined in *Article 1* and are entrusted with the functions set out in *Article 5(a)–(k)* of the Convention. ***The Committee requests the Government to indicate clearly the manner in which occupational health services, as defined by the Convention and the Occupational Health Services Recommendation, 1985 (No. 171), are structured, and the manner in which the State ensures that such services exist and operate in accordance with the requirements of the Convention. Please indicate the sectors in which occupational health services are operational and the plans for their progressive development in other sectors.***

*Article 5. Occupational health services that are adequate and appropriate to the occupational risks of the enterprise.* In its previous comments, the Committee requested the Government to indicate clearly the services in the country which discharge the functions set out in *Article 5*, and to provide detailed information on the manner in which effect is given in law and practice to each of the clauses of this Article. The Committee notes that the Government has not provided information on each of the functions set out in this Article, and that the information supplied is of a general nature. The Government refers to Resolution No. 1016 and explains its view that a service involves structure, results and processes and that occupational health programmes are equivalent to occupational health services. The Committee considers that, although programmes may provide the basis for health services, it is necessary to ascertain whether such programmes discharge the functions set out in each of the clauses of the present Article, which are all distinct functions. ***The Committee therefore once again requests the Government to provide comprehensive information on the effect given in law and practice to the functions set out in Article 5(a)–(k) of the Convention.***

*Article 5(a). Identification and assessment of risks. Clause (b). Surveillance of the factors in the working environment and working practices. Clause (c). Advice on the planning and organization of work, including the design of workplaces.* The Committee recalls its previous comments relating to the alleged lack of prevention in mines and the deaths that have occurred, among others, in the San Fernando coal mine, where 73 workers died, the Government has reported that, in view of the fact that the mining sector has become one of the most important economic activities, the structure and functions of the Colombian Institute of Geology and Mining (INGEOMINAS) are being reviewed with a view to strengthening inspection, supervision and control of occupational health standards in the sector. The Government indicates that communication campaigns have been strengthened to promote a culture of self-awareness by miners, and various direct interventions have been undertaken in mines. The Committee notes the newspaper articles supplied by the CGT containing information in a project to reduce deaths in coalmines and its indication that the project is based on the approach that accidents in coalmines are due to the lack of safety technology, the lack of training for owners and workers, and unlawful activities, and that the aim is to reduce by half the number of accidents by 2014. The article also indicates that in 2010 there were 173 deaths resulting from employment accidents in this sector. ***The Committee requests the Government to indicate the total number of workers in the mines in the country, and the number of workers in mines who in practice benefit from the functions indicated in clauses (a), (b) and (c) of this Article of the Convention. It also requests the Government to provide information on the plans for the establishment of health services in all mines, including those that are not registered, as is the case of the Sinifaná basin, to which it referred in its last comment.***

*Part VI of the report form. Application in practice.* The Committee notes that, according to the communications of the CUT and the CTC, statistics are not updated by the Government, which is an obstacle to prevention and to the implementation, control and effectiveness of safety standards. ***The Committee requests the Government to provide information on this subject.***

The Committee is raising other points in a request addressed directly to the Government.

### ***Asbestos Convention, 1986 (No. 162) (ratification: 2001)***

The Committee notes the Government's detailed report in reply to its 2010 observation, in which it referred to a communication from the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC), and the pending matters in reply to its direct request of 2005. It further notes a new communication from the CUT and the CTC of 2011, containing comments on the Government's report, which were forwarded to the Government on 19 September 2011. In their communication of 2011, the CUT and the CTC indicate, among other matters, that the comments made in their 2010 communication continue to be fully relevant, as the Government has not adopted a real practice of the prevention of occupational risks or of occupational safety and health.

*Background.* The communication of the CUT and the CTC alleges that: public policies have not been established at the national level by the Government for the control and management of asbestos; there is no appropriate legislation, or the will to develop it; technical standards are not implemented; there are no measures promoted by the Government to eliminate the risk and the Government does not have the capacity to control it; the Government has transferred all the

occupational safety and health obligations to the employer; precarious measures are set out in internal work rules and in occupational health committees, which are not applied in practice; and there is no national training programme on the handling and use of asbestos. They also assert that there is no dialogue, and that there is a need for real and effective dialogue with the various social partners. They conclude that measures consisting of the establishment of a threshold are not viable, particularly in the construction and mining sectors, for which reason they consider that it is necessary to adopt a public policy of the total prohibition of asbestos. In this respect, they assert that the Government disregards *Article 10* of the Convention. The CUT and the CTC add that over 10,000 tonnes of asbestos a year are extracted from the mine located in the department of Antioquia, which is absolutely hazardous for the miners, as the mining is carried out using artisanal techniques, without technology. They add that during the first half of 2007 in the fibre-cement sector, 30,403 tonnes of asbestos were imported. The Committee examines below the points raised, together with the Government's detailed report in reply to its previous comments.

*Article 3. National laws and regulations and measures for the prevention and control of, and protection of workers against, health hazardous. Background.* The Committee notes the indication in the communication of the CUT and the CTC that the Government of Colombia considers the present Convention to be an international instrument which is permissive in its objective, and that there is no appropriate legislation and technical standards are not implemented. The Committee notes that, according to the Government's report, all of the legislation respecting occupational health and employment risks is compulsory for all branches of activity, and that the Government refers in particular to Decree No. 1295 of 1994 determining the organization and administration of the General Employment Risks System, and Resolution No. 1016 of 1989 regulating the organization, operation and form of the Occupational Health Programmes that have to be implemented by employers in the country. It also notes that in 2010 the Government provided information on draft Regulations respecting health and safety in respect of chrysotile and other fibres, and in 2011 it provided a copy of the draft text and indicated that it was in the process of adoption. In its previous comments, the Committee requested the Government to provide information on the legislative measures adopted to give effect to certain Articles of the Convention referred to below.

- *Articles 9 (adequate technical prevention measures or special rules), 13 (notification to the competent authority by employers) and 14 (responsibility of producers, suppliers and manufacturers for labelling).* The Committee notes the Government's indication that effect will be given to these Articles in the draft Regulations, and that information is not provided on the effect given to these Articles at present.
- *Article 11. Prohibition of crocidolite and products containing this fibre.* The Committee notes the Government's indication that crocidolite has not been used since 1985. The Committee further notes the Government's indication that the Decree ratifying the Convention in itself constitutes a prohibition of crocidolite and the indication that it will be explicitly prohibited in the draft Regulations.
- *Article 12. Prohibition of the spraying of all forms of asbestos.* The Committee notes the Government's indication that in Colombia pulverized forms and asbestos applications in sprays are not used, together with the indication that they will be explicitly prohibited in the draft Regulations.

The Committee notes with **concern** that up to now very limited legislative effect has been given to the above provisions, although it notes that the adoption of draft Regulations giving expression to the provisions of the present Convention could constitute significant progress in the application of the Convention. The Committee wishes to emphasize that it is essential to give legislative effect to the provisions of the Convention with a view to providing employers and workers with a legislative framework that is in conformity with the Convention so that prevention and protection measures and the exercise of the rights and duties of employers and workers are in conformity with the requirements of the Convention. **The Committee therefore urges the Government to ensure the rapid adoption of legislation giving effect to the provisions of the Convention, including the adoption of the pending draft legislative texts, and the preparation of new legislation where necessary, and requests it to provide information in this respect. Referring to the comments of the CUT and the CTC that effect is not given or required to technical standards, the Committee requests the Government to provide information on the compulsory nature of the technical standards respecting asbestos.**

*Article 4. Consultation of the most representative organizations of employers and workers concerned on the measures to be taken to give effect to the provisions of the Convention.* With reference to its previous comments, the Committee notes the Government's indication that the National Commission on Occupational Health in the Asbestos Sector was established in 2001 by Resolution No. 00935 of 2001, and that in 2008 the Commission was modified by Resolution No. 1458, with its title being changed to the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres. The Government indicates that the Commission has been implementing its programme of meetings and activities. In 2011, the CUT and CTC indicated that the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres examined a number of documents which have not yet received the approval of the Ministry of Social Protection. They add that there is no real and effective dialogue and refer to other consultation forums which they consider more appropriate. The Committee also notes that section 3 of the Resolution of 2008, referred to above, in subsection 7, includes in the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres a delegate of the trade unions or workers' representative, and a delegate

of each of the fibre-cement enterprises, while subsection 9 includes a delegate of the trade unions or workers' representative, and of each of the enterprises in the friction materials sector. While noting that the Government holds consultations in the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres, the Committee also notes the call made by the CUT and the CTC for real and effective dialogue, and further notes that the CUT and the CTC do not appear to be represented on the above Commission. ***The Committee hopes that the Government will make efforts to include in consultations other organizations which meet the criterion of the most representative organizations of employers and workers concerned on the measures to be taken to give effect to the provisions of the present Convention (Article 3) and that it will provide information on the outcome of these consultations.***

*Article 10 (replacement of asbestos by other materials or the prohibition of the use of asbestos) in conjunction with Article 3(2) (periodic review of national laws and regulations in the light of technical progress and advances in scientific knowledge) and with Article 4 (consultation of the most representative organizations of employers and workers concerned).* In its previous comments, the Committee noted that, according to the communication of the CUT and the CTC, the Government disregards *Article 10*, which provides that where necessary to protect the health of workers and technically practicable (and they emphasize that this is not done in Colombia) national laws and regulations shall provide for one or more of the following measures: (a) replacement; and (b) total or partial prohibition. They add that various international and scientific organizations, including the WHO, have indicated that there is no substantial evidence of a threshold for exposure to asbestos below which cancer is not caused. The Committee further noted that the CUT and the CTC indicated that the Colombian trade union confederations are in agreement that the use of asbestos needs to be prohibited and its replacement promoted. They refer to Resolution No. 001 of 14 December 2006 of the Confederation of Workers of Colombia in this respect and assert that the Convention needs to be applied in domestic legislation and that the use of asbestos should not be allowed. In this regard, the Committee notes the Government's indication that, based on reference works from the various international organizations, it has recognized on various occasions that the fibres that are being used as possible replacements have not yet been considered less harmful, and that accordingly they do not merit sufficient confidence for it to support the total prohibition of all asbestos fibres. The Government attaches a paper by the Fibre Producers Association of Colombia (ASCOLFIBRAS), which supports the Government's statement. The Committee recalls that all legislative measures should be the subject of consultation and periodically reviewed in the light of technical progress and advances in scientific knowledge, in accordance with *Article 3(2)* of the Convention, and that accordingly *Article 10* has to be viewed in the light of *Article 3(2)* and be the subject of consultations, as set out in *Article 4* of the Convention. ***The Committee therefore requests the Government, in accordance with Article 3(2), and within the framework of consultations with the most representative organizations of employers and workers concerned, as required by Article 4, to examine the possibility of replacement/prohibition as set out in Article 10 of the Convention and to provide information on this subject.***

### **Other measures**

*Article 15(2). The fixing, periodical review and updating of exposure limits or other exposure criteria in the light of technological progress and advances in technological and scientific knowledge.* The Committee notes that, according to the Government, Resolution No. 2400 of 1979 of the Ministry of Labour and Social Security adopted as permissible limits the threshold limit values (TLVs) approved by the American Conference of Governmental Industrial Hygienists (ACGIH). The Government indicates that for 2011 the TLV for chrysotile in workplaces is 0.1 fibres per cubic centimetre of air. The Committee notes that section 154 of the above Decree refers to harmful or hazardous substances and indicates that the values shall be established by the ACGIH or by the Ministry of Health. ***As this section is of a general nature, the Committee requests the Government to indicate the text which establishes the limit value for asbestos and the manner in which it is ensured that enterprises and workers are aware of this limit value and that it is respected.***

*Article 17. Demolition work. Authorization for demolition work and elimination to be undertaken only by employers or contractors who are recognized by the competent authority as qualified to carry out such work.* In its previous comments, the Committee noted that, according to the CUT and the CTC, in 2007 the fibre-cement sector imported 30,403 tonnes of asbestos. Although the sector has adopted certain measures, according to the trade union confederations the Government does not control the measures adopted to eliminate the risk and does not have the capacity to do so. They add that, in the construction sector, asbestos and its handling have serious consequences, that workers are exposed to asbestos when working in demolition and using insulation boards, paint primers, asbestos cables, asbestos textiles, packaging, reinforced plastic, roofs, tiles and pipes, for example, and that most of these products are manufactured using chrysotile and crocidolite or amosite. The Committee notes the Government's indication that asbestos has not been used in Colombia in the construction of buildings, except for the content of fibre-cement tiles and storage tanks for drinking water, for which reason it is not considered a risk to the health of workers in enterprises engaged in the demolition of buildings, or for the public. The Government adds that the Ministry of the Environment, Housing and Territorial Development issued regulations on water and air pollution caused by asbestos, exposure to asbestos in the repair and demolition of buildings and the elimination of waste containing asbestos, in Decree No. 4741 of 2005. The Government also refers to paragraph 4.5 of the Technical Annex to the draft Regulations, which will cover demolition. The Committee further notes that the paper by ASCOLFIBRAS provided by the Government indicates that fibre-cement is the generic name to identify products manufactured using fibres and a bonding product, such as cement, and that more specifically in fibre-cement products using chrysotile, fibres account for a minimum percentage of the product (between

7 and 10 per cent). It adds that there is no information that activities such as the use of insulation boards, paint primers, insulation tubes and asbestos cables are prevalent in construction in Colombia. The Committee reminds the Government that this Article of the Convention refers to demolition work, which is an activity which liberates asbestos into the air, and that in other periods the percentage of asbestos used in construction may have been greater than that indicated, and that it is during demolition activities that special prevention and protection measures are required. **Accordingly, and even though asbestos may only be used in tiles and roofing, and although fibre-cement contains between 7 and 10 per cent of asbestos, the Committee emphasizes that these activities are covered by this Article of the Convention and it therefore urges the Government to give effect to this Article in law and practice, and to provide information on this subject. Please also provide information on the allegations of the CUT and the CTC concerning the use of crocidolite, despite the indication by the Government that this product is prohibited.**

*Prevention, vigilance and monitoring of the working environment (Article 20). Monitoring of the working environment and the exposure of workers to asbestos, in conjunction with Article 9. Laws or regulations providing that exposure to asbestos shall be prevented or controlled by one or more specific measures.* The Committee notes that, according to the CUT and the CTC, there is no determination of the occupational risks related to asbestos in Colombia and measures are not adopted for healthy practices and protection against risks for any workers in relation to asbestos, white lead or any activities in general. The trade union confederations indicate that the Government has not established public policies at the national level for the control and handling of asbestos and they refer to the measures reportedly adopted by certain enterprises through their internal rules, which are only applicable to them. They add that the fibre-cement sector claims to have adopted certain occupational policies in order to claim the safe handling of asbestos in factories, based on precarious measures set out in internal work rules or occupational health committees, which are not normally operational. They assert that the Government has not adapted the legislation with a view to guaranteeing the safety of workers and indicate that there is no control to eliminate the risk and that there is a lack of capacity at the level of the Government. The Committee notes the information provided by the Government on the legislative effect given to *Article 9* of the Convention, with reference to the draft Regulations. With regard to *Article 20*, it notes the Government's indication that the comprehensive evidence-based guide (GATISO) for pneumoconiosis, in point 5.12, provides guidance for environmental monitoring for aerosols, solids, silica, asbestos and coal. It adds that the workers' representatives on the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres have indicated that the provisions respecting employment risks and occupational health are complied with and that at the time that the report was drafted no complaints had been made concerning failure to comply with the provisions for the control of the risks caused by exposure to asbestos. Moreover, the representatives of the occupational risk management agencies (ARPs) to which enterprises which work with chrysotile are affiliated have indicated that their affiliated enterprises comply with the obligation to control the risks inherent in the use of chrysotile. Furthermore, the function of supervising the controls carried out by their affiliated enterprises is delegated by the State to occupational risk management agencies. In conclusion, the Government indicates in its report that mechanisms have been established to control the risks arising out of work, particularly in relation to the Convention, and it adds that the numbers of labour inspectors have increased and their profile has changed. It further indicates that the Occupational Risks Directorate of the Ministry of Social Protection is developing a public policy to control occupational cancer, based on which the comprehensive evidence-based guide was prepared for pneumoconiosis (silicosis, pneumoconiosis in coal mines and asbestosis) in 2007; the comprehensive occupational health guide for employment-related lung cancer (GATISO-CAP) in 2008; the National Plan for the Prevention of Occupational Cancer in Colombia in 2009; and the National Plan for the Prevention of Silicosis, Pneumoconiosis in Coal Mines and Asbestosis. The Committee notes the indication in the paper prepared by ASCOLFIBRAS, which was attached by the Government, that the fibre-cement and friction materials enterprises represented by the Association comply with national and international standards and are certified under NTC-ISO Standard 14001 (Environmental management) and NTC-OSHAS 18001 (Occupational health and safety management). The Committee reminds the Government that the exposure prevention or control measures referred to by *Article 9* of the Convention have to be adopted through the laws or regulations indicated in *Article 3*, as *Article 9* establishes the responsibility of employers in relation to various matters, such as the records referred to in *Article 20(2)* and *(3)*, which also have to be regulated by legislation. On the one hand, the Committee notes the activities undertaken by employers and by the ARPs, although on the other it notes that these activities in relation specifically to asbestos are based on guides and certification standards which are apparently not of a binding nature. The Committee recalls that these Articles of the Convention refer to specific matters which have to be regulated by the Government, in order to establish a clear framework for employers, ARPs and workers in relation to the prevention and control measures that are required. **The Committee therefore requests the Government to adopt the necessary measures to give legislative effect to these Articles of the Convention and to provide information on this subject.**

*Part V of the report form. Application in practice.* The Committee notes the information provided by the CUT concerning a study of occupational diseases caused by asbestos, and the Government's reply indicating that the study was undertaken almost 30 years ago. The Government acknowledges the need to update research in order to know the real impact of the pathologies associated with exposure to asbestos in Colombia and indicates that the National Commission on Occupational Safety in relation to Chrysotile Asbestos and Other Fibres has contacted the University of Bosque and that the Government is willing to support this type of research. It also notes the Government's statement that one of its priorities is the implementation of the occupational risk information system envisaged in the National Plan for

Occupational Health 2008–12, and that the reports on occupational diseases for the period 2001–03 and 2003–05 did not indicate that occupational pathologies associated with exposure to asbestos are among the highest in terms of morbidity and mortality. ***The Committee requests the Government to provide updated information on the studies referred to and detailed statistical information. Please also provide practical information on the activities carried out by the labour inspection services to supervise the application of the provisions of the Convention and on the penalties applied, in accordance with Article 5 of the Convention.***

***In light of the above comments, and also taking into account the communication of the CUT and the CTC indicating that Colombia is an important producer and also importer of asbestos, the Committee urges the Government to ensure rapidly that full effect is given to the Convention in law and practice, in consultation with the most representative organizations of employers and workers concerned.***

The Committee is raising other points in a request addressed directly to the Government.

***[The Government is asked to reply in detail to the present comments in 2012.]***

### **Chemicals Convention, 1990 (No. 170) (ratification: 1994)**

***Legislation.*** The Committee notes that the Government has provided a copy of Decree No. 2923 of 12 August 2011 establishing the Quality Control System of the General Occupational Risks System, which in its introductory paragraphs indicates that indicators will have to be established and such indicators are necessary to assess and monitor the quality of occupational health services. Section 5 refers to a system of minimum standards, but does not specify them. ***The Committee requests the Government to indicate the impact of this Decree on the application of the present Convention.***

The Committee also notes, that in a communication sent in 2011, the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC) raise issues relating to Act No. 55 of 1993 and Legislative Decree No. 1295 of 1994, indicating, among other matters, that the Government does not assume its responsibility, but transfers it to others. They add that Decree No. 2150 of 1995 limits the special controls by the State to enterprises which use hazardous chemicals of a specific category, in accordance with the classification of economic activities set out in Decree No. 1295, and that the others are governed by Decision No. 1016. ***The Committee requests the Government to indicate the differences in the application of the Convention to enterprises which use hazardous chemicals of the different categories.***

***Article 1 of the Convention.*** ***Application of the Convention to all branches of economic activity in which chemicals are used.*** In its previous comments, the Committee noted that, according to the CUT and the CTC, protection against risks only covers workers who are in a formal employment relationship. The Committee notes the Government's indication in its reply that, in the case of the chemicals sector, workers who are not in a formal relationship are not quantified, but that the State provides training through its local agencies and that the present Government's Develop Plan is intended to reduce informality to rational proportions, as illustrated by Act No. 1429 of 2010 to promote formalization and first jobs, which was adopted recently. It adds that alternative projects are undertaken for the informal and vulnerable population, such as the Public Health Plan. The Committee notes that the health measures indicated by the Government are general in nature, but that the Convention applies to activities which require particular monitoring by the Government to ensure that enterprises in all branches of economic activity in which chemicals are used comply with the requirements of the Convention. ***The Committee therefore requests the Government to make efforts to ensure the application of the Convention in all branches of economic activity in which chemicals are used and to continue providing information on this subject.***

***Article 4. Formulation, implementation and periodical review of a coherent policy on safety in the use of chemicals, in consultation with the social partners. Article 3. Requirement to consult the most representative organizations of employers and workers concerned on the measures to be taken to give effect to the provisions of the Convention.*** With reference to its previous comments, the Committee notes the Government's indication that the Ministry of Social Protection, in the context of the Fifth Ibero-American Congress on Employment Risk Prevention: Prevention 2011, hosted the Fourth Meeting for the Prevention and Elimination of Silicosis. The Committee notes that this information does not reply to the question raised by the Committee concerning the effect given to ***Article 4*** of the Convention. The Committee also notes that the CUT and the CTC, in their 2011 comments, reiterate their observations concerning the absence of social dialogue and propose the following, among other, measures: implementing a system of epidemiological monitoring of occupational cancer; articulating monitoring and control systems; increasing the commitments of the various sectors and socializing national plans for the prevention of pneumoconiosis and the control of occupational cancer. ***The Committee requests the Government to provide information on the consultations held with the most representative organizations of employers and workers concerned with regard to the national policy and the measures to be taken to give effect to the Convention, and the results achieved. It also requests the Government to indicate whether there are any tripartite sectoral commissions to follow-up the policy and the measures to give effect to the Convention.***

***Article 13. Obligation of employers to assess risks and protect workers by appropriate means.*** In its previous comments, the Committee noted the indications by the CUT and the CTC that in order to eliminate chemical risks, alternative less toxic materials have to be used, ventilation must be improved, leaks monitored and protective clothing used. They indicate that there are no appropriate prevention plans, control measures are not adopted, appropriate alerts are

not given and that the loss of life and cases of permanent incapacity resulting from the handling of certain chemicals are still frequent. The Committee requested the Government to provide information on this subject and on the manner in which the application of the above provisions of the Convention is ensured in practice. The Committee notes that the Government has only provided information of a general nature. ***The Committee requests the Government to provide information on the manner in which it ensures that employers make an assessment of the risks and ensure the protection of workers by appropriate means. It requests the Government to provide information on the effect given to each of the paragraphs of this Article in law and practice in enterprises in the branches of economic activity in which chemicals are used.***

*Article 15. Obligation of employers to provide information and training.* With reference to its previous comments, the Committee notes the Government's indication that the administrators of the General Occupational Risks System (ARPs) are required to invest at least 5 per cent of the income that they receive from contributions on occupational prevention programmes and the promotion of occupational health, and that in overall terms they invest no less than 15 per cent in such activities. The Committee notes the Government's reference to health and safety activities in general, but observes that in relation to this Article the Government is requested to provide information on the manner in which effect is given in law and practice to specific obligations, such as informing workers of the hazards associated with exposure to chemicals used in the enterprise, instructing workers on how to obtain and use the information provided on labels and chemical safety data sheets, among others. ***The Committee requests the Government to provide information on the effect given to this Article in law and practice in enterprises in branches of economic activity in which chemicals are used.***

*Article 6. System for the classification of chemicals. Article 7. Requirement to label and mark chemicals. Article 8. Chemical safety data sheets for hazardous chemicals. Article 9. Responsibilities of suppliers. Articles 10 to 12. Responsibilities of employers in relation to the identification of chemicals, their transfer and the exposure of workers to chemicals. Articles 17 and 18. Rights of workers and their representatives, and duties of workers.* The Committee notes that the Government has not provided the information requested in the last paragraph of its previous direct request, or has provided brief, incomplete or general information that does not refer to the Articles of the Convention, which does not enable the Committee to gain an idea of the effect given to these Articles of the Convention. ***The Committee once again requests the Government to indicate in detail the manner in which effect is given in law and in practice to the abovementioned Articles or, where appropriate, on the measures adopted or envisaged for that purpose. The Committee asks the Government, when the Articles include more than one paragraph, to provide clear indications of the effect given to each paragraph.***

## Croatia

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 1991)

*Article 4. Formulation, implementation and periodical review of a national policy on occupational safety and health.* The Committee notes with **satisfaction** the adoption of the National Programme for the Protection of Health and Safety at Work for the period 2009–13 which defines policies in the area of occupational safety and health and the adoption of the State Inspectorate Act (OG 116/08 and 123/08). ***The Committee invites the Government to continue to provide information on any relevant legislative change; to provide further information on the outcome of periodical review of the national policy due in 2013; and to provide information on any decisions taken as regards the 2002 Protocol to the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

### **Occupational Health Services Convention, 1985 (No. 161)** (ratification: 1991)

*Articles 1 and 3 of the Convention. National policy and plans to develop progressively occupational health services.* The Committee notes with **satisfaction** the information that the Government has adopted a National Programme for the Protection of Health and Safety at Work for the period 2009–13 which defines policies in the area of occupational safety and health including specific policies concerning occupational health services. It notes that the strategic goals of the National Programme include: to design and implement policy instruments to protect the health of workers; to protect and promote health in the workplace; to improve the efficiency of and access to occupational health services; and to monitor the health of workers. The Committee also notes that pursuant thereto and relevant legislation the Croatian Institute for Occupational Safety and Health Insurance and the Croatian Institute for the Protection of Health and Safety at Work were founded and began operations on 1 January 2009. ***The Committee requests the Government to continue to provide information on the progressive implementation of the national programme referenced above and the development of health services for workers in all economic sectors and to provide further details on the outcome of periodical review of the national policy due in 2013.***

The Committee is raising other points in a request addressed directly to the Government.

## Democratic Republic of the Congo

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1960)**

Following numerous requests the Committee welcomes the submission by the Government of a report on the application of this Convention, including a list of current legislation which according to the Government implements the provisions of the Convention. *The Committee requests the Government to continue to provide information on any legislative changes and provide the Office with a copy of the amending laws or regulations which will permit an assessment of the application of the provisions of the Convention.*

*Article 4 of the Convention.* The Committee notes the information that the mission of the restructured labour inspectorate remained the same as previously, namely to monitor relevant regulations, to provide advice and to seek to resolve any conflicts occurring; and that there were no specific competencies attributed to the labour inspectorate in terms of inspections in the area of construction. *With reference to its previous comment, the Committee asks the Government to provide more information on the manner in which technical standards applied in the building industry are monitored and enforced.*

*Article 6. Application in practice.* The Committee notes with *interest* the 2010 report of the National Institute for Social Security and of the Inspector General for 2008–09 including detailed, albeit not comprehensive, statistical information, which reflects a noticeable development in the Government's efforts to improve its monitoring of the working conditions in the country. The Committee notes that the information provided does not fully enable the Committee to evaluate the trends in relation to occupational accidents and diseases in the area of construction. *The Committee hopes the Government will be in a position to supply to the Office, with its next report, further and more complete statistical information on the number and classification of the accidents and diseases occurring, particularly to persons working in the sector covered by the Convention, and as detailed information as possible on the number of persons engaged in the building industry and covered by the statistics.*

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)**

The Committee notes with *satisfaction* the adoption of Ministerial Decree No. 12/CAB.MIN/ETPS/046/2008, 8 August (MD No. 46) on guards on machinery and other mechanical engines and the prohibition against sale, hire and exhibition or transfer in any other manner of unguarded machinery including provisions giving effect, inter alia, to *Article 2(2)–(4) of the Convention.*

The Committee is raising other points in a request addressed directly to the Government.

## Djibouti

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)**

The Committee notes with *regret* that, for the fourth consecutive year, the Government's report has not been received and that, prior thereto and since 2000, the Government has submitted the same report which does not provide any new information in reply to the Committee's previous comments. While noting the efforts made in the country through the adoption of a new Labour Code in 2006 and the development and adoption of a Decent Work Country Programme 2008–12, the Committee must underscore that the reporting obligations undertaken by the Government are important and that a regular review of the situation in the country in relation to the matters covered in this Convention can be helpful for the Government in its further improvements, not only in relation to the application of the present Convention but in the area of occupational safety and health in general.

*Plan of action (2010–16).* The Committee would also like to take this opportunity to inform the Government that, in March 2010, the Governing Body adopted a plan of action to achieve widespread ratification and effective implementation of the key instruments in the area of occupational safety and health (OSH), the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (document GB.307/10/2(Rev.)). The Committee would like to bring to the Government's attention that, under this plan of action, the Office is available to provide assistance to governments, as appropriate, to bring their national law and practice into conformity with these key OSH Conventions in order to promote their ratification and effective implementation. *The Committee invites the Government to provide information on any needs it may have in this respect.*

In the meantime, the Committee must repeat its previous observation which reads as follows:

The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitutes a general framework for the protection of workers against risks related to work. According to previously submitted information the relevant legislation would also include Order No. 1010/SG/CG of 3 July 1968 concerning the protection of workers against ionizing radiation in hospitals and health-care institutions, or in Order No. 72-60/SG/CG of 12 January 1972 on occupational medicine. *With reference to article 125(a) of the newly adopted law providing for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, on a series of different issues including radiation protection, the Committee requests the Government to clarify whether the*

*abovementioned Orders remain in force and, as appropriate, to transmit to it copies of any revised or complementing legislation once it has been adopted.*

The Committee also notes the observations submitted by the General Union of Djibouti Workers (UGTD) on 23 of November 2007, raising concerns regarding insufficient protection against ionizing radiation for employees at health care centres. These observations were transmitted to the Government for comment on 21 September 2007, but no comments have been received to date.

*Article 3(1). Protection of workers against ionizing radiations; Article 6(2). Maximum permissible doses; and Article 9(2) of the Convention. Instruction of the workers assigned to work under radiations.* With reference to the foregoing and its previous comments, the Committee recalls that all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. In this context, the Committee notes that the UGDT seems to indicate that, in practice, industrial undertakings using procedures involving ionizing radiation do not seem to apply uniform rules for the protection of workers against exposure thereto and that the workers engaged in, for example, health-care centres are not sufficiently informed of the dangers related to their activity and are not protected in an adequate way. The Committee again draws the Government's attention to the revised dose limits for exposure to ionizing radiation established on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP) in its 1990 recommendations. **The Committee requests the Government to respond to the observations made by the UGDT and urges the Government to take all appropriate measures, in the near future, and with due account of the 1990 Recommendations of the ICRP, to give full effect, in law and in practice, to these provisions of the Convention.**

*Article 7(1)(b) and (2) of the Convention. Exposure limits for young persons between 16 and 18 years of age. Prohibition against employing young persons under 16 in work involving exposure to radiation.* In its previous comments, the Committee had noted that there were no provisions in relevant legislation prohibiting the employment of children under 16 years of age in radiation work and fixing maximum permissible doses for persons between 16 and 18 who are directly engaged in radiation work, as called for by this Article of the Convention. **The Committee urges the Government to take all appropriate measures to ensure the application of this Article in the near future.**

*Exceptional exposure of workers in situations of emergency.* With reference to its previous comments, the Committee again draws the Government's attention to paragraphs 16–17 of its 1992 general observation under this Convention which concern occupational exposure during and after an emergency. **The Government is requested to indicate whether, in emergency situations, exceptions are permitted to the normally tolerated dose limits for exposure to ionizing radiation and, if so, to indicate the exceptional levels of exposure allowed in these circumstances and to specify the manner in which these circumstances are defined.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1978)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee understands that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. **The Committee nevertheless requests the Government to provide additional information concerning the following points.**

*Articles 10, 13–16 and 18 of the Convention.* With reference to the comments that it has formulated for several years, the Committee notes that article 125(a) of the Labour Code provides for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, in particular, with regard to lighting, ventilation or aeration, drinking water, sanitary facilities, evacuation of dust and fumes, precautions to be taken against fire, installation of emergency exits, radiation, noise and vibrations. **The Committee trusts that the Government will adopt the abovementioned legislation in the very near future and that it will give full effect to Articles 10, 13–16 and 18 of the Convention. The Committee requests the Government to provide a copy of this legislation as soon as it has been adopted.**

*With reference to the advances that hopefully will be made through the Decent Work Country Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee urges the Government to make every effort to take the necessary action in the very near future.*

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## **Dominican Republic**

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1998)**

*Legislation.* The Committee notes with *interest* that the Occupational Safety and Health Regulations, issued by Decree No. 522-06 of 17 October 2006 and Resolution 4 of 2007, give effect to a good number of provisions of the Convention. **Noting that the abovementioned legislation has introduced significant changes, the Committee requests the Government to provide a detailed report specifying the provisions of its legislation that give effect to each provision of the Convention, together with information on the application of the Convention in practice.**

*Application of the Convention in practice. Communication from trade unions.* In its comments of 2010, the Committee noted communications from the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Trade Union Unity (CNUS) and the National Confederation of Dominican Workers (CNTD), forwarded to the Government on 23 September 2010. It noted that the communications referred among other matters to the high incidence of accidents and diseases in the construction sector and alleged that the labour inspectorate lacks effectiveness

in dealing with the frequent, systematic and serious violations of the applicable legislation. The Committee said that it would examine the communications in greater detail at the present session, together with any comments the Government saw fit to make. The abovementioned organizations submit that, generally speaking, it could be said that the legislation of the Dominican Republic is adequate to ensure the application of the Convention, and that it is backed up by penalties to deter any violations, since section 720 of the Labour Code treats occupational safety and health violations as very serious offences punishable by penal sanctions where the violation endangers or is liable to endanger the life, health or safety of the workers. The trade unions nonetheless report that despite the legal framework, breaches of the Convention are frequent, systematic and very serious. They further assert that the work of the inspectorate is ineffectual and indicate that the last Labour Statistics Bulletin, No. 9 of 2006, published by the Secretariat of State for Labour, records 5,326 occupational accidents, 399 of which occurred in construction. They also indicate that according to the same Bulletin, of the 777 contraventions reported by the labour inspectorate, only 27 concerned social security and occupational accidents. Furthermore, according to the country's only occupational risk director, although there are an estimated 70,000 occupational accidents a year, only 5 per cent of them are reported. The trade unions also assert that according to the same director, "as in other countries, here too most cases occur in the construction sector, but with the difference that in the Dominican Republic the victims are Haitian and are not insured". The organizations indicate that with the crisis in the sugar industry and the privatization of the sugar sector, tens of thousands of agricultural workers lost their jobs and moved to the east of the country, where the growing tourism sector needed workers for the construction of hotel complexes, and that according to the calculations of the Association of Housing Project Builders (ACOPROVI), 95 per cent of the workers employed in the tourism sector are Haitian. In Santo Domingo the percentage is lower, but Haitian workers are in the majority in the construction sector. They further assert that many enterprises apply no safety measures, such as nets for high-rise work, protective helmets, harnesses, boots and reflective jackets, and that the workers are careless about their own safety and that of their colleagues because they have received no instruction and, in some cases, because the companies provide no protective equipment. Furthermore, no one pays into the Construction Workers Pension Fund, so in the event of an accident workers resort to the public health system, where care is uneven and where they have virtually no access to medication. The organizations further assert that prevention programmes are rudimentary and, in practice, workers are unprotected and ill-prepared to cope with such risks. In conclusion, the organizations state that, although the authorities are making efforts to comply with their obligations deriving from ratified ILO Conventions, more effective legislation, policies and actions are nonetheless needed in order to apply the Conventions in practice.

*Comments of the Government.* The Committee notes that although the Government makes no direct reference to the communication, it does provide some information on the application of the Convention in practice. It notes that, according to the Government, various meetings were held in 2010 with representatives of the main trade union federations in the construction sector and that the Ministry of Labour covered 70 per cent of the workplan that was developed. The report indicates that the Ministry of Labour has promoted Regulation No. 522, conducted training activities together with the unions, and supported the establishment of 16 joint committees, which are up and running. It also states that a platform is being developed for immediate registration/notification of occupational accidents to the Ministry of Labour, that there are to be improvements in the statistics on occupational accidents and that an agreement is under discussion on public works so that as soon as formalities start for land use and/or building permits, the Ministry of Labour is informed at once so that it can require submission of an occupational safety and health programme and the establishment of a joint committee. The Government indicates that the first forum on health and safety in the construction sector was organized with representatives of employers, workers and interested technical bodies; 2,000 copies of the rules on safety and health in construction were printed; a programme to promote compliance with construction safety prescriptions was organized in the north-Atlantic, north-east and south-central regions, with the assistance of 50 engineers; a workshop was organized for the association of master builders and another for engineers of the National Drinking Water and Sewerage Institute. The inspectorate monitored the safety and health of 10,026 workers.

The Committee notes that the communication from the workers refers to the application of *Article 1 (scope); Article 9 (design and planning of construction projects); Part III (preventive and protective measures); Article 35 (labour inspection); Article 33 (information and training); and Article 34 (notification of accidents and diseases), which are analysed below.*

*Article 1 of the Convention. Scope.* With reference to the communication from the workers, the Committee points out that the Convention applies to all construction activities, namely building, civil engineering, and erection and dismantling work, including any process, operation or transport on a construction site, from the preparation of the site to the completion of the project, without any distinction as to the employment relationship of the workers. ***The Committee requests the Government provide information on the manner in which it ensures that the Convention is applied to all construction activities and to all those who perform them, whether registered workers, unregistered workers or independent workers, together with specific information on construction workers who are not registered or who work in the informal economy.***

*Article 9. Design and planning of a construction project.* ***Referring to the communication from the workers, the Committee asks the Government to provide information on how it ensures, in practice, that the persons responsible for designing and planning construction projects fulfil their duty to take account of the safety and health of construction workers, in conformity with national law and practice. Please also indicate whether the agreement which the***

*Government referred to in its report, and under which the authorities issuing building permits must inform the Ministry of Labour of applications for permits, has been concluded.*

*Part III. Preventive and protective measures. Article 35. Labour inspection. In view of the problems in applying the provisions in practice referred to in the communication from the workers, please indicate the measures adopted to ensure effective application of the preventive and protective measures established in the Convention, including, but not limited to, the reinforcement of the labour inspectorate.*

*Article 33. Information and training. The Committee refers to the communication from the workers' and the Government's reply, and asks the Government to continue to provide information on the efforts made to give effect to this Article in practice.*

*Article 34. Notification of accidents and diseases. The Committee refers to the communication from the workers, and noting that a platform is being developed for immediate registration/notification to the Ministry of Labour of occupational accidents and for the improvement of occupational accident statistics, the Committee requests the Government to provide information on all progress made in this regard, including in respect to unregistered workers, whether Dominican or Haitian.*

*Part VII of the report form. The Committee notes that according to the communication from the workers' federations, in 2010 the Government did not send them copies of its report. It also notes that the 2011 report makes no mention of whether it was sent to workers' and employers' organizations or whether these were consulted. The Committee requests the Government to indicate the representative organizations of employers and workers to which it sent copies of its report, in accordance with article 23(2) of the ILO Constitution.*

*Technical assistance. The Committee further notes that from 17 to 24 July 2011, an ILO Technical Assistance Mission was carried out under the Action Plan 2010–2016 in order to obtain broad ratification and effective application of the Occupational Safety and Health Convention, 1981 (No. 155), and its Protocol of 2002, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The purpose of the Mission, which was requested by the Government, was to explain and facilitate ratification of these key occupational safety and health instruments and the Safety and Health in Mines Convention, 1995 (No. 176). The Committee notes that as a result of the Mission, the Government expressed its intention to ratify Convention No. 187 in the short term and to continue working towards ratification of the other instruments. It also notes the Government's statement that it was having difficulty in giving practical effect to the Occupational Safety and Health Regulations, issued by Decree No. 522-06 of 17 October 2006, and had requested further technical assistance by the Office so as to examine the matter in the context of three forthcoming tripartite workshops. The Committee observes that according to the present communication from the workers' federations, the problems in giving practical effect to Ministerial Decision No. 4 of 2007 on construction are the same. The Committee accordingly urges the Government to extend its request for technical assistance to cover the difficulties encountered in giving practical effect to this Convention and to continue to pursue efforts with the social partners to improve effective application of the legislation giving effect to this Convention, and to provide information in this regard. The Committee hopes that the Government will be in a position to notify in the near future its ratification of Convention No. 187, in accordance with the statement it made to that effect to the Technical Assistance Mission, since this could make an effective contribution to improving the management of occupational safety and health.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Ecuador

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1970)**

In 2010, the Committee asked the Government to reply in detail in 2011 to the questions raised in its observation of 2005. The Committee notes that the Government states in this connection that it will make the necessary amendments to update the law. The Government also refers to a handbook of normal and emergency procedures and a directory for care of radiological emergencies. The Government report being brief, the Committee finds that it is unable to proceed further with its examination of how the Convention is applied. *The Committee requests the Government to provide information on the legislative proposals referred to. The Committee again asks the Government to consider the possibility of requesting technical assistance from the Office in the drafting of reports and for a number of issues raised in connection with the occupational safety and health Conventions, and requests it to provide information on any needs that may arise in this regard. It also asks the Government to reply to the questions raised and to indicate the manner in which it ensures, in practice, the effective application of the Articles indicated by the Committee in its comments of 2005, which read as follows:*

*Articles 3(1) and 6(2) of the Convention. Measures taken in the light of the knowledge available. The Committee notes the Government's indication that the Ecuadorian Commission on Atomic Energy (CEEA) has given an undertaking to the International Atomic Energy Agency (IAEA) to amend the Regulations on radiological safety (RSR) of 1979 during the course of the technical assistance cycle 2005–06 with a view to bringing the national regulations into conformity with international standards on the maximum permissible dose limits for the exposure of workers adopted by the International Commission on Radiological Protection (ICRP) in 1990, which were reflected in the 1994 International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources established under the auspices of the IAEA, ILO, WHO and*

three other international organizations. **The Committee requests the Government to take the necessary measures rapidly with a view to bringing its legislation into conformity with these provisions of the Convention with due consideration being given to the general observation of 1992 and to provide a copy of the amended regulations as soon as they have been adopted.**

*Article 7. Workers under the age of 18 directly engaged in radiation work.* The Committee notes that section 3 of the Regulations on radiological safety of 1979 defines radiation areas as areas where the radiation doses may be higher than 5 mrem per hour and that this definition will also be amended during the course of the technical assistance cycle 2005–06 so that young persons under the age of 18 cannot be assigned to work involving exposure to ionizing radiations. It also notes the information that the CEEA does not authorize work permits for young persons under the age of 18 to perform work involving ionizing radiations or in “radiation areas”. **The Committee once again requests the Government to take the necessary measures rapidly and to provide it with a copy of the amended regulations as soon as they have been adopted.**

*Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes the information that workers who, for medical reasons, can no longer work under conditions involving exposure to ionizing radiations may be granted compensation following classification as being affected by an occupational disease by the Ecuadorian Social Security Institute (IESS). In this context, the Committee wishes to draw the attention of the Government to paragraph 32 of the 1992 general observation under the Convention where it is indicated that every effort must be made to provide the workers concerned with suitable alternative employment, or to maintain their income through social security measures or otherwise where continued assignment to work involving exposure to ionizing radiations is found to be medically inadvisable. **In the light of the foregoing, the Committee requests the Government to consider appropriate measures to ensure that no worker shall be employed or shall continue to be employed in work by reason of which the worker could be the subject of exposure to ionizing radiation contrary to medical advice and that for such workers, every effort is made to provide them with suitable alternative employment or to offer them other means to maintain their income and requests the Government to keep it informed in this respect.**

*Exposure during emergency situations.* The Committee notes that exposure during emergency situations is regulated by the Manual on normal procedures and in cases of emergency, which requires the information on radioactive sources in the country to be updated. It also notes that this manual is prepared for each individual user and that it is regularly updated to ensure that it is in conformity with the international recommendations determining the admissible dose levels in cases of emergency. **The Committee requests the Government to provide a copy of one of these manuals.**

**[The Government is asked to reply in detail to the present comments in 2013.]**

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1969)**

In 2010, the Committee noted once again that the Government had not provided the information requested and once again invited it to provide detailed information in reply to its direct request of 2006. The Committee notes that the Government’s report indicates that the content of the direct request has been sent to the respective bodies, but that the detailed information requested has not been provided. The 2006 direct request read as follows:

*Article 2(3) and (4) and Article 4 of the Convention. Dangerous parts of machinery requiring guards and the persons responsible.* The Committee notes the study done by the Coordinator of the Occupational Safety and Health Unit, which in turn refers to the provisions of the Occupational Safety and Health Regulations, adopted by Decree No. 2393 of 13 November 1986. In its comments in 1995, the Committee noted that this text establishes liability and certain sanctions for failure to apply the prescriptions set forth in its provisions, but does not specify the persons on whom the obligation to ensure compliance with the provisions of *Article 2* of the Convention shall rest. The Committee once again recalls that, in accordance with the provisions of the Convention, measures have to be taken to ensure that the categories of persons referred to in *Article 4*, namely vendors, persons letting out on hire or transferring machinery in any other manner and exhibitors and, where appropriate, their respective agents, and the manufacturer when she or he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it, are explicitly covered by the provisions of the national legislation establishing the obligation to prohibit by national laws or regulations or to prevent by other equally effective measures, the sale and hire of machinery of which the dangerous parts, specified in *paragraphs 3 and 4 of Article 2*, are without appropriate guards. **The Committee urges the Government to take the necessary measures in the near future to bring the national legislation into conformity with the above provisions of the Convention and requests it to provide information on the progress achieved in this respect.**

**The Committee once again invites the Government to consider the possibility of requesting ILO technical assistance for the drafting of reports and on certain questions raised in relation to the occupational safety and health Conventions, and to provide information on any need which may arise in this respect.**

**[The Government is asked to reply in detail to the present comments in 2013.]**

### **Benzene Convention, 1971 (No. 136) (ratification: 1975)**

In 2010, the Committee noted that the Government had not provided the information requested and again asked it to provide detailed information in response to the direct request of 2006. The Committee notes that the Government’s report indicates once again that there has been a delay in the adoption of regulations on the use of benzene and that the technical standards are about to be updated. The Government also states that since benzene is not used in industries, no violations or results of any kind have been reported in the inspection visits carried out. The Government refers to the information it provided previously. The Committee points out that, having noted the information reiterated by the Government, it raised questions designed to seek clarification of some aspects of the application of certain Articles of the Convention for which further information is needed. Since the report supplied by the Government does not respond in detail to the Committee’s questions, it is bound to repeat its previous comments, which read as follows:

*Article 5 of the Convention. Occupational hygiene and technical measures to ensure effective protection of workers exposed to benzene.* The Committee notes that, in 2005, the Ministry of Labour and Employment approved the Occupational Safety and Health Institutional Policy and the Safety and Health Management System of the Ministry of Labour by means of Ministerial Order No. 000213 of 23 October 2002, which sets out the principles and objectives of the policy, as well as strategies and measures for the development of national law and practice to ensure effective implementation of its terms of reference. **The**

**Committee hopes that these strategies will be implemented in the very near future and requests the Government to provide information on progress in this matter.**

The Committee notes that adoption of the draft regulations on the use of benzene has been delayed and that, as a consequence of this, the technical standards are now to be updated by the Inter-Institutional Committee and then sent to the tripartite National Labour Council so that it can acquaint itself with this vitally important matter and speed up adoption. **The Committee hopes that the abovementioned draft regulations will be adopted in the near future and will give full effect to the provisions of the Convention, and especially:**

- *Article 2(1).* Use of substitute products, where they are available, instead of benzene or products containing benzene;
- *Article 4(1) and (2).* Prohibition of the use of benzene or products containing benzene in certain processes, at least as a solvent or diluent, except where the process is carried out in an enclosed system or where there are other equally safe methods of work;
- *Article 5.* Occupational hygiene and technical measures to ensure effective protection of workers exposed to benzene;
- *Article 6(1)–(3).* Measures to prevent the escape of benzene vapour into the air of places of employment; measures to ensure that the concentration of benzene in the air of places of employment does not exceed a ceiling which shall be fixed by the competent authority at a level not exceeding 25 parts per million, and the establishment of appropriate standards for measuring the concentration of benzene in the air;
- *Article 7(1) and (2).* Work processes involving the use of benzene or of products containing benzene to be carried out, as far as possible, in an enclosed system or, where this is not practicable, places of work to be equipped with effective means to ensure the removal of benzene vapour;
- *Article 8(1) and (2).* Adequate means of personal protection against the risk of absorbing benzene through the skin or of inhaling benzene vapour, where its concentration in the air of the place of employment exceeds the ceiling of 25 parts per million; and the obligation to limit exposure as far as possible;
- *Articles 9 and 10.* Pre-employment medical examinations and periodical re-examinations at no cost to the workers to be undergone by all workers who are employed in work processes involving exposure to benzene or to products containing benzene; medical examinations to include blood tests and biological tests carried out under the supervision or with the assistance, as appropriate, of a competent laboratory; appropriate certification;
- *Article 11(1) and (2).* Prohibition on the employment of pregnant women, nursing mothers and young persons under 18 years of age in work processes involving exposure to benzene or products containing benzene;
- *Article 12.* Clearly visible danger symbols on any container holding benzene or products containing benzene;
- *Article 13.* Appropriate measures to provide that any worker exposed to benzene or products containing benzene receives proper instructions on measures to safeguard health and prevent accidents, and on the appropriate action in the event of poisoning; and
- *Article 14.* Procedures for the prevention of occupational risks and appropriate inspection.

*Part IV of the report form. Application of the Convention in practice.* **The Committee requests the Government to provide general information on the manner in which the Convention is applied, including extracts of inspection reports and data on the number of workers covered by the Convention, if possible, disaggregated by gender and the number and nature of the infringements recorded.**

**The Committee again invites the Government to envisage the possibility of requesting technical assistance from the Office in drafting reports and addressing some of the matters raised in the occupational safety and health Conventions, and asks it to provide information on any needs that may arise in this regard.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1975)**

*Article 1(1) and (3) of the Convention. Determination of the carcinogenic substances and agents to be prohibited or made subject to authorization.* Referring to its previous comments, the Committee notes the Government's statement that the Inter-Institutional Committee has not fixed maximum permissible levels of exposure as required by section 64 of the Regulations concerning the safety and health of workers, but that the limit values laid down in international standards are used as a reference point in the country. **The Committee requests the Government to supply information on the legislation referring to or prescribing the limit values laid down in international standards and on the manner in which their application is ensured in practice.**

*Article 2(2). Reduction to the minimum compatible with safety of the number of workers exposed to carcinogenic substances or agents and the length of such exposure.* **Having referred to this matter for a number of years, the Committee again requests the Government to supply information on the application of this Article, including on the establishment of the list of enterprises for the purposes of checking the length of workers' exposure to carcinogenic substances or agents.**

*Article 5. Medical examinations after the period of employment.* Referring to its previous comments, the Committee notes the Government's indication that it has drafted an instrument which specifies that the type and frequency of medical examinations shall depend on the assessment of exposure levels in the workplace and that the internal occupational safety and health (OSH) regulations presented to the Ministry of Labour for approval shall contain a chapter on this subject. **The Committee notes that this information is of a general nature and requests the Government to supply more detailed information on the legislation governing medical examinations after employment, with an indication of the areas of work concerned, and especially on the application of these provisions in practice.**

In 2010 the Committee asked the Government to reply in detail to its comments of 2006. The Committee pointed out to the Government that its concise report contained little information in relation to progress made on the application of the

Convention. *The Committee therefore again requests the Government to contemplate the possibility of requesting technical assistance from the Office with regard to the drafting of reports and issues raised in connection with the OSH Conventions and to supply information on any needs that may arise in this regard.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1978)**

*Article 4 of the Convention. Measures for the prevention and control of occupational hazards due to air pollution, noise and vibration. Article 5. Cooperation between employers and workers. Article 11. Periodical medical examinations. Workers in the telephony sector.* In its previous comments the Committee asked the Government to consult employers and workers as provided for in *Article 5* of the Convention with regard to the measures for prevention and protection referred to in *Article 4* which apply in the telephony sector, and to provide information on such consultations as well as on measures taken or contemplated. The Committee also asked the Government to provide information on the medical examinations conducted for workers in the sector, indicating their frequency and providing information on their results. The Committee notes the Government's statement that, in accordance with the report of the Directorate for Occupational Safety and Health and with regard to reducing the length of the working day in the telephony sector, the sectoral committees were assisted by a safety and health team in defining a working day of seven hours, with the option of reviewing the situation. The Committee draws the Government's attention to the fact that this is a case which it has been dealing with for many years and that, in order to assess whether effect is being given to these Articles in the sector concerned, it is essential that it receives information on the manner in which the application of the abovementioned Articles is ensured in practice. ***The Committee again requests the Government to supply information on the application of the abovementioned Articles, indicating the action taken by the labour inspectorate in the telephony sector in relation to these Articles of the Convention and the results achieved, so that it can assess whether the measures taken have resulted in improvements for the workers in this sector.***

In its observation of 2010, the Committee once again noted with regret that, despite asking the Government to reply in detail to the comments made, the Government's report was a general summary and, in the absence of further information from the Government, the Committee was unable to assess the importance of the additional information from various sources which was attached to the Government's report. It pointed out that, in some cases, the information requested did not come within the competence of the unit concerned. The Committee indicated that coordination is necessary both to apply the occupational safety and health (OSH) Conventions and to prepare the respective reports and that, regardless of the internal distribution of competencies, the responsibility for submitting the reports lies with the Government. As a result of the various issues mentioned, the information available did not enable the Committee to assess whether the national law and practice give effect to the obligations deriving from the Convention. However, the Committee noted that certain efforts were being made with regard to OSH in the country. The Committee asked the Government to compile the information requested by the Committee in its previous comments and to reply in detail to the questions posed in 2009. The Committee also asked the Government to contemplate the possibility of requesting technical assistance from the Office with a view to preparing reports and replying to the questions raised in relation to the OSH Conventions. The Committee notes that the Government once again has submitted a brief report which does not reply to the questions raised by the Committee. The Committee is therefore bound to repeat its comments of 2009, which read as follows:

*Article 6(2). Requirement for employers to cooperate in applying prescribed measures.* The Committee notes that the Government merely refers to its previous report without answering the question raised by the Committee. It reminds the Government that under this Article, whenever two or more employers undertake activities simultaneously at one workplace, they shall have the duty to collaborate in order to comply with the prescribed measures and that, in appropriate circumstances, the competent authorities shall prescribe general procedures for this collaboration. ***The Committee asks the Government to provide information on the manner in which it ensures compliance in law and in practice with the duty to collaborate laid down in this Article and, if necessary, to prescribe the procedures for such collaboration.***

*Article 8(1) and (3). Air pollution and vibration.* For several years the Committee has been asking the Government provide information on the establishment, by the Inter-Institutional Committee on Occupational Safety and Health, of exposure limits for corrosive, irritating and toxic substances, by adopting the standards established for such substances by the American Conference of Governmental Industrial Hygienists. The Committee notes that according to the Government, Ecuador has regulated maximum permissible limits of exposure only for asbestos and for all other cases, they apply international standards. ***The Committee requests the Government to indicate which international standards it applies, and submit a copy of the legal provisions providing for the application of these standards. Please also provide documentation on the criteria currently used to define the risks of exposure to air pollution and vibration in the workplace, and the exposure limits, as well as on the manner in which these criteria and limits are supplemented and revised in practice, together with relevant documentation.***

*Article 10. Exceeding exposure limits and protective equipment.* The Committee once again notes that the Government has not sent the information requested. ***It invites the Government to indicate the methods prescribed for determining whether the limits specified in pursuance of Article 8 are exceeded and to specify the guidelines or instructions on the type of personal protective equipment to be provided to the workers exposed should these limits be exceeded.***

*Article 11. Medical examinations (pre-assignment and periodical).* ***Please provide information on measures taken, in law and in practice, to regulate how these examinations are carried out and that periodicity.***

*Article 12. Notification to the competent authority of processes, substances, machinery and equipment which involve exposure.* ***The Committee repeats its request to the Government for information on the measures taken or envisaged to***

*ensure that the use of processes, substances, machinery and equipment involving exposure to air pollution, noise or vibration are notified to the competent authorities.*

*Part IV of the report form. Application in practice. Please provide general information on the manner in which the Convention is applied, together with extracts from inspection reports with an indication of the number and nature of infringements detected in connection with the Convention, including in the telephone sector. Please also provide reports prepared pursuant to the Andean Occupational Safety and Health Instrument that may be relevant, to enable the Committee to ascertain more fully the extent to which the Convention is applied.*

In general, the Committee notes that although it has asked the Government to reply in detail to its comments of 2006, the information sent by the Government is summary and general in nature. The Committee also notes that the type of reply sent by the Government does now allow it to resolve the application of the issues that it has been raising for several years. **The Committee requests the Government to reply in detail to the present comments attaching copies of the legislative provisions, and to provide examples that illustrate the assertions it makes in its report. The Committee draws the Government's attention to the fact that it may seek technical assistance from the Office should it deem this necessary.**

**The Committee again requests the Government to contemplate the possibility of requesting technical assistance from the Office with a view to preparing reports and replying to questions raised in relation to the OSH Conventions, and to supply information on any needs that may arise in this regard.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Asbestos Convention, 1986 (No. 162) (ratification: 1990)**

*Articles 11 and 12 of the Convention. Use of crocidolite and the spraying of asbestos.* In its previous comments the Committee noted that sections 5.1 and 5.2 of the Safety Regulations for the Use of Asbestos of 9 August 2000 prohibit the use of crocidolite and the spraying of all forms of asbestos and provide for possible waivers by the competent authority where there is no alternative and on condition that the health of workers is not endangered, and asked the Government to provide information in this regard. The Committee notes that according to the Government, there have been no cases of any waivers being issued under these provisions of the Regulations.

*Article 17(1) and (2). Demolition of plants containing friable asbestos insulation materials.* In its previous comments, the Committee noted that the Safety Regulation for the Use of Asbestos contain no specific requirement that the demolition of plants containing friable asbestos insulation materials is to be undertaken only by employers or contractors recognized by the competent authority as qualified to carry out such work, or any provision on the workplan which has to be drawn up before such work is started. The Committee requested the Government to take the necessary steps to ensure application of this Article of the Convention. The Committee notes with **regret** that the Government refers to the abovementioned Regulations without indicating the relevant provisions that give effect to these Articles of the Convention and which would respond to the questions raised by the Committee. **The Committee again asks the Government to indicate clearly the provisions of the relevant legislation that give effect to these Articles, and to provide information on their application in practice in the construction industry.**

*Article 21(4). Alternative employment and maintenance of workers' income when continued assignment to work involving exposure is found to be medically inadvisable.* Further to its previous comments, the Committee notes that the Government refers to section 5 of the 1993 Recommendations on Occupational Safety and Health in the Use of Asbestos. The Committee notes that section 5 refers to a programme of medical supervision, providing that "the medical service of the enterprise shall determine and apply medical contraindications when assigning or rotating a post". Although this Recommendation may contribute in part to assignment to alternative employment, it would not appear sufficient for effectively ensuring alternative employment or other means of maintaining income in the case at hand. **The Committee accordingly asks the Government once again to continue to provide information on the manner in which it ensures alternative employment or other measures such as social benefits so as to secure maintenance of the worker's income where the worker's assignment to or maintenance in a job involving exposure is medically inadvisable. Please provide, in particular, practical information on the manner in which maintenance of income is guaranteed, including through social benefits.**

*Part V of the report form. Application in practice. Article 5. Labour inspection services.* With reference to its previous comments, the Committee notes that the Government does not provide the information requested on the application of the Convention in practice. The Government again states that the Occupation Safety and Health Unit is undergoing restructuring with the assistance of the Government of Spain and that the relevant regulations are being disseminated, but provides no further information. The Committee points out to the Government that information on the manner in which effect is given to the Convention is essential to the Committee's examination of how far the Convention is applied. **The Committee again asks the Government to make every effort to provide information on the effect given in practice to the Convention, including reports of the labour inspection services or other bodies responsible for the enforcement of the Convention and supervision of the application of the abovementioned Regulations, so the Committee may gain a fuller picture of the manner in which the Convention is applied in practice. Please provide, for example, general information on the manner in which the Convention is applied, including in the construction sector as far as possible.**

**The Committee again asks the Government to envisage the possibility of requesting technical assistance from the Office in drafting reports and addressing some of the questions raised regarding the occupational safety and health Conventions, and requests it to provide information on any needs that may arise in this regard.**

[The Government is asked to reply in detail to the present comments in 2013.]

## El Salvador

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 2000)

*Article 4 of the Convention. Formulation, implementation and periodic review of national policy in consultation with the social partners.* The Committee notes Agreement No. 93 of 2006 whereby the National Occupational Safety And Health (OSH) policy was adopted. It notes from the preamble that the Higher Labour Council is the tripartite body for social dialogue which, via the National Occupational Safety and Health Commission, is the forum for analysis, definition, consultation and promotion of policies, programmes, projects and actions in the field of occupational hazard prevention. However, it notes that this document does not show the mechanisms for the implementation and periodic review of this national policy. Also with reference to the 2009 General Survey on occupational safety and health, paragraphs 54–59, the Committee emphasizes that, under the terms of this Article, the State must, in consultation with the most representative employers' and workers' organizations, formulate, implement and periodically review a coherent national policy in this field. This implies a dynamic of implementation and periodic review in consultation with the social partners, with a view to ensuring an evaluation of its application in practice and determination of the spheres of action for achieving future improvements. **The Committee requests the Government to provide information on the manner in which the national policy is reviewed and at what intervals, indicating the results of the evaluation of the areas of action for achieving future improvements.**

*Articles 4 and 8. Laws and regulations relating to the national policy.* The Committee notes the adoption, by means of Legislative Decree No. 254 of 2010, of the General Act concerning occupational hazard prevention, published on 5 May 2010. It notes with *interest* that the preamble to the new Act expresses the Government's will to give effect to the present Convention and that it provides for the formulation of programmes to manage occupational hazard prevention at the enterprise level and for the establishment of OSH committees that will participate in the formulation, implementation and evaluation of the policy and programme for the management of occupational hazards. However, it notes that the Act does not appear to give effect to certain articles of the Convention, such as *Article 13*, according to which any worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences. The Government previously indicated that section 106 of the Labour Code identifies the activities that present an imminent and serious danger. However, *Article 13* of the Convention does not refer to activities but to a work situation that may arise, without specifying a particular type of activity, and to the need to protect the worker from undue consequences, and this is not covered by section 106 of the Labour Code or by the new legislation. The Committee informs the Government that further clarification can be found in the 2009 General Survey, paragraphs 145–152. **In view of the legislative changes that have occurred, particularly, the new Act and the national policy, the Committee considers it necessary to undertake a full analysis of the effect given to the Convention in law and in practice and requests the Government to send a detailed report according to the terms of the report form.**

*Article 14. Promoting the inclusion of questions of occupational safety and health and the working environment at all levels of education and training.* The Committee notes with *interest* the activities undertaken by the Government to promote OSH matters. It notes the indication that the Ministry of Labour has concluded agreements with Matías Delgado University in El Salvador and the Polytechnic University of Madrid. It also notes the information relating to technical diploma courses given and persons trained, including 300 OSH technicians at the Ministry of Labour and in the private sector. Furthermore, coordination was increased with the Social Security Institute of El Salvador and with the Association of Agricultural Suppliers for the purpose of training, including in relation to the safe use and storage of pesticides. Work has been ongoing since February 2008 on the formulation of a "local strategic alliance", which continues to pool efforts in the health, labour, environment and education sectors through the implementation of coordinated strategic lines of action, on the basis of the Plan of Action of the 4th Summit of the Americas in 2005. It also notes the different actions designed to reinforce labour inspection with support from the social partners and technical assistance from the Office in the context of the "civil service reinforcement project". Another key task which has been assigned to the labour inspectorate is promotion, training, advice and guidance for workers and employers in the context of the new General Act concerning occupational hazard prevention. **The Committee requests the Government to continue to supply information on the application of this Article of the Convention.**

*Part V of the report form. Application of the Convention in practice.* The Committee notes the detailed information supplied by the Government including extracts from labour inspection reports and the number of workers covered, disaggregated by sex, including statistics on occupational accidents by branch of activity. The Committee notes that, for both men and women, the highest number of recorded accidents is in the manufacturing industry. **The Committee requests the Government to specify in which manufacturing activities the highest number of accidents is recorded, and to continue to supply information on the application of the Convention in practice, including with regard to workers in agriculture.**

*Protocol of 2002 to the present Convention.* The Committee notes with *interest* that the Government has ratified the Protocol of 2002 to the present Convention. **The Committee requests the Government to send a detailed report on the application of the Protocol of 2002 in the terms indicated in the corresponding report form, together with the detailed report on the application of the present Convention.**

*Plan of Action (2010–16).* The Committee wishes to take this opportunity to inform the Government that in March 2010 the ILO Governing Body adopted a Plan of Action to achieve widespread ratification and effective implementation of the key instruments in OSH, namely: the Occupational Safety and Health Convention, 1981 (No. 155), its Protocol of 2002, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (GB.307/10/2(Rev.)). Noting that the Government has already ratified two of the key instruments in the Plan of Action and that it is making intense efforts to give effect to them in law and in practice, the Committee wishes to draw the Government's attention to the fact that, under the terms of the Plan, the Office is available to provide assistance to facilitate the application of the present Convention and its Protocol of 2002 and, if the Government so desires, to clarify the scope and additional aspects of Convention No. 187. **The Committee requests the Government to supply information on any need for technical assistance that it may have in this respect.**

*[The Government is asked to reply in detail to the present comments and to report in detail in 2013.]*

## Ethiopia

### **Occupational Safety and Health Convention, 1981 (No. 155)** *(ratification: 1991)*

The Committee notes with *satisfaction* the information provided by the Government regarding the adoption of the Occupational Safety and Health Directive by the Ministry of Labour and Social Affairs in 2008 (OSH Directive), which lays down general occupational safety and health (OSH) provisions and specific rules on fire prevention, working with chemicals, exposure to radiations, electric and magnetic fields, noise, vibration and rules protecting workers employed in cold/hot thermal environments. In addition, the Committee notes that the OSH Directive defines specific rules on OSH in the manufacturing sector, in the construction sector, and in agriculture.

The Committee is raising other points in a request addressed directly to the Government.

## France

### **French Polynesia**

### **Radiation Protection Convention, 1960 (No. 115)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information regarding the updating of the list of work that requires an increased medical surveillance by the adoption of Decree No. 126 CM of 8 February 2010 which abrogates and replaces Decree No. 1756 CM of 20 December 2002. The Committee also notes that the discussions undertaken in the technical committee with competence for the prevention of occupational risks concerning the improvements to be made to the regulations on exposure to ionizing radiations, which were pursued in 2009 together with Nuclear Safety Authority health officials. The Committee notes the stated purpose of these discussions is to improve the situation with respect to the declaration of ionizing sources, the effectiveness of dosimetric monitoring, to develop complementary regulations adapted to the conditions in French Polynesia and to harmonize law and practice in the work and health sectors and that the further objective is to prepare a draft for 2010 for submission to the Parliament of French Polynesia in 2011. **With reference to the comments the Committee has been making since 1993, the Committee once again urges the Government to pursue its efforts to institute legislative changes to comply with the Convention, to appoint a medical inspector and to inform the Committee of the results of these efforts including any progress made. The Committee also feels bound to reiterate its previous comments, which read as follows:**

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.

**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 Articles 3(1) and 6(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.**

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).**

**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.**

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.***

*Emergency situations.* The Committee refers to the explanations provided in paragraphs 16–27 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.***

*Provision of alternative employment.* ***With reference to paragraphs 28–34 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 Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## **New Caledonia**

### **Radiation Protection Convention, 1960 (No. 115)**

The Committee notes with *interest* the information provided concerning the developments in the area of occupational safety and health in general in the country, including, in particular, the adoption of law No. 2009-7 of 19 October 2009 concerning occupational safety and health (OSH) as part of the implementation of the new Labour Code adopted in 2008. The Committee notes that the new OSH law is broad in scope, that it emphasizes prevention and risk assessment, that it includes detailed provisions regarding the functions of the labour inspection services, and that the Government refers to several activities destined to increase the general awareness to OSH issues. The Committee notes with *regret*, however, that the Government reports that no change in law and in practice has occurred as regards the specific requirements of this Convention. ***The Committee requests the Government to provide a copy of the new OSH law adopted, and urges the Government once again to pursue its efforts to institute legislative changes to comply with the Convention, to appoint a medical inspector and to inform the Committee of the results of these efforts including any progress made. Against this background, the Committee is bound to reiterate its previous comments, which read as follows:***

The Committee notes the information contained in the Government's report, including the information concerning the adoption of Decision No. 547 of 25 January 1995 relating to the protection of workers against the hazard of ionizing radiations, as well as Orders Nos 3165-T, 3167-T, 3169-T, 3171-T and 3173-T of 10 August 1995. It wishes to bring the Government's attention to the following points.

*Article 1 of the Convention. Tripartite consultation.* The Committee notes that the legislation referred to by the Government as giving effect to the Convention does not seem to contain provisions ensuring consultation with the representatives of the workers and the employers regarding the preparation and implementation of measures giving effect to the Convention. ***The Committee requests the Government to indicate the measures taken or envisaged for this purpose.***

*Article 3(1) and (2), and Article 6.* ***Appropriate measures for ensuring the effective protection of workers against ionizing radiations and for the review, in the light of knowledge available at the time, of the maximum permissible doses of ionizing radiations.*** In its report, the Government refers to the exposure limits set forth in sections 5 to 8 of Decision No. 547/CP of 25 January 1995. The Committee notes that these exposure limits reflect those set forth by the International Commission on Radiological Protection (ICRP) in 1977. In this regard, the Committee brings the attention of the Government to the fact that under the terms of *Article 3(1) and (2), and Article 6*, of the Convention, all appropriate steps shall be taken to ensure effective protection of workers, as regards their health and safety, against ionizing radiations and that, for this purpose, maximum permissible doses of ionizing radiations shall be kept under constant review in the light of "knowledge available at the time" and "new knowledge". The Committee recalls that, following a recommendation of 1977, these maximum doses have been revised by the ICRP and that new exposure limits were set forth in its recommendations, adopted in 1990. The Committee refers to its recommendations in its 1992 general observation and emphasizes, in paragraph 11, that the ICRP set, *inter alia*, a maximum admissible dose limit of 20 mSv per year, averaged over five years (100 mSv in five years), but not exceeding 50 mSv in any single year. The Committee also invites the Government to refer to paragraph 13 of its general observation concerning the maximum admissible dose for pregnant women. The Committee notes that the legislation to which the Government refers is not in conformity with the latest recommendations of the ICRP according to which women who may be pregnant shall be ensured a level of protection broadly comparable with that provided for members of the general public (i.e. effective dose not to exceed 1 mSv per year). The recommendations also envisage that, once the pregnancy is declared, the equivalent dose limit to the surface of the woman's abdomen should not exceed 2 mSv for the remainder of the pregnancy. Finally, the Committee notes that the legislation giving effect to the Convention does not seem to contain provisions ensuring the protection of the public in general against exposure to radiations. ***The Government is requested to indicate the measures taken or envisaged with regard to these points, thus ensuring the effective protection of the workers, in the light of the knowledge available at the time, according to the recommendations issued in 1990 by the ICRP.***

*Article 9(2). Instruction for workers.* The Committee notes that section 10, paragraph 3, of Decision No. 547/CP of 25 January 1995, provides that any handling of industrial radiography or radiology apparatus shall be carried out by an employee having received special training. The Committee also notes that the second subparagraph of this section provides that an exemption to this measure may be granted by the Director of Labour in the case of electrical generators for fixed X-ray machines. **The Committee requests the Government to indicate the measures taken or envisaged to ensure that all workers directly engaged in radiation work are duly trained as well as to indicate the criteria according to which the exemptions provided for in section 10, paragraph 3, subparagraph 2, of Decision No. 547/CP of 25 January 1995, are granted.**

*Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* The Committee notes that the legislation envisaged for the application of the Convention does not seem to contain provisions ensuring that no worker shall be employed or shall continue to be employed in work by reason of which the worker could be subject to exposure to ionizing radiations contrary to qualified medical advice. In this context, the Committee wishes to draw the Government's attention to paragraph 32 of the 1992 general observation under the Convention where it is indicated that every effort must be made to provide the workers concerned with suitable alternative employment, or to maintain their income through social security measures or otherwise where continued assignment to work involving exposure to ionizing radiations is found to be medically inadvisable. **In the light of the above indication, the Committee requests the Government to consider appropriate measures to ensure that no worker shall be employed or shall continue to be employed in work by reason of which the worker could be the subject of exposure to ionizing radiations contrary to medical advice and that, for such workers, every effort is made to provide them with suitable alternative employment or to offer them other means to maintain their income and requests the Government to keep it informed in this respect.**

**[The Government is asked to reply in detail to the present comments in 2012.]**

### **Maximum Weight Convention, 1967 (No. 127)**

The Committee notes with *satisfaction* the information concerning the adoption of Decree No. 2009-4271/GNC of 22 September 2009 containing minimum occupational safety and health (OSH) requirements concerning manual handling of loads. The Decree prescribes specific maximum limits of loads to be carried by adult men, women and young workers and the conduct of risk assessments in relation to the manual handling of loads and gives effect to the provisions of the Convention. The Committee also notes the information that the Government presently implementing is 2009-14 OSH policy based on prevention which includes practical measures including campaigns to increase the general awareness knowledge on OSH. **The Committee requests the Government to submit to the Office a copy of the abovementioned national policy on OSH.**

*Part V of the report form. Application in practice.* **The Committee requests the Government to provide a general appreciation of the manner the Convention is applied in the country including extracts from inspection services and information concerning the number and nature of contraventions reported and the action taken on them, etc.**

## **Germany**

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1993)**

The Committee notes the detailed and comprehensive response provided by the Government including references to legislation and available electronic sources of information. The Committee notes the information provided concerning effect given to the following Articles of the Convention: *Articles 2(h), 14(1), 15(1)(e), 17(3) and 12(1).*

The Committee notes the observations submitted by the German Confederation of Trade Unions in a communication received on 24 November 2011 and which was transmitted to the Government on 28 November 2011. The Committee will address these comments at its next session in the light of any comments the Government may wish to make in response thereto.

*Article 30(1). Provision of personal protective equipment.* The Committee notes with *interest* the detailed information provided by the Government regarding the implementation of the provision of the Convention based on a consistent application of a risk management approach. The Committee notes in particular that the Government underscores that the objective of the relevant legislation – including the ordinance on the use of personal protective equipment (PPE) – is to arrive at the independent management of safety and health protection by enterprises, the core elements of such management being: risk assessment; the information and training of workers; and the inclusion of workers in decision-making processes of the enterprise having regard to safety and health at work. The Government further states that therefore, as a rule, the Occupational Safety Act and the ordinances based on risk management lay down only essential framework conditions so as not to prevent employers and workers from achieving the level of autonomous action that is the aim of legislation; that these general requirements are underpinned by more concrete sub-statutory sets of rules and that employers implementing these rules can assume that they comply with the legal requirements. The Government indicates however, that a deliberate choice was made not to draw up a set of rules of this kind to assist with the implementation of the ordinance on the use of PPE as, according to the general principles set out in Article 4 of the Occupational Safety Act, individual protective measures such as the wearing of PPE are subordinate to technical and organizational protective measures. The Government further states that as a result, PPE may be used either only in addition to other protective measures or only if risk assessment has showed that technical or organizational measures cannot be taken at all or merely to an extent that is considered insufficient. The Government goes on to emphasize that it

should further be taken into consideration that the use of PPE in itself can impair or damage health, and that it is not advisable for the legislator to prescribe the compulsory use of PPE in certain work situations on construction sites as it is impossible for all possible constraints to be covered by legislation; and that therefore only the employers can take all constraints into consideration, based on individual situation-related risk assessments. The Government also refers to the fact that other legislation specifically requires the provision and use of PPE if certain limit values are exceeded (for example the noise and vibration protection ordinance, hazardous substances ordinance and technical rules accompanying the hazardous substances ordinance, notably TRGS 500). Finally the Government indicates that the statutory accident insurance companies have made available a number of practical guides to help employers select appropriate PPE in areas including for example on the use of breathing equipment and on retaining best and coupling mans for retaining belts. The Committee wishes to recall that this approach places high demands on the enforcement of the provisions on risk assessment and their effective application in practice. ***The Committee requests the Government to provide further detailed information on the application of this approach in practice including examples of the methods used to ensure such an effective implementation of this Article in practice.***

*Part VI of the report form. Application in practice.* The Committee notes the information provided regarding the elaboration of the common occupational safety and health strategy between the competent inspectorates of the Länder and the statutory accident insurance institutions, in which they agreed on core activities and harmonized information, advisory and implementing measures to reduce accidents and occupational diseases in the construction sector, in particular in building and assembly scaffolding and demolition, but that no interim reports are available for the reporting period. ***The Committee asks the Government to provide further detailed information on the impact of this common approach on the number of occupational accidents and diseases in the referenced sectors. In that context the Committee requests the Government to also provide information on whether and to what extent particular attention is given to occupational safety and health in demolition work involving demolition of buildings containing asbestos and any information on the incidence of asbestos related diseases among construction workers.***

## Guatemala

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1991)**

*Laws and regulations and the Plan of Action (2010–16).* The Committee notes the information provided once again by the Government indicating that the new Occupational Safety and Health Regulations have not yet been adopted. The Committee has been referring to this matter for many years and observes that the Government appears to be encountering difficulties in the adoption of the Regulations, which would establish the general occupational safety and health framework and would facilitate the application of the other occupational safety and health (OSH) Conventions that have been ratified. In this respect, the Committee takes this opportunity to inform the Government that in March 2010 the Governing Body adopted a Plan of Action to achieve widespread ratification and effective implementation of the key OSH instruments, which are the Occupational Safety and Health Convention, 1981 (No. 155), its Protocol of 2002 and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (GB.307/10/2(Rev.)). The Committee wishes to draw the Government's attention to the fact that, under the terms of the Plan of Action, the Office is available to provide assistance to governments, where appropriate, to assist in bringing their law and practice into conformity with these key OSH Conventions with a view to promoting their ratification and effective implementation, as well as to provide assistance in relation to the other OSH Conventions. The Committee also wishes to indicate that the approach adopted by these three key instruments can make an effective contribution to the management of OSH systems based on a preventive, coherent and tripartite approach to OSH. ***The Committee invites the Government to examine the obstacles encountered in the adoption of the Regulations referred to above, and particularly for the adoption of legislation to give effect to the present Convention, and requests it to provide information on these obstacles and on any need for technical assistance identified in this connection.***

The Committee is raising other points in a request addressed directly to the Government.

## Guinea

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government indicates, in its last report, that a draft Order respecting air pollution, noise and vibration, cesspools, drinking water and protection against radiations had been prepared, but was subsequently separated into several draft Orders to make them more easily applicable. These draft Orders should have been adopted some time ago. However, the Advisory Commission on Labour and Social Legislation, as a tripartite commission, is composed of various members with very different concerns and sometimes constraints at the national level, which prevented it from completing its usual session. Furthermore, the Government states that the State of Guinea has priorities, even with regard to the adoption of laws and regulations. The Committee states that the Government has been expressing the intention for many years of adopting regulations to protect workers against ionizing radiations, without however in practice taking the necessary measures to this effect. It notes

with regret that the Government's attitude disregards the urgency of taking the necessary legislative action for the adoption of regulations respecting protection against ionizing radiations. In this respect, the Committee recalls that this Convention was ratified by Guinea in 1966 and that since then the Committee has had to comment on various points concerning the application of the Convention. The Committee recalls that, when the Government takes the sovereign decision to ratify a Convention, it undertakes to adopt all the necessary measures to give effect to the provisions of the Convention in question. The Committee also considers that, while the Government may cite the existence of other matters which must take priority in the adoption of laws and regulations, it would be appropriate after the number of years that have elapsed for it to take the necessary measures to ensure that the draft Orders relating to the application of the provisions of this Convention are adopted as soon as possible. **The Committee therefore once again hopes that the Government will soon be in a position to report on the adoption of provisions covering all activities involving the exposure of workers to ionizing radiations in the course of their work and in conformity with the dose limits referred to in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and in the Basic Safety Standards for Protection Against Ionising Radiation and for the Safety of Radiation Sources of 1994.**

*Articles 2, 3(1), 6 and 7 of the Convention.* In its previous comment, the Committee noted the Government's statement that the current dose limits correspond to an equivalent of an annual dose of 50 mSv for persons exposed to ionizing radiations. The Committee had recalled the maximum dose limits for ionizing radiations established in the 1990 Recommendations of the International Commission on Radiological Protection and in the 1994 Basic International Safety Standards for Radiation Protection. For workers directly engaged in work exposed to radiation, this limit is 20 mSv per year averaged over five years (100 mSv over five years), and the actual dose must not exceed 50 mSv in any year. The Committee also draws attention to the dose limits envisaged for apprentices aged from 16 to 18 years, set out in Annex II, paragraph II-6, of the 1994 Basic International Safety Standards for Radiation Protection. **The Committee once again hopes that the maximum doses and quantities to be included in the Government's draft Order will be in conformity with the maximum permitted doses and quantities, and that the Government does indeed envisage adopting the above draft Order.**

*Situations of occupational exposure in emergencies and provision of alternative employment.* **The Committee once again requests the Government to indicate the measures which have been taken or are envisaged in relation to the points raised in paragraph 35(c) and (d) of the conclusions of its 1992 general observation under this Convention.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 11 of the Convention.* The Committee notes the Government's reply to its previous comments indicating that it has taken due note that section 170 of the Labour Code seems to permit employers to authorize or to order workers to remove safety devices, contrary to *Article 11* of the Convention. It also notes the Government's statement that such authorization is only based on prior measures taken by the employer to avoid all exposure to occupational risks, and that in any event it is the responsibility of the employer to promote best safety conditions at workplaces periodically visited by the labour inspectorate. **The Committee would nonetheless request the Government to consider including in the draft Labour Code implementing regulations that are in preparation, a specific provision prohibiting such authorization or order to remove safety devices, as required by this Article of the Convention.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government, in accordance with section 171 of the Labour Code, will be submitting draft orders on sanitary facilities in workplaces and the provision of drinking water and non-alcoholic drinks in enterprises and establishments. The Committee also notes the draft decree establishing Committees on Occupational Safety, Health and Working Conditions (CHSCT).

**The Committee recalls that, since 1989, it has been asking the Government to adopt the ministerial orders envisaged in section 171 of the Labour Code in the following areas: ventilation (Article 8 of the Convention); lighting (Article 9); drinking water (Article 12); seats for all workers (Article 14); and noise and vibrations (Article 18) in order to give effect to these provisions of the Convention. The Committee hopes that such decrees will be adopted after consultation with the representative organizations of employers and workers, in accordance with Article 5 of the Convention.**

*Article 1 of the Convention.* The Committee recalls its previous observation in which it drew attention to the fact that all workers who are mainly engaged in office work, including workers in the public services, are covered by the Convention. **The Committee hopes that the Government will take the necessary measures in the near future to ensure the full application of the Convention in the public service and requests the Government to indicate the progress made in this regard.**

*Part IV of the report form.* **The Committee wishes to draw the Government's attention to the fact that the information that it is requested to provide in this respect concerns the number of workers covered by the national legislation and the number and nature of the contraventions reported. This type of information may be found, for example, in the reports of the labour inspection services.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

### **Benzene Convention, 1971 (No. 136) (ratification: 1977)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government does not presently intend to amend Order No. 2265/MT of 9 April 1982, but envisages formulating, in consultation with the social partners, technical guidelines on harmful, hazardous and carcinogenic

products, particularly benzene. The Committee also notes that the guidelines envisaged will be made available to all users. *It hopes that the guidelines will be formulated and adopted without delay and requests the Government to provide information on any progress made in this matter.*

*Article 4(2) of the Convention.* The Committee notes the Government's information on processes which use methods of work that are as safe as those carried out in an enclosed system. It notes in particular that the increase in labour and health inspections in enterprises and the involvement of Workers' Committees for Health, Safety and Working Conditions (CHSCT) ensure that the processes are carried out under the safest possible conditions. *The Committee requests the Government to provide an indication of the frequency of the inspections carried out in enterprises that use benzene. It also requests the Government to provide copies of the statistics collected during inspections, to enable the Committee to assess the extent to which this provision of the Convention is applied in practice.*

*Article 6(2) and (3).* With regard to the concentration of benzene vapour in the air of workplaces, the Committee notes that a draft Order concerning data files on the safety of chemical substances establishes a level not exceeding 10 ppm or 32 mg/m<sup>3</sup> over an eight-hour time-weighted average. The Committee accordingly concludes that the ceiling established in the draft Order is lower than the one established in the Convention when it was adopted in 1971. It nevertheless wishes to point out to the Government that the threshold limit value recommended by the American Conference of Government Industrial Hygienists (ACGIH) is 0.5 ppm over an eight-hour time-weighted average. *It therefore invites the Government to take measures to bring the ceiling value established by the draft Order into line with the value recommended by the ACGIH. The Committee also requests the Government to specify the guidelines issued by the competent authority on the procedure for determining the concentration of benzene in places of employment. It also requests the Government to provide a copy of the abovementioned Order as soon as it is adopted.*

*Article 8(2).* With regard to limiting the duration of exposure of workers who, for special reasons, may be exposed to concentrations of benzene in the air of places of employment which exceed the maximum established, the Committee notes that, according to the Government, a study is under way on this matter. *It requests the Government to provide information on any progress made in this regard.*

*The Committee also requests the Government to provide relevant extracts of the inspection reports and the statistics available on the number of employees covered by the legislation as well as the number and nature of violations reported, as requested under Part IV of the report form.*

In its previous comments, the Committee noted the Government's statement that a draft Order on occupational cancer giving full effect to the provisions of the Convention had been formulated with ILO technical assistance. *The Committee requests the Government to indicate whether this Order is still under consideration for enactment.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1976)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Referring to the comments the Committee has been making for several years concerning *Article 2(1) of the Convention*, the Government has explained in several of its reports that, under section 4 of Order No. 93/4794/MARAFDPT/DNTLS of 4 June 1993, an employer is required to replace a carcinogenic substance or agent by a non-carcinogenic or less carcinogenic substance or agent provided that one exists, each time that such replacement can be envisaged in view of the given circumstances. The Committee notes that, in its last report, the Government indicates briefly that measures will be taken as soon as the new Labour Code is adopted to align the provisions of section 4 of the abovementioned Order. *The Committee asks the Government to send a copy of the new Labour Code as soon as it is adopted and to indicate any progress made in this matter.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 1(1) of the Convention.* The Committee notes that the draft conditions of service of the public service, which is being discussed within the Government, should contain the necessary measures to give full effect to the provisions of this Article of the Convention through their application in practice in all branches of economic activity. *The Committee requests the Government to keep the International Labour Office informed of developments relating to these conditions of service and to provide a copy of them when they have been adopted.*

*Articles 4, 8 and 10.* The Committee notes the information concerning a draft Order, prepared by the Government, which was due to be examined by the Advisory Committee on Labour and Social Legislation. This draft text would cover cesspits, drinking water, noise, vibration, air pollution, etc. *The Committee requests the Government to indicate whether this text is issued under section 171(1) of the Labour Code.* It reminds the Government that, under the terms of *Article 4*, the provisions adopted must prescribe the specific measures to be taken both for the prevention of occupational hazards due to air pollution, noise and vibration, and to control and protect workers against these hazards. The Committee also reminds the Government that, under the terms of *Article 8* of the Convention, the above draft text should provide for the establishment of criteria for determining the hazards of exposure to air pollution, noise and vibration and should specify exposure limits. The Committee notes that the Government's report does not indicate whether the above draft text provides, as required by *Article 10*, for the provision of personal protective equipment where the measures taken to eliminate hazards do not bring air pollution, noise and vibration within the limits specified by the competent authority. *The Committee requests the Government to keep the Office informed of the adoption of this draft text, to provide a copy when it has been adopted and to inform it of any other specific measures taken for the application of the provisions of Articles 4, 8 and 10 of the Convention.*

*Article 9.* *The Committee requests the Government to indicate the technical measures and supplementary work organizational measures intended to eliminate the above hazards.*

*Article 14.* The Committee notes that the National Occupational Medicine Service is equipped with a laboratory which is inadequately provided with appropriate instruments for its needs, but that the Government plans within a relatively short period to provide the above Service with modern and appropriate equipment. ***It requests the Government to keep the Office informed of the progress made in equipping the National Occupational Medicine Service and to inform it of any other measures taken to promote such research.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Hungary

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1994)**

The Committee notes the information contained in the Government's report, including on the adoption of new laws and regulations, including the amendment to Decree No. 25/2000 (IX.30.) EüM-SzCsM to take into account new limit values related to the exposure to asbestos; Decree No. 66/2005 (XII.22.) EüM-SzCsM concerning the exposure to noise and Decree No. 22/2005 (VII.24.) EüM of the Minister of Health regarding exposure to vibration. Based on available information the Committee notes the effect given to *Articles 8(1) and (2), and 9* of the Convention. The Committee notes that the referenced legislation was not attached to the report. ***The Committee requests the Government to continue to provide information on legislative developments in the country and to make the relevant legislative texts available to the Committee.***

*Article 1 of the Convention. Scope of application and definitions.* The Committee notes that the report is silent as to whether the new legislation, adopted by the Minister of Health has amended the scope of national legislation so as to ensure compliance with this provision of the Convention and that only excerpts of the relevant texts have been made available to the Committee. ***The Committee requests the Government to provide further detailed information regarding the scope of the relevant legislation.***

*Article 11(3). Provision of alternative employment.* The Committee notes that the information provided by the Government does not include a response to the comment raised by the Committee regarding the rules concerning the transfer of workers who have been exposed to air pollution noise or vibration where continued assignment is considered medically inadvisable, and measures taken to ensure that transferred workers are able to maintain their income. In this respect, the Committee would like draw the Government's attention to the fact that the provision of *Article 11(3)* also relates to situations *before* any occupational disease has been declared but *after* a determination that continued assignment to work involving exposure to air pollution noise and vibration has been found to be medically inadvisable. ***The Committee again requests the Government to provide further information on measures taken to ensure the transfer to alternative employment of workers who, based on medical opinion, are required to discontinue work involving exposure to air pollution, noise or vibration and how it is ensured that such workers are able to maintain their income.***

*Article 12. Notification to the competent authority of exposure of workers to occupational hazards.* The Committee notes that in its response the Government indicates that, in conformity with harmonized legislation with the European Community, there are no notification obligations with respect to risks related to vibration and noise at workplaces. The Committee also notes that the report is silent as regards the competent authority's entitlement to authorize or prohibit the use of certain processes, machinery and equipment as provided in *Article 12*. The Government also indicates that, following consultations in the tripartite National ILO Council on the report for the ILO, the workers' organizations expressed the view that national law was not in conformity with *Article 12* of the Convention. The Committee deems it relevant yet again to refer to paragraph 68 of its general comments on the application of Conventions on occupational safety and health in its 1997 General Report, where the Committee stated that "there is a difference between international standards and regional standards in the approach adopted to occupational safety and health problems and the manner in which they are to be addressed. The incorporation of regional standards into national legislation is not always sufficient to meet the requirements of the international standards of the ILO. States should therefore be reminded that greater attention should be paid to these standards in the revision and formulation of national laws and regulations". ***The Committee requests the Government to clarify measures taken to ensure full conformity with this provision of the Convention in law and in practice taking the comments of the workers' organizations into account.***

*Part IV of the report form. Application in practice.* The Committee notes that the report does not contain any information on the application in practice of the Convention as requested. ***The Committee requests the Government to provide a general appreciation of the application in practice of the Convention, including, for instance, extracts from the reports of the inspection services.***

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1989)**

The Committee notes the detailed report submitted by the Government, including information regarding relevant legislation and statistics regarding application in practice of the Convention. Based on available information, the Committee notes the effect given to *Articles 16, 19, 21 and 23 of the Convention.*

*Part IV of the report form. Application in practice.* As regards application in practice, the Committee notes the statistical data provided regarding the construction industry, including information on infringements of relevant legislation in 2006–09, and the number of occupational accidents recorded in 2007–09. In terms of infringements, the information provided seems to indicate a downward trend regarding infringements of rules concerning protective equipment and an upward trend regarding infringements of the rules on shock protection. As regards the information regarding occupational accidents, it is difficult to determine any distinct trends. The Committee also notes the information in the Government's report that, following consultations with employers' and workers' organizations – including on the workers' side the National Federation of Autonomous Trade Unions; the Trade Union of Intellectuals; the Democratic League of Independent Trade Unions; the National Confederation of Workers' Councils; and the Co-operation Forum of Trade Unions – the workers' organizations have observed that resolutions on imposing labour protection fines were passed only for a fraction of the breaches of labour protection. In response thereto, the Government indicates that the inspection authority may impose a labour protection fine only in cases provided for in section 82(1) of Act XCIII of 1993 on labour protection which provides, inter alia, that fines be imposed in situations where the infringements “seriously endanger the life, physical integrity and health of workers” and that the inspector shall resort to misdemeanour proceedings in other cases implying serious risks. **The Committee requests the Government to provide further information on measures taken to address the upward trend regarding infringements of rules on shock protection and on how section 82(1) of Act XCIII of 1993 is applied in practice in the light of the comments of the workers' organizations.**

## Iraq

### **Radiation Protection Convention, 1960 (No. 115) (ratification: 1962)**

The Committee notes with *satisfaction* the adoption and transmission to the ILO of Internal Regulations No. 1 (2006) concerning the Control of the use of Radioactive Sources in Iraq (2006 Regulations) issued by the Radioactive Source Regulatory Authority that these regulations provide for the steps to be taken 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 *Articles 3(1), 5, 6(2) and 11 of the Convention*, including established dose limits for the various categories of persons referred to in the Convention, and that the dose limits so prescribed are in accordance with the 1990 Recommendation of the International Commission on Radiological Protection to which the Committee refers in its 1992 general observation under the Convention.

The Committee is raising other points in a request addressed directly to the Government.

## Italy

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1981)**

*Legislation.* The Committee notes the information provided by the Government in its last report. It notes with *satisfaction* that the Legislative Decree No. 81 of 9 April 2008, the “Single Text for the Protection of Safety and Health in Workplaces (TULS)”, establishes a comprehensive framework for the protection of workers exposed to carcinogenic substances and agents (Part IX, Chapter II). Concerning its previous comments, the Committee takes note of the fact that the new legislation replaces different regulations on safety and health at workplace, inter alia, the Legislative Decree No. 626 of 19 September 1994. In addition, the Committee takes notes of the fact that, by means of sections 234 and 245 of the Legislative Decree No. 81 of 2008, Italian law, in line with *Article 1 of the Convention*, provides for a list of carcinogenic and mutagenic substances and ensures that this list is periodically reviewed by the National Consultative Commission for Toxicology. The Committee notes the update of the list of carcinogenic and mutagenic substances attached to the Government's report. Section 243 of the named Legislative Decree ensures the conformity of Italian legislation with *Article 3* of the Convention, by establishing a system of records, composed of a registry and a sanitary file for each worker at risk and the obligation to keep those files at the Higher Institute for Occupational Safety and Health (ISPESL). This body is in charge of data collection and monitoring on occupational hazards related to exposure to carcinogenic substances (the data are received from the National Institute for Social Security, the National Institute of Statistics, the National Insurance Institute for Employment Injuries, physicians and public and private hospitals); each year the ISPESL communicates them to the Ministry of Health and the Ministry of Labour.

*Article 5 of the Convention. Medical examinations and health supervision. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable.* In its previous comments the Committee referred to the situation of workers for whom a continued assignment to work involving exposure to carcinogenic substances was found medically inadvisable. The Committee pointed out that, in case a relocation of the workers to other positions (at equivalent or lower level) within the same enterprise was not possible, they needed to be assisted in finding alternative employment or with measures to protect their income. Against this background, the Committee takes note of the fact that the previous legislation regulating this issue is no longer in force but that section 42 of the TULS requires the employer to assign the worker who has been declared unable to work under exposure to carcinogenic substances to an equivalent position and, when this is not possible, to a lower position (while retaining the same remuneration). The Committee further notes that, according to section 8, Law

No. 68 of 12 March 1999, in case the assignment to another position with the same employer is not possible, the placement agencies are in charge of helping the dismissed workers to find alternative employment, thus in conformity with point 14 of the ILO Occupational Cancer Recommendation, 1974 (No. 147). In addition, the Committee takes note of the fact that, according to Decree 1124 of 30 June 1965, when workers contract an occupational disease (as under the list contained in Annex 4 of the named Decree), the National Insurance Institute for Employment Injuries (INAIL) provides for, between others, compensation for temporary and permanent inability to work. Concerning health supervision, the Committee notes the information supplied by the Government on the medical examinations to be conducted before and during the employment activities of workers exposed to carcinogenic substances. The Committee reminds the Government that, under the terms of this Article, these examinations must also be carried out after the period of employment. ***The Committee requests the Government to make provision in law and in practice for medical examinations following the period of employment and requests it to provide information in this respect.***

*Part IV of the report form and Article 6(c). Inspection reports, statistics and appropriate system of inspection.* With reference to its previous comments, the Committee notes with **interest** the detailed information provided by the Government. The Committee notes the data on occupational diseases collected by the INAIL in the period between 2006 and 2011, with statistics disaggregated by region, sector of activity and type of disease. According to these statistics, between 2006 and 2010 there has been an increase of 58.3 per cent of occupational diseases reported (from 26,752 in 2006 to 42,347 in 2010), out of which the majority is related to musculoskeletal disorders (from 10,069 in 2006 to 25,937 in 2010, with an increase of 157.6 per cent), and hearing loss (from 6,483 in 2006 to 6,277 in 2010, with a decrease of 3.2 per cent). The Committee also notes that the asbestos exposure-related diseases continue to increase. The Committee further notes the information provided by the Government on the Italian Information System on Occupational Exposure to Carcinogens (SIREP), which has been created by the ISPESL with the aim to monitor the exposure of workers to carcinogenic substances and the report of the National Registry of Mesotheliomas (ReNaM) for the period 1993–2004, which contains data on the types of cancers contracted at workplaces disaggregated by gender. According to this data, out of 6,640 cases of mesothelioma, in the period between 1993 and 2004, the majority of which are pleural cancers (6,203 cases); amongst the others there are cancers developed on the peritoneum area (396 cases). The Committee also notes the data concerning asbestos-related lung cancer mortality for the period 1980–2001 (12,216 pleural cancer deaths). ***The Committee, therefore, invites the Government to continue providing updated information and statistics on the number of professional cancers, with data disaggregated also by type of cancer.***

## Japan

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1977)**

*Article 1 of the Convention. Periodic updating of the carcinogenic substances that are either prohibited or subject to authorization or control.* The Committee notes with **interest** the information that the coverage of national legislation concerning carcinogenic substances and agents has been extended to include all kinds of asbestos and products containing asbestos as well as certain nickel compounds and formaldehyde among the regulated and prohibited substances, and that the definition of “asbestos” now includes “amosite” and “crocidolite” following the definition of asbestos of the ILO. The Committee also notes the comments by the Japanese Trade Union Confederation (JTUC–RENGO) attached to the Governments’ report, according to which it raises concerns that the efforts of the Japanese Government in carrying out toxicity tests (including threshold assessments) remains inadequate due to budgetary constraints. JTUC–RENGO refers to reductions made in both the duration of testing procedures and the number of specimens tested, and considers that it is necessary for the Government to develop alternative testing procedures, in line with advances in toxicology, that can be carried out in shorter testing periods and at less cost, in particular in carcinogen research. ***The Committee requests the Government to provide information on measures taken to address the concerns raised by JTUC–RENGO.***

The Committee is raising other points in a request addressed directly to the Government.

## Kuwait

### **Benzene Convention, 1971 (No. 136) (ratification: 1974)**

*Article 6(3) of the Convention. Measurement of the concentration of benzene. Part IV of the report form. Application in practice.* The Committee notes that it has, on several occasions in previous comments, requested the Government to provide concrete information on how Order No. 210 of 2 October 2001 on executive regulations of Act No. 21/1995 is applied in practice and how compliance with the required limit for exposure to benzene of 0.5 mg/l is maintained in practice. The Committee yet again notes that the Government in its most recent report repeats its reference to the activities of the labour inspection services, without submitting any supporting information on actual labour inspection carried out. ***Recalling that Article 6(3) of the Convention requires the competent authority to issue directions on carrying out the measurement of the concentration of benzene in the workplace, the Committee urges the Government to indicate the measures taken or envisaged in this regard. The Committee also requests the Government to provide information on the application of the Convention in practice, including extracts from the reports of***

*inspection services and information on the number of employed persons covered by the measures adopted, to give effect to the Convention and on the number and nature of the contraventions reported.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Kyrgyzstan**

### **Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the most recent report on the application of this Convention was received in 1994 and that it is yet uncertain whether *Articles 5(3), 6(2), 12 and 14* are fully applied in the country. The Committee also notes, however, the publication in 2008 by the Government, in collaboration with the ILO, of *Occupational safety and health in the Kyrgyz Republic – National profile*. According thereto a number of laws, regulations and technical standards have been adopted since 1994 which indicate promising developments in the area of occupational safety and health. The Committee also notes that according to this national profile the Government is considering the ratification of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Safety and Health in Construction Convention, 1988 (No. 167), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). ***Welcoming these developments, the Committee asks the Government to report on progress in this regard. It also urges the Government to fulfil its reporting obligations under this ratified Convention, and invites the Government to consider whether it would benefit from technical assistance from the Office regarding the development of legislation giving effect to the provisions of the present Convention and the reporting obligations associated with such ratified Conventions. In the meantime the Committee must yet again repeat its previous observation which read as follows:***

*Article 5(3) of the Convention. The Committee asks the Government to provide a copy of collective and other agreements containing mutual obligations designed to ensure safe and healthy working conditions.*

*Article 6(2). The Committee asks the Government to provide information on the general procedures prescribed for the collaboration of employers where two or more of them undertake activities simultaneously at one workplace. It also asks the Government to provide a copy of the Standards and Regulations for Health and Safety in Construction Work (No. III-4-80) and of the Order of the Ministry of Industry and Energy governing work done jointly by several enterprises at the same workplace in coalmining.*

*Article 12. The Committee asks the Government to provide a copy of the Regulations on state medical supervision referred to in its report.*

*Article 14. The Committee asks the Government to describe the measures taken to promote research, in accordance with this Article.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## **Luxembourg**

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2001)**

*Article 4 of the Convention. National policy.* The Committee notes with *satisfaction* that, within the framework of the periodic review of its national occupational safety and health (OSH) policy, the Government, in consultation with the social partners, proceeded to ratify in 2008 the Protocol of 2002 to the present Convention and the following Conventions, for which the first reports were received on 25 October 2010: the Radiation Protection Convention, 1960 (No. 115); the Guarding of Machinery Convention, 1963 (No. 119); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); the Maximum Weight Convention, 1967 (No. 127); the Benzene Convention, 1971 (No. 136); the Occupational Cancer Convention, 1974 (No. 139); the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148); the Occupational Health Services Convention, 1985 (No. 161); the Asbestos Convention, 1986 (No. 162); the Safety and Health in Construction Convention, 1988 (No. 167); the Chemicals Convention, 1990 (No. 170); the Prevention of Major Industrial Accidents Convention, 1993 (No. 174); the Safety and Health in Mines Convention, 1995 (No. 176); the Safety and Health in Agriculture Convention, 2001 (No. 184). In this respect, the Committee takes this opportunity to recall that in March 2010 the Governing Body adopted a Plan of Action 2010–16 to achieve widespread ratification and effective implementation of the key occupational safety and health instruments (Convention No. 155, its Protocol of 2002 and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)). As the Government has ratified the present Convention and its Protocol, as well as sectoral and thematic OSH Conventions, the Committee takes this opportunity to draw the Government's attention to the fact that Convention No. 187 effectively supplements the holistic approach to OSH. ***The Committee invites the Government to provide information in the manner in which the periodical review of its national policy, as envisaged in this Article, is undertaken, and its outcome.***

The Committee is raising other points in a request addressed directly to the Government.

## **Occupational Health Services Convention, 1985 (No. 161) (ratification: 2008)**

*Article 3 of the Convention. Progressive development of occupational health services for all workers.* The Committee notes the Government's first report providing detailed information and it notes with *interest* the information that occupational health services have been operational in Luxembourg since January 1995 for all workers in the private sector and since 2004 for the public sector. In the private sector, there are three major types of occupational health services: (1) inter-enterprise services organized by sector; (2) enterprise health services; and (3) a compulsory multi-sectoral health service covering all enterprises which have not opted for one of the first two solutions. It also notes the practical information provided indicating, among other matters, that occupational health has become an indispensable link in the system of medical supervision of the active population, as in 44 per cent of cases the occupational physician is the only doctor consulted during the year.

## **Mexico**

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011).**

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO).* The Committee notes the discussions that took place in the Conference Committee on the Application of Standards in June 2011, the conclusions of the Conference Committee, a communication from the National Union of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF) received on 2 September 2011, the Government's report received on 11 October 2011 and its appendices, and the observations from the Government on a communication from the aforementioned union received in 2010. The Committee is following up on the recommendations made by the Governing Body in March 2009 (document GB.304/14/8) further to the accident that took place at the Pasta de Conchos coalmine in Coahuila. The Committee indicates that the discussions and conclusions of the Conference Committee on the Application of Standards also refer to the follow-up to the report and, in that context, to the application of this Convention to workers in coalmines in Coahuila. The communications from the trade union in 2010 and 2011 also refer to the same situation. In view of the fact that the Committee has before it the documents mentioned above and their numerous appendices and questions relating to the issues raised by the Governing Body, the Conference Committee and the Committee of Experts in previous years, the Committee will restructure the follow-up by combining related themes. The Committee will briefly note in its comment the main aspects of the communication of 2011 and will examine the communication in further detail in conjunction with any observations the Government sees fit to make, including with regard to allegations of child labour in the coalmines, which the Committee will examine in due course as part of its examination of the application of the Worst Forms of Child Labour Convention, 1999 (No. 182).

#### **I. Measures to be taken in consultation with the social partners**

*Articles 4(1) and (2) and 7 of the Convention. National policy. Overall reviews or reviews relating to specific areas: hazardous types of work such as those performed in the coalmining sector.*

*(a) Register of reliable data on existing mines and of workers in these mines.* In its previous comments the Committee noted a communication from the SNTCPF, to the effect that there is no register that would enable an overview of legal, illegal and clandestine mines in the coal-producing region of Coahuila, and consequently it is impossible to plan the necessary measures, to monitor their application and to inspect the mines. The Conference Committee on the Application of Standards asked the Government to indicate the number and type of mines in the coal-producing region of Coahuila, including, as far as possible, the registered and non-registered sectors. This information is essential to be able to formulate, revise and implement a national occupational safety and health (OSH) policy based on prevention. The Committee notes the Government's statement that the Ministry of Labour and Social Security (STPS) indicates that the number of workplaces does not necessarily coincide with the number of mining concessions awarded by the Ministry of Mining. The Government indicates that the STPS has a National Directory of Enterprises and that, as at July 2011, the Directory contains 201 registered workplaces in the state of Coahuila involved in coalmining activities. It also indicates that in Coahuila there are 909 mining concessions covering a surface area of 2.5 million hectares and that there are nine large coalmines and 62 medium-sized coalmines. As regards the *pocitos* (small-scale mines or pits), the Government indicates that from March 2010 the GeoInfoMex satellite system was used for the location of *pozos* (small-scale mines or pits), a project that ended in May 2011. This resulted in the identification of the existence of 563 vertical shafts, in 297 of which activity was detected, and these will be inspected. The Committee notes that the Government distinguishes between the registration of mining concessions and the registration of workplaces and indicates that it is making progress on coordination among the various state bodies connected with mining in Coahuila. **The Committee requests the Government to continue to supply up-to-date information on the number and type of mines and, recalling the request made by the Conference Committee on the Application of Standards, requests it to distinguish between registered and non-registered mines in that information. The Committee also requests the Government to indicate the estimated total number of miners in Coahuila, the number of registered miners and the estimated number of non-registered miners.**

***The Committee understands that these are two different but complementary issues that form part of the application of the Convention at the workplace and to all the workers employed there, and requests it to take the necessary measures to obtain the fullest possible records and to provide information in this regard.***

(b) *Accidents in the coalmining sector.* The Committee notes the Government's statement that in the last ten years (2001–10) the Mexican Social Security Institute (IMSS) recorded 38,069 occupational accidents and diseases in the mining sector and 340 deaths. The Government indicates that, if a comparison is made between 2001 and 2010, the number of workers in the mining industry increased by 35.74 per cent and that, as regards the number of deaths, there was no significant variation (31 in 2010 and 30 in 2001). The Committee also notes that, according to the communication, from June 2010 to August 2011, 33 more miners died in occupational accidents, including 26 in Coahuila. It also states that 14 miners died on 3 May 2011 at *pozo* 3 of the BINSÁ company and that none of these 14 were registered with the IMSS, their average age was 24 years, and one 14-year-old worker survived who had left school and was on the payroll, even though the enterprise stated that he was merely accompanying his father. ***The Committee asks the Government to continue to provide detailed information on these issues, including on the accident in which 14 workers died. The Committee also asks the Government to continue providing statistics on accidents in coalmines and on the application of the Convention to mines in which accidents have occurred.***

(i) *Lulú mine.* In 2010, the Committee briefly noted the information supplied by the trade union, indicating that two workers died at the Lulú mine on 6 August 2009. According to the trade union, this mine had been in operation since 2001 but had never been inspected. The union also declares that the employer, "in the manner of the region", put pressure on the families of the workers not to coordinate with the Pasta de Conchos group of families or with the Pastoral Laboral organization, otherwise they would receive nothing. The union indicates that the families filed a complaint on 31 August and described in detail the defects in terms of safety regulations (pithead constructed with unsuitable material, lack of a fire escape, obstacles on the roadway, water lying in the mine, lack of training and no first-aid kit, etc.). It indicates that the workers were registered with the IMSS for 486.45 Mexican pesos (MXN) per week and MXN/1,500 were paid for piecework, without any registration. The SNTCPF declares that, according to the Ministry of Economic Affairs, the Lulú concession was in order but the trade union maintains otherwise, and supplies detailed information to support its arguments. In its 2011 report, the Government states that it had been planned to conduct an inspection at the Lulú mine in August 2009 but that, prior to the inspection, the accident occurred on 6 August, and so an emergency inspection was conducted from 7 to 10 August, followed by another inspection on 13 and 14 August, and access was then restricted. Five inspection visits were conducted to verify that the restriction on access had not been violated, on 31 August, 2, 4 and 15 September, and 29 October 2009. Other inspections and procedures were conducted in 2010, on 2 February 2011 the mine was closed for repeated failure to implement safety measures, and on 10 February 2011 the workers were notified. The Government concludes by stating that the labour inspector, as was his duty, enforced the applicable standards and it therefore rejects the allegations from the union that the inspection activities were "acts of simulation". The Committee notes that the union's communication of 2011 includes as an appendix Recommendation 12/2011 of 29 March 2011 of the National Human Rights Commission (CNDH), which has constitutional rank, concerning the accident at this mine. In its examination of the case, the CNDH states that "with the omissions described above on the part of public servants of the STPS and the Ministry of Economic Affairs, operations at the abovementioned enterprise were allowed under conditions that did not guarantee the integrity and health of the workers, and they were placed in grave danger and were exposed to situations such as the one that resulted in the death of (two workers)". It also states that this situation contravened *Articles 7 and 9* of the present Convention.

(ii) *Ferber pocito mine.* In its communication of 2010, the union indicated that on 13 August 2009 the periodic inspection of this mine was conducted and, leaving aside the provisions that do not apply to small-scale operations, 85 breaches of the provisions were recorded and 76 corrective measures were ordered, with restriction on access. On 11 September a 23-year-old worker died. The union also indicates that the labour inspectorate only appeared on 17 September 2009 to conduct the inspection. It claims that the Ferber construction company's arrangements for severance of the workers' employment were illegal and that the employer abandoned the scene of the accident without securing or signposting the entrance. The union concludes by stating that there was negligence on the part of the STPS of Coahuila, inasmuch as the latter seemed to consider it sufficient to complete the inspection forms, and that these "acts of simulation" leave the miners and their families in a state of helplessness. In its 2011 report, the Government corroborates the inspection of 13 August, explaining that a second inspection was made on 17 September because the employer failed to meet his obligation to notify the accident; subsequent inspections were conducted on 21 September, when the restriction on access to the mine was reiterated. The labour authority has established physically that the Ferber *pocito* mine no longer exists, but the prosecution proceedings are continuing and the authority has offered support to the family of the worker who died. The Committee notes that, during the examination of the case conducted by the CNDH (Recommendation No. 85/2010 of 21 December 2010), the CNDH affirmed in similar terms that the provisions of the present Convention have been breached.

The Committee notes the Government's statement that the *Lulú* mine and the *Ferber pocito* mine are not covered by the recommendations adopted by the Governing Body in its report on the representation but that it is providing information with a view to clarifying such matters. The Committee draws the Government's attention to the fact that

information on accidents in these mines actually forms part of the follow-up to the recommendations made by the Governing Body since the recommendation in *paragraph 99(b)(i) of the report* refers to ensuring the application of *Articles 4 and 7 of the Convention* with particular emphasis on coalmines, and the recommendation in *paragraph 99(b)(iii) of the report* refers to ensuring the affiliation of *Article 9 of the Convention* “in order to reduce the risk that accidents such as the accident in Pasta de Conchos occur in the future”. The Committee therefore indicates that information on accidents in the coalmines of Coahuila and the analysis of their causes contribute towards determining the real impact of the measures adopted and understanding whether everything was done that reasonably could have been expected to be done to avoid or reduce as far as possible the causes of the hazards inherent to the working environment. The Committee notes the dissemination activities of NOM-032-STPS-2008 and other promotional activities indicated by the Government, and notes that methods for the evaluation of hazards are based on this standard. Nevertheless, it draws the Government’s attention to the fact that the repetition of accidents in mines which have manifestly failed to adopt the requisite OSH measures highlights the necessity of reinforcing government action to ensure the application of the Convention in practice. ***The Committee therefore urges the Government to undertake, in conformity with Articles 4 and 7 of the Convention and in consultation with the social partners, the periodic examination of the situation relating to the health and safety of workers and the working environment in the coalmines in Coahuila, including the pocito mines, in order to identify the principal problems, draw up effective measures to resolve them, define the order of priority of the measures to be taken and evaluate their results. The Government is also requested to provide detailed information in this regard, including on the consultations undertaken.***

*Article 9. Adequate system of inspection.* The Committee notes the Government’s statement that a draft reform of the Federal Labour Act is awaiting analysis and opinion in Congress, and this draft proposes in particular that inspectors shall be able to restrict access or limit operations in areas where risks are detected to the lives, health or integrity of the workers and conduct a more streamlined procedure for total or partial closure. It also notes the Government’s indication that the labour and mining authorities have developed a joint strategy for preventing a workplace from continuing to operate when, during any inspection and without the need to exhaust the procedures laid down in section 512-D of the Federal Labour Act, imminent risks of violation of the regulations relating to OSH have been identified. The Government declares that, under this strategy, once the labour inspector has issued an order for access to be restricted, this is immediately brought to the attention of the National Directorate of Mines at the Ministry of Economic Affairs so that this department can issue an order for the provisional suspension of work at the mine. If the risks continue after the inspection visit, the mining authority is requested to order the permanent suspension of work. The Government states that the National Directorate of Mines was thus notified by the STPS of 14 restrictions on access on account of imminent danger, and suspension was notified on ten sites. It also indicates that improvements were made to the procedures for enforcing closure as envisaged in section 512-D of the Federal Labour Act and, accordingly, the Lulú mine was closed on 10 February 2011. The Committee also notes that the Government has supplied a CD and a folder of labour inspection documents relating to the coalmines of Coahuila. The Committee draws the Government’s attention to the fact that, for this information to be useful to the Government and the social partners and also to the Committee, the Government needs to undertake an analysis of the information, identifying trends regarding the cases of non-compliance detected, the effectiveness or otherwise of the measures taken by, or available to the labour inspectorate for remedying cases of non-compliance, especially in cases of serious and imminent danger, including its own evaluation in conjunction with the social partners of whether the system and the legal remedies available are appropriate and sufficient. The Committee refers to its previous paragraphs in which it noted the cases of the Ferber and Lulú mines as providing an illustration of the application and monitoring of OSH regulations. The Committee notes with **concern** that the Lulú mine which the Government closed on 10 February 2011 had its first inspection on 7 August 2009, the day following the death of two workers, that numerous irregularities relating to OSH were reported, and that in spite of this the closure of the mine took 17 months. In the case of the Ferber mine, the proprietor undertook the closure. The Committee notes the Government’s statement that the inspectors enforced the existing regulations. In that case, those regulations do not appear to constitute a framework that ensures an appropriate and adequate inspection system for safeguarding the lives, safety and health of workers in underground coalmines. Furthermore, the Committee reminds the Government that in its recommendations the Governing Body asked the Government to ensure, by all necessary means, the effective monitoring of the application in practice of laws and regulations on occupational safety and health and the working environment, in consultation with the social partners. ***The Committee therefore requests the Government to examine, as part of the review required by the Committee pursuant to Article 7, the manner in which the labour inspectorate can be strengthened, particularly in cases of imminent danger, and to provide information on this matter and also on the measures for immediate enforcement currently at the disposal of the labour inspectorate, including closure in the event of imminent danger to the health and safety of the workers. It also requests the Government to undertake an analysis of the inspections conducted of which it informed the Committee in order to identify the principal problems with a view to achieving greater effectiveness in inspection work in coalmines and also provide information on the measures proposed for tackling these problems.***

***Pending the abovementioned reviews, the Committee urges the Government to take the necessary measures in the very near future to safeguard the lives and safety of the workers and to send information in this regard.***

***With regard to the Occupational Safety and Health Self-Management Programme, the Committee asks the Government to provide detailed information on its operation, including details of the requirements for joining the***

***Programme, the manner in which the labour inspection services monitor activities implemented under the Programme and its impact on safety and health in mines and in the “pocitos” where coal is extracted.***

*Request for information on any developments concerning the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176), based on Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines.* The Committee notes the Government’s statement that on 18 July 2011 consultations were held, with a view to evaluating whether ratification should occur, with various state bodies, plus the Confederation of Chambers of Industry (CONCAMIN), the Employers’ Confederation of the Republic of Mexico (COPARMEX), the Confederation of Workers of Mexico (CTM) and the Mining and Metallurgy Union. The Government states that at the time of sending its report (October 2011) it was awaiting the requested information. ***The Committee requests the Government to supply information on the results of these consultations with the social partners.***

## **II. Other measures**

*Compensation, pensions.* The Committee notes the union’s indication in its communication of 2010 that death certificates were issued, which would supposedly speed up procedures, but in fact this only resulted in the calculation of pensions and compensation amounting to a starvation wage for the families owing to the fact that, when the time and date of the miners’ deaths were indicated, the payment of a “triple wage” to the families which should have been made by the company in the following days was cancelled (despite the company’s obligation to maintain this commitment until the handing over of the mortal remains) and was suspended in March 2007. This triple wage meant that the deceased workers’ contributions to the IMSS were maintained for more than one year, as though they were still alive, but this sum of money was not given to the families. The union maintains that, in the cases represented by Office of the Federal Attorney for the Defence of Labour (PROFEDET), the wages were not increased and that, in cases involving private lawyers who requested this, the requests were refused because the death certificates were contested and rejected. It also indicates that the enterprise gave humanitarian aid of MXN830,000, which did not represent compensation but was a response to the fact that the awards had been contested. It indicates that the amounts of compensation ranged from MXN66,200 to MXN117,000. The Committee also notes the Government’s statement that, as regards the 57 demands for compensation filed by the families of the miners who died at the Pasta de Conchos mine, a judgment was issued ordering the Industrial de México and General de Hulla companies to pay the beneficiaries the legal contractual benefits for death in an industrial accident, funeral expenses, seniority bonus, vacation allowance and bonus, the extra month’s wage, life insurance savings fund payments, and compensation. The Government also indicates that all the awards were appealed against by the parties. As regards pensions, the Government states in reply to the communication of 2010 that these were not calculated incorrectly but were based on the wages registered with the IMSS. The Government also indicates the rulings handed down by the courts with regard to the appeals against the awards. ***The Committee requests the Government to indicate which issues are still pending with regard to compensation and pensions for the families of the deceased workers.***

*State and social benefits.* The Committee notes the detailed information provided by the Government but notes that this does not enable the number of beneficiaries among the widows and children of the deceased workers to be identified. ***Noting that housing and scholarships were promised and that the communication refers to 106 children whose fathers died at Pasta de Conchos, the Committee requests the Government to indicate how many of the children whose fathers died are receiving scholarships and how many of the 65 families have received assistance with housing.***

*Dialogue with the Pasta de Conchos families.* The Committee notes the Government’s statement that the Government held various meetings in 2007 and 2011 with the Pasta de Conchos Families’ Organization and the families of the miners with a view to ensuring the observance and full exercise of their rights, including an analysis and discussion of a possible recovery of the bodies. The Committee also notes that the 2011 communication continues to make allegations of harassment of the defenders of the Pasta de Conchos Families’ Organization by means of defamatory public statements that include accusations of opportunism and making money out of the tragedy. The Committee considers that the families of the victims of the Pasta de Conchos accident, including the 106 children who lost their fathers, deserve special care and attention from the Government. ***The Committee requests the Government to continue the dialogue with the organization and the families in order to find an appropriate solution to the complaints made by the families of the victims of the Pasta de Conchos accident, including with regard to the possibility referred to by the Government of recovering the bodies of the miners, and requests the Government to continue to provide information on the ongoing dialogue.***

## **III. Technical assistance**

In its previous comments the Committee invited the Government to avail itself of technical assistance from the Office in relation to the possible ratification of Convention No. 176. It also notes that the Conference Committee on the Application of Standards, in its 2011 conclusions, also invited the Government to avail itself of technical assistance from the Office. The Committee notes the Government’s indication that the Director-General of Labour Inspection appointed a person to forward the necessary information to the Office but notes that it has not received any information concerning the Government’s decision to accept the request of the Committee and the Conference Committee. ***In view of the difficulties relating to application that persist in the coalmining sector, the Committee again requests the Government to avail itself of technical assistance from the Office in order to tackle these problems and requests it to notify the Office of its decision in this regard.***

*The Committee also draws the Government's attention to its comments on the application of the Labour Administration Convention, 1978 (No. 150).*

The Committee is raising other points in a request addressed directly to the Government.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Nicaragua

### **Occupational Cancer Convention, 1974 (No. 139) (ratification: 1981)**

*Articles 1 and 3 of the Convention. Determination of carcinogenic substances and agents and establishment of an appropriate system of records.* In its previous comments, the Committee noted the existence of new legislation, and particularly Act No. 618 of 2007 (the General Occupational Safety and Health Act) and it requested a detailed report, including information on the application of the Convention in practice and replies to its previous comments. The Committee notes the Government's brief report, which does not enable it to gain a complete overview of the application of the Convention. The Committee notes that, through the Ministry for Natural Resources (MARENA), in coordination with other institutions, Nicaragua is implementing the second phase of the Stockholm Convention, as a result of which 12 persistent organic pollutants (POPs) are prohibited, and that the national legislation is being revised to provide a framework to be used by all national institutions for the provision of supervision and follow-up wherever toxic, hazardous and similar substances are commercialized. With regard to pesticides, the Government indicates that it is intended to carry out an investigation of the population near to the airport in Chinandega which acts as a base for spraying operations. The Committee notes that the information provided by the Government does not indicate the substances that are prohibited or the protection measures for workers in the event of exposure. The Committee draws the Government's attention to the fact that the fundamental aspect of *Article 1* of the Convention is the determination of a list of carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control and the existence of a mechanism for periodic review. The Committee also notes that the Government does not provide information on the operation of the Single National Registry of Pesticides and Toxic, Hazardous and Other Similar Substances envisaged in section 6 of Basic Act No. 274 to regulate and control pesticides and toxic, hazardous and other similar substances of 1998. ***The Committee once again requests the Government to provide a copy of the legislation determining the substances to which occupational exposure shall be prohibited or made subject to authorization or control, and those to which other provisions of the present Convention shall apply, the mechanism for review, the protection measures for workers and the records referred to in Articles 1 and 3 of the Convention. The Committee requests the Government to indicate whether the National Registry of Pesticides and Toxic, Hazardous and Other Similar Substances is already in operation, which will be a body of the authority responsible for the application of Act No. 274 and its Regulations.***

*Article 2(1). Obligation to have carcinogenic substances and agents replaced by non-carcinogenic substances or agents or by less harmful substances or agents.* The Committee notes the Government's indications that sections 19, 20 and 21 of Act No. 618 provide that the employer shall ensure the development of risk maps and prevention programmes together with the Joint Occupational Safety and Health Committee. The Committee notes that these sections refer to training, and not replacement, and it draws the Government's attention to the fact that such broad provisions do not ensure that effect is given to this provision of the Convention. It further notes that section 18(5) provides that employers shall have the obligation to replace what is dangerous by what involves little or no danger. Noting that this section contributes to the application of this provision of the Convention, the Committee observes that the latter is more specific and requires prior determination by the authority of the carcinogenic substances and agents which have to be replaced. ***The Committee requests the Government to take the necessary measures to give effect to this Article and to provide information on this subject.***

*Article 2(2). Duration and degree of exposure.* In its previous comments, the Committee noted that, under the terms of section 129 of Act No. 618, the Ministry of Labour shall establish, in respect of chemicals identified in various workplaces, exposure limit values for workers, which shall be established in accordance with international criteria and the national investigations that are undertaken in this area, and it authorizes the Directorate-General of Occupational Safety and Health to take the threshold limit values (TLVs) of the American Conference of Governmental Industrial Hygienists (ACGIH) as a reference point in inspections. The Committee requested the Government to provide detailed information on the application of the legislation in practice including, for example, the provision of information on the limit values laid down by the Ministry of Labour pursuant to section 129, and including information on the application of the Convention to rural workers. ***Noting that the Government has not provided the requested information, the Committee asks it once again to provide detailed information on this subject.***

*Article 4. Obligation to inform workers of the dangers involved in working with carcinogenic substances.* ***Noting that the Government has not provided information on the effect given to this Article of the Convention, the Committee again requests that it do so in relation both to law and practice.***

*Article 5. Medical examinations during employment and thereafter.* The Committee notes that sections 23 to 27 of Act No. 618 provide for examinations to be carried out prior to employment and during employment, but do not envisage examinations after employment, as required by the Convention. ***The Committee requests the Government to adopt measures to give effect to this Article and to provide information on the law and practice.***

*Part IV of the report form. The Committee requests the Government to provide detailed information on the application of the Convention in the country, including the effect given to the requirement to keep records, training, medical examinations, as well as information on the application of the Convention to rural workers, and particularly on the application of the Basic Act No. 274 to regulate and control pesticides and toxic, hazardous and other similar substances in relation to the aspects that are relevant to the present Convention.*

## **Panama**

### **Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2008)**

The Committee notes with *interest* the detailed first report of the Government and in particular Decree No. 2 of 15 February 2008 regulating safety, health and hygiene in the construction industry; Executive Decree No. 15 of 3 July 2007 and Act No. 68 of 26 October 2010, which establish a preventive, progressive, coordinated and tripartite approach to health and safety in construction. It notes the Government's indication that Decree No. 2 was drawn up by the Interinstitutional Technical Committee on Occupational Safety and Health, a standing advisory body which was consulted extensively together with the Panamanian Construction Industry Board (CAPAC) and construction industry workers' organizations, such as the Single National Union of Construction Industry and Allied Workers (SUNTRACS). It contains detailed technical provisions relating to health and safety in the various processes and activities of the construction industry, establishes the principle of prevention by means of identification, monitoring, elimination or reduction of hazard factors, and covers notification, consultation, tripartite participation and training of workers and employers. It also establishes the obligation to draw up, during the project planning phase, a study on occupational safety and health (OSH) and a plan resulting from the study, the cost of which must be included in the budget for performance of the work (section 12 of the regulations). The following sections lay down the minimum requirements for the study and safety plan and the obligation to designate a safety coordinator during the execution of the works. Section 400 of the regulations sets up a standing tripartite committee for improvements in OSH in the construction industry, with the participation of representatives of the construction workers, one of which is to be SUNTRACS and the other the National Council of Organized Workers (CONATO), two representatives of the employers in the construction industry, one of whom will come from CAPAC and the other from the National Council for Private Enterprise (CONEP), and two representatives of the Government. The task of this committee is to keep the regulations up to date, in line with any innovations in the construction industry. Decree No. 15 of 2007 introduced the concept of the occupational safety official, a post which is filled by engineers or architects specializing in OSH. The Decree also establishes a database of persons who may perform this function, which will be at the National Directorate for Labour Inspection and, in order to ensure the independence and objectivity of safety officials, establishes a fund for OSH in the construction industry with contributions from contract promoters. The Ministry of Labour designates the safety officials. Act No. 68 of 26 October 2010 establishes fines for persons who do not comply with this requirement and states that the "resident suitable professional" must be a constant presence during the execution of the work and lays down monetary fines in connection with the exercise of the profession. The report also indicates that 50 safety officials have just been appointed, of whom 43 perform their duties in the province of Panama, in view of the boom in the construction industry. In addition, a special unit has been established of inspectors for the construction industry, and the 2012 budget for the National Directorate for Labour Inspection includes a provision for hiring more inspectors and safety officials. The Government also states that ongoing training is provided for inspectors in the areas of safe conduct, basic safety and health concepts, physical hazards, electrical hazards and hazards from vibration. *The Committee welcomes the legislative and practical measures adopted and requests the Government to continue to supply information on any changes in the legislation.*

*Plan of Action 2010–16.* The Committee wishes to take this opportunity to inform the Government that in March 2010 the Governing Body adopted the Plan of Action 2010–16 to achieve widespread ratification and effective implementation of the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (GB.307/10/2(Rev.)). The Committee draws the Government's attention to the fact that, under this Plan, the Office provides technical assistance for governments, where applicable, so that they can bring their law and practice into conformity with these key occupational safety and health instruments, with a view to promoting the ratification and effective implementation thereof. The Committee also reminds the Government that it may avail itself of assistance from the Office with regard to the preparation of reports on ratified Conventions. *Noting that Panama has not ratified these key Conventions which cover all workers in all sectors of activity, the Committee requests the Government to provide information on any needs that may arise in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

## Peru

### **Safety and Health in Mines Convention, 1995 (No. 176) (ratification: 2008)**

The Committee notes the Government's first report received on 14 September 2010; the comments on the draft report of the Government sent by the General Confederation of Workers of Peru (CGTP), received by the Office on 14 September 2010 and forwarded to the Government on 28 September 2010; the comments of the National Confederation of Private Business Associations (CONFIEP), received by the Office on 12 November 2010, and the comments of the Chamber of Commerce of Lima (CCL), both forwarded to the Government on 18 November 2010. The Committee notes the indication by the CGTP, with regard to the authority competent to suspend or restrict mining activities on safety and health grounds, that it would have been advisable for the Government to provide information on the number of mining sites closed as a preventive measure by the Supervisory Body for Investment in Energy and Mining (OSINERGMIN), to provide further information in its report, in addition to referring to the respective legislative provisions, and to indicate the inspections carried out. The Committee notes that, according to the CCL, as envisaged in the legislation on the subject, the State shall ensure that the holders of mining rights are in compliance with the provisions of the Mining Act, its General Regulations, mining safety regulations in all exploration and exploitation concessions and in permits for the establishment of separation, smelting and refining plants. In conclusion, the Committee notes that, according to the CONFIEP, for reasons of timing, when the report was drawn up the recent Occupational Safety and Health Regulations and other additional measures in mining, approved by Supreme Decree No. 055-2010-EM, published in the *Diario Oficial el Peruano*, on 22 August 2010, were not taken into account. Indeed, the Committee notes that the Government's first report, provided in September 2010, is based on Supreme Decree No. 046-2001-EM, issuing the Mining Safety and Health Regulations, and that the Decree was repealed in full by the sole provision repealing former texts of Supreme Decree No. 055-2010-EM, which consists of 396 sections, 19 annexes and three guidelines. ***In light of the above, the Committee requests the Government to provide a new detailed report based on the legislation that is in force and on its application in practice, together with the comments that it deems appropriate concerning the communications referred to above.***

*[The Government is asked to report in detail in 2012.]*

## Rwanda

### **Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*National legislation.* The Committee notes the information in the Government's report regarding the application of section 3 and Title V of Law No. 13/2009 of 27 May 2009 to workers in the informal economy. The Committee also notes that the process of drafting a Ministerial Order on health and safety at the workplace in the building industry to fill the legal void created by the abrogation in 2001 of Ordinance No. 21/94 of 23 July 1953 is still ongoing. ***Concerned about the current situation, the Committee urges the Government to take relevant action without further delay. It would like to inform the Government that the Office is available to provide relevant technical assistance to the Government to assist it in its efforts to bring national law and practice into conformity with this Convention and requests the Government to transmit a copy of any new legislation once it has been adopted.***

*Articles 4 and 6 of the Convention, in conjunction with Part V of the report form.* On taking note of the Government's reply, the Committee looks forward to receiving the Government's annual report on the latest statistical information in relation to the number and classification of accidents, including those relevant to workers in the informal economy. The Committee also notes that the Government has indicated that it is in the process of raising the awareness and building the capacity of the labour inspectors. ***The Committee asks the Government to provide information on this process and any supporting legislative provisions.***

*Revision of this Convention.* The Committee would also like to draw the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises Convention No. 62 of 1937 and could well be better adapted to the current situation in the building sector. The ILO Governing Body invited States parties to Convention No. 62 to envisage the ratification of Convention No. 167, which entails, ipso jure, immediate denunciation of Convention No. 62 (GB.268/8/2). ***The Committee requests the Government to provide information on all possible developments in this respect.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Sierra Leone

### **Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the Government's summary report submitted in June 2004 indicated that the Government had no new developments to report.

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17 of the Convention*

(which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. ***Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the abovementioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Sweden

### **Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (ratification: 2008)**

The Committee notes the Government's first report including the legislative texts attached. The Committee also notes the observations by the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO) transmitted to the Office by the Government.

***Article 3(1) of the Convention. Promoting a safe and healthy working environment by formulating a national policy.*** The Committee notes that the Government in its report refers to a national policy for the work environment reportedly reflected in the Government's Budget Bill and that a draft national plan of action for a future working environment policy has been prepared. The Government indicates this draft policy includes facilitating and increasing better development of jobs and to break the isolation of people removed from the employment sector and that it has been developed in consultation with social partners and other stakeholders. In this respect the Committee notes that LO and TCO observe that while a national plan of action on a future work environment policy had been prepared, this plan had not yet been adopted in June 2010. ***The Government is requested to provide further information on current and future national policies on occupational safety and health (OSH) giving effect to this provision of the Convention, and to submit a copy of the relevant national OSH documents.***

***Article 3(3). Consultation with the most representative organizations of employers and workers.*** The Committee notes the information that both national legislation and legislation adopted by the Work Environment Authority (WEA) are drafted in tripartite consultation and that the outcome of the application of the obligations concerning Systematic Work Environment Management are shared with the social partners and inspectors in different contexts. It also notes that the LO and TCO indicate that consultations between the WEA and social partners and inspectors have only taken place on rare occasions and only in some districts. ***The Government is requested to provide information on the outcome and frequency of the consultations held in this regard in the light of the observations of LO and of TCO.***

***Article 4(2)(c). Mechanisms for ensuring compliance with national laws and regulations, including systems of inspections.*** The Committee notes the information that the WEA is responsible for enforcement of binding rules on the nature of the work environment and on obligations related thereto, that this authority has developed a system of work environment surveillance, with particular attention paid to workplaces where risks of ill health and accidents are greatest including an inspection system, which guarantees compliance. In this respect the Committee notes the observations from the LO and TCO according to which the number of labour inspectors in 2007 was reduced from 1 to 0.7 inspectors per 10,000 workers which is below the ILO recommendation of one inspector per 10,000 workers. ***In the light of the observations by LO and TCO, the Government is requested to provide further information on the functioning of and efforts to maintain, progressively develop and periodically review its labour inspection system.***

***Article 4(3)(a). A national tripartite advisory body, or bodies, addressing OSH issues.*** The Committee notes that the Government's report indicates that national tripartite bodies exist at the Ministry of Labour and the WEA and, when necessary the Ministry of Labour invites representatives of other departments to attend these consultations. In this respect the Committee notes that LO and TCO question whether these arrangements meet the requirements in the Convention as the tripartite body of the Ministry of Labour is more informative than political in nature and meets too seldom, and as the tripartite body within the WEA only addresses issues delegated to that authority. ***In the light of the observations by LO and TCO, the Government is requested to provide further information on the functioning of the national tripartite body or bodies addressing occupational safety and health issues.***

***Article 4(3)(d). Occupational health services in accordance with national law and practice.*** The Committee notes that the reference made by the Government to the provisions in Chapter 3, section 2(b) of the Work Environment Act according to which the employer shall provide occupational health services to the extent the work conditions require. It also notes the observations by the LO and TCO, according to which the application in practice of the referenced provision has not resulted in giving access to occupational health services for the sectors and businesses that are in the greatest need for such services, and that the effect has been rather the contrary, namely that where there is the greatest need,

occupational health services are the most scarce. ***In the light of the observations by LO and TCO, the Government is requested to provide further information on efforts to maintain, progressively develop and periodically review its occupational health service system.***

*Article 4(3)(e). Research on occupational safety and health.* The Committee notes that the Government indicates that under the Swedish system, state funded work environment research is conducted at higher education establishments. The Committee also notes the LO and TCO comments, that since the closing down of the National Institute of Working Life, research on occupational safety and health issues has regressed and it has become considerably more difficult to find already existing knowledge and to find information on which scientists have responsibility for a particular field of research. ***In the light of the observations by LO and TCO, the Government is requested to provide further information on efforts made to maintain, progressively develop and periodically review research carried out on OSH related issues.***

*Article 4(3)(g). Mechanism for collection and data analysis, and provisions for collaboration with relevant insurance or social security schemes.* The Committee notes that the Government indicates that, by virtue of Chapter 8, section 1 of the Work Injuries Insurance Act, employers are required to report work injuries to the Social Insurance Agency, and that section 12 of the Work Environment Ordinance places a duty on physicians to report to the WEA any diseases which may be connected with work or of interest from the view point of the working environment. The Committee notes that the Government indicates that the WEA is responsible for the collection and annual publication of work injury statistics of work accidents and work-related illnesses and that sample surveys of work-induced disorders are carried out by Statistics Sweden (SCB) and published annually. The Committee also notes the observations of the LO and TCO that the incidence of occupational injuries and diseases is considerably underreported in national statistics due to the structure of the Swedish work injury insurance and that it is thus questionable whether the national mechanism for the collection and analysis of data on occupational accidents and diseases fulfils the requirements of the Convention in this respect. ***The Government is requested to provide further information on the mechanisms of collection and analysis of data within the national system and processes for the collaboration with the Social Insurance Agency.***

The Committee is raising other points in a request addressed directly to the Government.

## Uruguay

### **Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1988)**

*Article 4 of the Convention. Formulation, implementation and review of a coherent national policy.* Referring to its previous comments, the Committee notes with **interest** the intense activity on the part of the sectoral tripartite committees dealing with occupational safety and health (OSH). The Government provides information on the following committees: (1) Tripartite Committee on the Construction Industry, which was established 23 years ago and has drawn up two decrees concerning hazard prevention in the sector (Decree No. 111/990 and Decree No. 89/995) and is currently engaged in the revision of the standard of 1995; (2) Tripartite Committee on the Chemicals Industry, which has drafted Decree No. 307/009 and is currently working on a new decree amending two articles of Decree No. 307; (3) Tripartite Committee on the Dairy Industry, which has conducted dissemination activities regarding standards and training in the context of Decree No. 291/2007; (4) Tripartite Committee on Telephone Call Centres, which has been doing intensive work for three years to create a consensus on a decree for hazard prevention in this major sector of activity and is close to finalizing this task; (5) Tripartite Committee on the Clothing Industry, which has been working in the context of Decree No. 291/2007 and is planning a survey of enterprises to gather input with a view to setting the direction for future specific actions; (6) Tripartite Committee on Rural Matters, which drafted Decree No. 321/009 by consensus and is undertaking dissemination activities; (7) Tripartite Committee on Health, which was established in 2011 and is working to install an observatory relating to the conditions of work of health personnel; (8) Tripartite Committee on the Metallurgical Industry, which has been preparing dissemination materials concerning prevention measures but is facing difficulties in its operation; (9) Tripartite Committee on Liquid Petroleum Gas Companies, which has been conducting a joint analysis of conditions of work and has signed memoranda of understanding for reducing the daily hours of work to six hours 40 minutes. Finally, the Government states that the National Council on Occupational Safety and Health is responsible for defining national policy in this sphere and has just taken a decision to adopt the latest list of occupational diseases promoted by the ILO and has on its agenda the regulation of the Occupational Health Services Convention, 1985 (No. 161) and statistical information on occupational accidents. ***The Committee requests the Government to continue to supply information on the establishment of any new committees or activities or the adoption of any new legislation.***

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO) (document GB.270/15/6).* In its previous comments the Committee requested information on the action taken on the recommendations contained in paragraph 41 of the report adopted by the Governing Body in 2005. The Committee notes with **satisfaction** the comprehensive information supplied by the Government on the action taken on each recommendation made by the Governing Body in the abovementioned report, which demonstrates that it has complied with these recommendations. The Government provides information on the legislation relating to OSH adopted between 2005 and 2009 and the legislation which is being drafted; on the substantial increase, in 2007 and 2008, in the operational capacity of the labour inspectorate and the measures taken by the inspectorate in relation to OSH; on the

vitality of tripartite dialogue; on the joint work with the organization responsible for statistics at national level, which will enable better results to be achieved within several months, and also the training and technical assistance granted to workers and enterprises. Furthermore, the Government attaches the 2010 annual report of the Labour and Social Security Inspectorate-General, which contains valuable information on the activities of the inspectorate relating to OSH. Consequently, the Committee declares the follow-up to the recommendations contained in report GB.270/15/6 to be closed.

The Committee is raising other points in a request addressed directly to the Government.

### **Safety and Health in Construction Convention, 1988 (No. 167)** (ratification: 2005)

*Legislation.* The Committee noted previously that sections 356 to 363 of Act No. 18362 establish a register of construction works and their traceability, to apply as from 2009. The register would operate within the General Inspectorate of Labour and Social Security (IGTSS) and the Government stated its view that the register consisted of a database of enormous importance to the construction industry and state bodies, as it will contain all information of importance in real time concerning the various public and private sector construction processes and those operating them. The Committee notes with *interest* Decree No. 481/009 to regulate the operation of the register, which, according to the 2010 annual report of the IGTSS, is up and running. Decree No. 481 defines the scope and establishes the requirements for the registration of construction work which include submission of an occupational safety and health study and plan (section 4) and sets out the functions of the tripartite occupational safety and health committee for the construction industry as they concern the register (section 7). Furthermore, with regard to its previous comments, the Committee notes the Government's statement that a technical committee is hard at work studying the amendment and updating of Decree No. 89/995 on safety and health in the construction industry and it is hoped that it will present its results to the sectoral tripartite committee in the coming months. The Government states that in introducing amendments and improvements to the existing legal framework, the technical committee has taken into account not only the existing legal voids but also proposals from all inspectors who monitor environmental conditions of work and the conclusions of the occupational safety and health congress organized in October 2010 by the sectoral tripartite committee. *The Committee requests the Government to make efforts to ensure that the new text gives effect to the provisions of this Convention and to take account of the comments made by the Committee in its examination of this Convention and the other ratified occupational safety and health Conventions, particularly its comments on the Occupational Safety and Health Convention, 1981 (No. 155), and the Asbestos Convention, 1986 (No. 162). Furthermore, because the legislation is undergoing significant changes, the Committee requests the Government to provide a detailed report indicating the legislative, regulatory or other texts and the relevant provisions thereof that give effect in law to each Article of the Convention.*

*Part V of the report form. Application in practice.* The Committee notes the 2010 annual report of the IGTSS, which notes that according to the register of works and their traceability, in 2010, 8,552 construction works were registered, and of these 1,625 had final certification while for 6,832 certification was pending, works were finalized for 58 and works were closed for the remaining 37. It also notes the information on investigations into occupational accidents in the sector and their results. *The Committee requests the Government to continue to provide information in this regard.*

The Committee is raising other matters in a request addressed directly to the Government.

*[The Government is asked to report in detail in 2014.]*

## **Bolivarian Republic of Venezuela**

### **Occupational Safety and Health Convention, 1981 (No. 155)** (ratification: 1984)

The Committee takes note of the Government's detailed report; of the Government's reply to its comments in 2009 when it referred to a communication from the Confederation of Workers of Venezuela (CTV); of a communication from the Independent Trade Union Alliance (ASI) sent by the Government on 24 September 2010; and of two communications dated 30 August 2011, of which one is from the CTV and the other from the ASI, sent by the Government on 22 September 2011. The Committee notes that the Government has not sent information on the questions raised in these three communications. The Committee will refer to the communications when examining the relevant Articles of the Convention. Furthermore, the Committee notes that on 2 December 2011, the Office received comments from the Government referring to the communications from the trade unions mentioned above, but it did not provide any information in this respect. The only information connected with the application of this Convention is the number of occupational accidents and diseases for the first six months of 2011.

*Articles 4 and 8 of the Convention. Formulating, implementing and periodically reviewing a coherent national policy on occupational safety, occupational health and the working environment; measures to give effect to this Article by consulting with the most representative employers and workers' organizations concerned.* The Committee notes that, according to the Government in its report, the principle of the people as participants is a constitutional right set forth in

section 5 of the Basic Act on Prevention, Working Conditions and the Working Environment (LOPCYMAT) which gives effect to *Article 4* of the Convention, and that draft legislation, regulations and technical standards are submitted for consultation among the various social partners. The Committee also notes that section 10 of the LOPCYMAT establishes that the Ministry of Labour shall consult the employers' and workers' organizations in respect of its national policy and that it will take into account, for the elaboration of this policy, inter alia, statistics on occupational diseases, accidents and death; the Government adds that section 36 of the same Act establishes a National Safety and Health Council with the participation of employers and workers. The Committee notes, however, that the Government has not provided information on the way in which this section of the Convention is applied in practice, indicating for example, the content of its national policy and whether this policy and its implementing measures have been and are discussed with the most representative employers' and workers' organizations concerned. This implies a process of application and periodical revision in consultation with the most representative employers' and workers' organizations concerned, to ensure an evaluation of the national policy, the basis upon which the scope of future actions is determined. With respect to *Article 8* of the Convention, the Government states that the Assembly puts into practice the so-called "parliamentarism of the street" which consists of discussing a number of bills with the citizens. It also points out that workers' assemblies, workshops with safety officers, meetings with trade union organizations and business associations of a number of productive groups are also held. Furthermore, the Committee notes that, in its comments of 2010, the CTV indicates that the Institute for Occupational Prevention, Health and Safety (INPSASEL) does not consult with the trade union organizations. The CTV adds that the Government should use the tripartite consultation mechanisms established under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) to improve the occupational safety and health conditions and reverse the present trend. The Committee draws the Government's attention to the fact that *Articles 4 and 8* of the Convention refer to consultations on national policy and ways to give effect to these, with the most representative employers' and workers' organizations concerned, and therefore discussions with the citizens does not replace consultations with the said organizations. **The Committee requests the Government to send additional information on the content of its national policy; on the consultations held with the most representative employers' and workers' organizations concerned with respect to the formulation, application and evaluation of its national policy and measures referred to under Article 8; and on the results of these consultations.**

*Article 5(e). Spheres of action that should be taken into account by national policy; the protection of workers and their representatives from disciplinary measures as a result of the actions properly taken by them in conformity with the policy referred to in Article 4 of this Convention.* The Committee notes that, according to section 44 of the LOPCYMAT, no safety delegate may be dismissed, transferred or demoted in his/her job, from the time he/she is elected until three months after the period for which he/she has been elected, without justified grounds previously approved by the labour inspectorate, in accordance with the Organic Labour Law. **Noting that, according to the ASI communication in 2010, 400 safety delegates were dismissed at the end of the first quarter of 2008, the Committee requests the Government to indicate what its legislation considers "justified grounds" in the context of the said Article; to send information on the application of this Article in practice, including on the application of dismissal with "just grounds previously approved by the labour inspectorate in accordance with the Organic Labour Law", and on the alleged cases of dismissal of safety delegates.**

*Article 6. Functions and responsibilities. Article 15. Coordination.* With respect to its comments in 2009, in which the Committee noted that, according to the CTV, the LOPCYMAT had not as yet been fully implemented and the Social Security Fund was not yet in operation, the Committee notes that, according to the Government, it is untrue that the LOPCYMAT is not yet functioning. The Governing points out that in the context of the transition of the social security institutions, certain legal situations of occupational safety and health (OSH) fall within the remit of the Venezuelan Social Security Institute (IVSS); that the entering into force of the Social Security Fund will enable the remaining aspects to come into effect; however, there has not been a deterioration or vacuum with respect to situations regulated by previous laws and regulations. The Committee also notes that, according to the ASI's communication of 2010, another delay with the LOPCYMAT is connected to the appointment of special prosecutors in occupational safety and health matters. In turn, the Committee notes that the Government has not provided the information requested in its previous comment on the difficulties encountered in formally setting up the National Council for Prevention, Safety and Health at Work, to which section 36 of the LOPCYMAT refers. **The Committee requests the Government to indicate whether the National Council for Prevention, Safety and Health at Work is operating and to send information on which bodies governed by the LOPCYMAT are functioning in practice, and those which are not, as well as the Government's plans to implement the Act in its totality.**

*Article 7. Reviews, either overall or in respect of particular areas, carried out at appropriate intervals. Article 11(c). The establishment and application of procedures for the notification of occupational accidents; and paragraph (e), the annual publication of information on measures taken, and on occupational accidents and occupational diseases.* The Committee notes that in 2010, the ASI indicates that, according to the INPSASEL, up to the third quarter of 2008, 69,119 serious accidents occurred, compared to the 57,000 registered throughout 2007. It is estimated, according to the ASI, that 90 per cent of occupational accidents are not reported. The Committee notes that in its communication of 2010, the ASI stated that INPSASEL would administer the OSH services in six sectors, and mentioned the petrochemical, petrol, auto-parts and agriculture sectors; and that in its 2011 communication, the ASI refers to the poor state of some installations belonging to the Venezuelan Petroleum Enterprise (PVDSA), adding that trade union officials urged the

INPSASEL to assume the responsibility for and supervise gas-filling plants throughout the country, and noted that workers were not employed in adequate safety and health conditions. Similarly, the Committee noted that, according to a communication from the CTV in 2011, there has been an increase in the number of occupational accidents compared with ten years before; and that this may be attributed to a deterioration in the working environment. It pointed out that there were no reliable statistics. The CTV also states that the petroleum industry is a particular case in point given that accidents in this industry have increased dramatically during the past eight years, and that according to the statement by the Secretary-General of the Federation of Petroleum Workers in August 2011, there have been 500 occupational accidents in the industry and 15 deaths, and that the PVDSA has dismissed workers involved in occupational accidents. As regards the notification of accidents, the Committee states that these are reported online and that this system is in its first phase. The Government also states that the INPSASEL posts on its webpage information on occupational accidents which occurred during the 2005–07 period, and on occupational diseases during the 2002–06 period. The Committee notes that the Government, in its communication received on 2 December 2011, stated that in the first semester of 2011, 29,020 occupational accidents and 1,130 occupational diseases were reported, but it did not provide information on previous years. **Having noted that the information available on the INPSASEL webpage is up to the year 2007, the Committee requests the Government to redouble its efforts to bring the available information on occupational accidents up to date so that it may count on efficient indicators in due time, allowing it to identify the sectors requiring priority action and, in this way, to be able to re-examine its national policy on the basis of reliable and recent data, and to provide information on this particular issue. Furthermore, the Committee requests the Government to: (1) send its comments on the issues related to the increase in the number of occupational accidents and under-reporting; (2) indicate the trends in occupational labour accidents by sector and the measures taken or envisaged to deal with this situation, including statistical information from 2007 until the present date; (3) send information on the surveys carried out or ongoing in specific sectors; and (4) indicate the sectoral committees to which it referred in its previous comment and provide information on the way they are run and activities.**

*Article 9. Adequate and appropriate system of inspection. Taking into account the problems of application in practice referred to in the communications, the Government is asked to indicate the measures adopted to guarantee the effective application of preventive and protective measures established under the Convention, including, but not exclusively, the strengthening of the labour inspectorate.*

*Other issues. Article 5. Spheres of action that should be taken into account in national policy; Article 11(a)(b) and (d). Functions that should be covered by national policy; Article 12. Obligations on persons who design, manufacture, import, provide or transfer machinery, equipment or substances for occupational use; and Article 15. Coherence of the national policy and coordination between the various authorities and bodies responsible for giving effect to parts II and III of the present Convention. Noting that the Government has not, in its report, provided information on the application of the abovementioned Articles, the Committee requests the Government to send information in this respect.*

*[The Government is asked to report in detail in 2012.]*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (Azerbaijan, Comoros, Guinea, Iraq, Luxembourg, Togo); **Convention No. 45** (Angola, Belarus, Bulgaria, Costa Rica, Dominican Republic, Fiji, Guinea-Bissau, Guyana, Nigeria, Sierra Leone, Solomon Islands); **Convention No. 62** (Greece, Guinea, Ireland); **Convention No. 115** (Argentina, Azerbaijan, Belarus, Brazil, Chile, China: Macau Special Administrative Region, Denmark, Guyana, Hungary, Iraq, Italy, Kyrgyzstan, Luxembourg, Tajikistan); **Convention No. 119** (Azerbaijan, Croatia, Democratic Republic of the Congo, Iraq, Italy, Kyrgyzstan, Russian Federation, The former Yugoslav Republic of Macedonia); **Convention No. 120** (Azerbaijan, Belarus, Costa Rica, France: New Caledonia, Iraq, Kyrgyzstan, Slovakia, Tajikistan, Ukraine); **Convention No. 127** (Algeria, Costa Rica, France: French Polynesia, Peru); **Convention No. 136** (Brazil, Chile, Greece, Guyana, Iraq, Nicaragua, Uruguay, Zambia); **Convention No. 139** (Brazil, Croatia, Denmark, Guyana, Hungary, Iraq, Ireland, Japan, Luxembourg, Slovakia, The former Yugoslav Republic of Macedonia, Bolivarian Republic of Venezuela); **Convention No. 148** (China: Macau Special Administrative Region, Costa Rica, Egypt, Ghana, Guatemala, Iraq, Luxembourg, Malta, San Marino, Seychelles, Slovakia, Uruguay, Zambia); **Convention No. 155** (Algeria, Bahrain, Belarus, Belize, Brazil, Croatia, Denmark, Ethiopia, Hungary, Ireland, Luxembourg, Mexico, Mongolia, Niger, Nigeria, Seychelles, South Africa, Syrian Arab Republic, Uruguay); **Convention No. 161** (Benin, Brazil, Colombia, Croatia, Niger, Slovakia, Uruguay); **Convention No. 162** (Plurinational State of Bolivia, Brazil, Canada, Colombia, Denmark, Germany, Luxembourg, Russian Federation, Uganda, Uruguay); **Convention No. 167** (Algeria, Belarus, China: Macau Special Administrative Region, Colombia, Guatemala, Iraq, Italy, Luxembourg, Panama, Slovakia, Uruguay); **Convention No. 170** (Burkina Faso, Dominican Republic, Italy, Luxembourg, Mexico, Syrian Arab Republic); **Convention No. 174** (Brazil, Colombia, Luxembourg, Saudi Arabia); **Convention No. 176** (Albania, Botswana, Ireland, Slovakia, Zambia); **Convention No. 184** (Argentina, Fiji, Ukraine); **Convention No. 187** (Cyprus, Denmark, Japan, Niger, Spain, Sweden).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 45** (Cyprus, United Kingdom: Falkland Islands (Malvinas)); **Convention No. 127** (Hungary);

**Convention No. 136** (*Hungary*); **Convention No. 148** (*Belgium, Denmark, Italy*); **Convention No. 161** (*Hungary*); **Convention No. 162** (*Belgium*).

## Social security

In cases where the problems of application identified by the Committee were of a systemic nature, the Committee considered it appropriate to formulate one general observation covering several or all social security Conventions ratified by the country concerned. This year such integrated comments are addressed to the following countries: Plurinational State of Bolivia, Guinea-Bissau, Nicaragua, Peru and Bolivarian Republic of Venezuela.

### Algeria

#### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1962)**

The Committee notes with *regret* that the Government's report does not provide any reply concerning the points to which it has been drawing its attention for many years:

- (i) the need for the wording of the various pathological manifestations enumerated in the left-hand column of the schedules of occupational diseases entitled "designation of diseases" to be of an indicative nature, in the same way as the wording for the corresponding types of work in the right-hand column of the schedules;
- (ii) the wording of the items pertaining to poisoning by arsenic (Schedules Nos 20 and 21), manifestations caused by the halogen derivatives of hydrocarbons of the aliphatic series (Schedules Nos 3, 11, 12, 26 and 27), and poisoning by phosphorus and certain of its compounds (Schedules Nos 5 and 34) must, pursuant to the Schedule annexed to the Convention, cover in general terms all the manifestations that may be caused by the above substances (such a wording would also make it possible to cover diseases which may be caused by the use of new products);
- (iii) the activities in which there is a risk of exposure to anthrax infection should also include the loading, unloading or transport of merchandise in general so as to cover workers (such as dockworkers) who have transported merchandise that has been contaminated by anthrax spores.

*The Committee requests the Government to indicate the reasons which have prevented it from bringing the national legislation into conformity with the Convention for over 30 years and once again urges it to take the necessary measures without further ado to bring the schedules of occupational diseases into conformity with the obligations deriving from the Convention.*

### Angola

#### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1976)**

*Article 2(1) of the Convention. Protection of apprentices in the event of employment accidents.* The Committee notes with *satisfaction* that, under the terms of section 7 of Decree No. 53/05 of 15 August 2005 on the legal framework for employment accidents and occupational diseases, coverage of occupational risks has been extended to apprentices and trainees, as requested by the Committee in its previous comments.

The Committee is raising certain other matters in a request addressed directly to the Government.

### Barbados

#### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1974)**

*Article 5 of the Convention. Payment of benefits abroad.* With reference to its 2008 observation, the Committee notes that, in its report of 2009, the Government provided information on the pensions in payment under the reciprocal agreements concluded with Canada, Quebec, the United Kingdom and the member countries of CARICOM. The Committee notes, however, that the Government's report did not reply on the other issues raised in the observation, particularly as regards the Government's indication in 2005 of the planned adoption of a draft bill amending the national legislation so as to comply with *Article 5* of the Convention. *The Committee therefore requests the Government to provide in its next report due in 2012 all the information requested in the Committee's previous observation on the following points.*

The Committee recalls that section 49 (in conjunction with section 48) of the National Insurance and Social Security (Benefits) Regulations of 1967 and section 25 of the Employment Injury (Benefits) Regulations of 1970 deprive a beneficiary residing abroad of the right to ask for the benefit to be paid directly to him at his place of residence, which is contrary to the provisions of *Article 5* of the Convention. In its previous report of 2002, the Government stated that approval has been given for direct payment of the benefits in the country where the claimant is currently residing, that corresponding amendments of the National Insurance and Social Security Act were approved by the Government to bring it in accordance with *Article 5* of the Convention, and that the procedural steps were taken to submit these amendments to

Parliament for enactment. In its report, received in June 2005, the Government indicated that a draft bill had been prepared for benefits to be paid to persons residing abroad and that a copy of the new provisions would be forwarded to the ILO as soon as they were adopted by Parliament.

The Committee recalls that, in granting equality of treatment for residents of the contracting parties under their social security legislation, the CARICOM Agreement on Social Security ensures protection and maintenance of the rights of beneficiaries “notwithstanding changes of residence among their respective territories – principles which underlie several of the Conventions of the International Labour Organization” (Preamble). The Committee wishes to recall in this respect that, in accordance with the principle of the maintenance of rights through the provision of benefits abroad, as established by Convention No. 118, Barbados shall guarantee direct payment of the benefits to all entitled beneficiaries at their place of residence, irrespective of the country in which they reside and even in the absence of a bilateral or multilateral agreement to that effect. *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.*

## Plurinational State of Bolivia

**Social Security (Minimum Standards) Convention, 1952 (No. 102)**  
(ratification: 1977)

**Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)** (ratification: 1977)

**Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128)**  
(ratification: 1977)

**Medical Care and Sickness Benefits Convention, 1969 (No. 130)**  
(ratification: 1977)

In reply to the Committee’s previous observation concerning Conventions Nos 102, 121, 128 and 130, the Government explained, in its report received in August 2010, that the new Political Constitution of the State has established a new hierarchy of legal standards. This new hierarchy gives precedence over national law to international instruments including the Conventions of the International Labour Organization (ILO) ratified by the Plurinational State of Bolivia, a hierarchy that differs from the one existing under the Political Constitution of the State of 1967. The Government also stated that the Plurinational State of Bolivia must adopt new legislation as soon as possible (acts, supreme decrees and other legal instruments), reflecting the new spirit of the Constitution in force. Accordingly, the State and the Bolivian Workers’ Federation (COB) signed a framework agreement for the reform of Bolivian social security legislation, and it was agreed to amend the parameters concerning retirement in terms that would imply greater solidarity for affiliated workers. The abovementioned plans for social security reform maintain the financial system of individual capitalization and establish a solidarity component. Referring to its 2011 General Survey *Social security and the rule of law* (paras 451–452), the Committee welcomes the reinforcement of the involvement of the Bolivarian State and the reconstruction of solidarity mechanisms based on the principle of collective financing as major components of national social security systems. The Committee considers that the principles of collective financing and social solidarity are a powerful weapon against poverty and an effective instrument for making societies more equal and just. Besides improving social security administration, management and supervision, public systems more readily abide by the governance principles set out in ILO social security instruments. *The Committee therefore expresses the firm hope that all future reforms of the social security system, such as the reform of the pensions system currently under way, will be based on the principles of solidarity and collective financing established in the new Political Constitution and by the ILO Conventions ratified by Bolivia.* Moreover, the Committee notes that the Government has not replied to its observations concerning the extension and restructuring of the social security scheme and the creation of a national strategy for the development of social security. *The Committee trusts that the Government, in its next detailed report which it is due to present before 1 September 2012, will reply to the questions raised in its previous observation, which read as follows:*

### *Extension and restructuring of the social security scheme*

The level of coverage of the social security scheme currently remains one of the lowest in the region. However, a number of recent measures have resulted in progress being made, with regard to health protection, through the introduction of universal insurance for mothers and children (SUMI) and free old-age medical insurance (SMVG). However, the health system remains very fragmented between the public assistance targeting the most vulnerable, the social security scheme directed at the employed population and their beneficiaries, and the private actors focusing on the higher income brackets. A rational restructuring would allow efforts to increase membership of the system to be coordinated, a series of basic health benefits to be defined giving effect in practice to the right to health protection for all and major economies of scale to be made with regard to both administrative management costs and the financing of care facilities.

Membership of the pension scheme also remains very low despite the introduction in 1997 of the new funded pension scheme which replaced the pay-as-you-go scheme based on solidarity. In order to remedy that situation, the Government recently established a universal non-contributory pension paid to all persons over 65 years of age, which has produced tangible results. A reform of the pension system is currently under way and a bill has already been approved by the Chamber of Deputies and is to be submitted to the Senate. The bill establishes a mixed pension scheme comprising a contributory and semi-contributory scheme and a non-contributory system. It also creates an invalidity and survivors' scheme for common and occupational risks, as well as a specific invalidity and survivors' insurance scheme for self-employed workers.

According to the 2009 ILO study, the weak coverage of the social security system with regard to health protection and pensions is largely due to the structure of the labour market and the fact that the social security scheme is essentially focused on covering the employed population benefiting from a relatively stable formal employment relationship and working essentially in large urban enterprises. However, given that this workforce accounts for only 25 per cent of the total workforce, the large majority of the economically active population, which comprises self-employed, domestic and rural workers, is excluded from the compulsory social security scheme, even though they represent more than two-thirds of the country's population. This situation is compounded by considerable evasion of contributions even within the formal economy. The combination of these two factors leads to a very low overall rate of health coverage of the economically active population (13.5 per cent in 2003). Access to health services in rural areas remains very limited with only 6 per cent of the rural population being covered. Furthermore, the high number of actors and the lack of coordination constitute yet more factors which contribute to keeping the coverage of the population at a very low level and perpetuating the lack of a comprehensive strategy in this regard. As regards old-age, invalidity and survivors' risks, the Government indicated in its report that only 38 per cent of employees of large enterprises employing over 20 persons are covered. The economically active persons affiliated to the old-age, invalidity and survivors' scheme represented only 5 per cent of the total number of residents. The problem of poor coverage is particularly pronounced with regard to self-employed workers and in agriculture, with only 4 per cent of Bolivian self-employed workers being affiliated to a pension fund administrator in 2007. In view of these factors, there is a need to adjust the Bolivian social security model in line with the economic and social reality of predominantly self-employed informal employment. The gradual compulsory membership of self-employed workers is a possible means of ensuring coverage of a large proportion of the population not yet benefiting from any social security coverage. State support in the form of social contribution subsidies would be an important component to ensure the success of such an initiative. ***The Committee would be grateful if the Government would provide information in its next report on the solutions found to increase the rates of membership and coverage and indicate the progress made with regard to reforming both the pension scheme and the health scheme.***

The separation, since 1987, of the management of the short-term benefits scheme and the basic long-term scheme has resulted in each of these schemes devoting a significant proportion of their resources to the performance of administrative and operational functions, particularly those relating to membership and the collection of social contributions. Studies show that the establishment of centralized management with regard to the collection of benefits and supervision of compliance with the obligation to join the social security scheme would allow significant results to be achieved in terms of coverage and would ensure better coordination, planning and linking of strategic activities regarded as priorities from the point of view of the entire system. The creation of an independent specialized body responsible solely for supervising and controlling the social security system, without participating in the management of the system's programmes, is another necessary component for the proper operation and viability of social security systems. ***The Committee requests the Government to provide information on the structural measures taken or envisaged with a view to optimizing the structure of the social security system.***

#### *Creation of a national strategy for the development of social security*

In 2001, the International Labour Conference (ILC) reaffirmed the central role of social security and reiterated that it was a challenge which all member States had to tackle as a matter of urgency. The resolution adopted by the ILC in 2001 recognizes that "the highest priority should be given to policies and initiatives that bring social security to those who are not covered by existing systems". To achieve that objective, the Conference urged every country to devise a national strategy closely linked to other social policies. States such as Bolivia which are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also required, according to the general observations made in 2007 by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), to devise a national strategy for the comprehensive implementation of the right to social security and to allocate sufficient budgetary and other resources at the national level. The Committee considers that the need to devise a national strategy arises from the general responsibility of the State, established by Convention No. 102, to ensure the continuity and proper operation of the social security system. The launch of a national strategy designed to ensure the strengthening and sustainable development of the social security scheme, taking into account the above concerns, would allow the State to exploit to the full all the potential offered by international social security standards with a view to ensuring the proper administration of schemes and enabling the gradual extension of coverage to the entire population. ***The Committee draws the Government's attention to the possibility of making greater use of technical assistance from the ILO with a view to devising, together with the social partners, a national strategy for the sustainable development of social security.***

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1977)**

*Articles 2(1)(i) and (2), and 6 of the Convention. Family allowances.* Referring to its previous observation, the Committee notes that the new Political Constitution of the Plurinational State of Bolivia, adopted on 7 February 2009, provides that the social security scheme will include the branch of family allowances and other social benefits. The Government states that it envisages adopting new legislation that will be fully in accordance with all the rights recognized by the new Constitution, including in the area of social security. ***The Committee hopes that the measures taken by the Government to comply with the new Constitution will enable it to reintroduce a family benefit scheme guaranteeing the granting 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, in respect of children who reside in the territory of any such Member, in accordance with Article 6 of the Convention.***

*Articles 7 and 8. Social security agreements ensuring the maintenance of acquired rights and rights in course of acquisition.* The Committee notes with *interest* the entry into force on 1 May 2011 of the Multilateral Ibero-American Social Security Convention, signed on 10 November 2007 by 15 countries: Argentina, Plurinational State of Bolivia,

Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Paraguay, Peru, Portugal, Spain, Uruguay and the Bolivarian Republic of Venezuela. Under *Article 2* of this Convention, it applies to any person who is subject or has been subject to the legislation of one or several States parties, as well as to their families and dependants. *The Committee requests the Government to indicate whether the ratification of this Convention and of its implementing agreement required amendments to the national legislation.*

## Cape Verde

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1987)

*Branch (g) (Employment injury benefit). Articles 3 and 4 of the Convention.* Referring to its previous comments, the Committee notes the Government's reiteration in its 2010 report that the system for protection against industrial accidents and occupational diseases is currently being revised in consultation with the social partners. The Committee recalls that, as the law currently stands, section 3(3) of Legislative Decree No. 84/78 of 22 September 1978, establishing the system of compulsory insurance against industrial accidents, subjects equality of treatment of foreign workers working in Cape Verde to a condition of reciprocity. This arrangement is contrary to *Articles 3 and 4* of the Convention, which provide for a system of automatic reciprocity for States that have ratified the instrument. ***In view of the commitment previously made by the Government to bring national law into conformity with the Convention and the fact that this situation has persisted for many years, the Committee hopes that the Government will be in a position to provide information in its next detailed report due in 2012 on progress made in this regard.***

*Article 5. Payment of benefits abroad.* In its previous comments the Committee asked the Government to incorporate into Legislative Decree No. 84/78 of 22 September 1978 a specific provision prescribing the granting of benefits for employment injuries when the persons concerned reside abroad, in order to give full effect to *Article 5 (branch (g))* of the Convention. The Government reiterates in its report that, even though it is not explicitly provided for in the abovementioned Decree, this provision of the Convention is applicable inasmuch as, under the terms of the Constitution of Cape Verde, the provisions of ratified Conventions prevail over national law. The Committee reiterates, as it has now done in several prior observations, that as regards the situation in law it is necessary to bring Legislative Decree No. 84/78 explicitly into conformity with *Article 5* of the Convention in order to avoid any ambiguity in the legislation and its application in practice. ***The Committee trusts that by the time of its next detailed report in 2012, the Government will have taken the opportunity provided by the current reform to establish an explicit provision guaranteeing the principle of preservation of rights with regard to the granting of employment injury benefits in cases of residence abroad. The Committee also requests the Government once again to send information on the internal regulations relating to the procedures followed for the transfer of benefits abroad and to provide statistics on the effective transfers by the National Social Security Institute or another relevant body and on the amounts of benefits for employment injury to beneficiaries residing abroad.***

## Chile

### **Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)** (ratification: 1935)

The Committee notes the comments on the application of Conventions Nos 35 and 37 received from the National Confederation of Municipal Employees of Chile (ASEMUCH) on 30 May 2011 with respect to the determination of remuneration taken into account to compute old-age pensions; as well as the collective comments on Conventions Nos 35 and 36, from the National Association of Public Employees (ANEF), the Association of Employees of the Women's National Service, the College of Teachers of Chile AG, the National Confederation of Business and Services, and the Confederation of Unions in the Banking and Financial Sectors of Chile, dated 15 September 2011, with respect to the differences in the rates of old-age pensions granted to men and women by the private pension system. The Government is invited to reply to these comments in its next report due by 1 September 2012.

With regards to the representation made by the College of Teachers AG in 2009 under article 24 of the ILO Constitution alleging non-observance by Chile of Conventions Nos 35 and 37, the Governing Body has referred the matter for examination to a tripartite committee set up to this effect at its 311th Session (June 2011). In accordance with its usual practice, the Committee has decided to suspend the examination of this issue awaiting the end of the article 24 procedure.

Finally, the Committee hopes that, in its next report, the Government will provide detailed information on the follow-up given to the recommendations made by the tripartite committees established to examine:

- the representations made in 1985 by the National Trade Union Coordinating Council (CNS) (ILO Official Bulletin Vol. LXXI, 1988, Series B, Supplement 1) and in 1998 by a number of national trade unions of workers of the private sector pension funds (AFPs) (document: GB.277/17/5); and
- the representations made in 1997 and 2004 by the College of Teachers of Chile AG (documents: GB.274/16/4 and GB.298/15/6).

## Costa Rica

### Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1972)

#### I. Reform of the national old-age, invalidity and survivors' insurance scheme

In 2000, the Workers' Protection Act No. 7983 established the new regulatory framework for old-age pensions, made up of a public social security scheme, a compulsory private scheme, a voluntary private scheme and a public non-contributory scheme. With a view to ensuring the sustainability of the Social Security Fund of Costa Rica, important changes were made in April 2005 to the first "pillar" of the Regulation concerning the national old-age, invalidity and survivors' insurance programme (IVM), which covers about 800,000 workers. For the most part, these changes focused on: the introduction of a new mechanism to determine a basic pension rate to help those with low incomes; the introduction of a pension with proportional rates after 15 years; the extension of the minimum contributory period and the period used to determine earnings taken into consideration to calculate old-age and invalidity benefits; the gradual increase of contributions over a period of 30 years; and the introduction of an invalidity pension at a rate of 50 per cent of the full-rate invalidity pension for persons aged 48 years and over who have contributed for at least 60 months. ***In order to understand more clearly the way in which the Convention is implemented in the light of the considerable changes made in the country with respect to the abovementioned benefits, the Committee requests the Government to provide, in its next detailed report due in 2012, all the information required by the report form under each of the Parts of the Convention accepted by Costa Rica, i.e., Parts II and V to X, as well as the statistics required by Article 76 of the Convention.***

#### II. Questions raised previously

Referring to its previous comments, the Committee notes with *satisfaction* the amendments made in 2007 to the Regulation concerning old-age, invalidity and survivors' insurance and death, which introduced a proportional pension for beneficiaries who have reached 65 years of age and paid a total of 180 contributions, i.e. 15 years, in accordance with the requirements of *Article 29(2)(a)* of the Convention. The Committee also notes the statistical information demonstrating the correlation between the reassessment of the pensions, the inflation rate and the upgrading of salaries.

*Part VI (Employment injury and occupational illness benefit), Articles 34, 36 and 38 (in conjunction with Article 69).* The Committee notes that no change has been made to the limited period during which pensions are paid in the event of minor or partial permanent disability and in the event of death of the breadwinner. The Government refers once again in its report to a communication from the National Insurance Institute, which considers that there is no reason to amend the national legislation given that national policy attempts to reinstate the victims of occupational accidents into professional life, provided that their incapacity for work is not total and enables them to continue working. In this respect, the Committee reminds the Government that it has an overall responsibility to implement the Convention by guaranteeing the benefits due, and that there is no question of referring to an opinion handed down by the competent authority to avoid compliance with international obligations arising from ratified Conventions. The Committee recalls once again 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, implying that a person having lost half of his capacity to work following an occupational accident may be deprived of benefits which should be guaranteed throughout the duration of the contingency. In this respect, the Committee points out that the Convention favours the vocational rehabilitation of victims who are permanently disabled and their reintegration into the labour force, but authorizes the cumulation of the permanent disability pension with any other possible income that persons might earn by drawing upon their remaining capacity to work. ***In these circumstances, the Committee can only hope that the Government will take the necessary measures to amend the relevant provisions of the Labour Code so that in all cases of permanent incapacity, 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.***

*Part VII (Family benefits), Articles 40 and 44.* In reply to the Committee's previous comments concerning the need to amend the system of family benefits to bring it into line with the definition of the contingency defined under *Article 4* of the Convention, the Government states that, despite the efforts made to comply with the Convention, the socio-economic factors affecting developing countries means that it does not have sufficient resources to pay the family benefits at the rates required by the Convention. The Committee recalls in this respect that the benefits paid at present to low-income families under section 4 of Act No. 5662 of 23 December 1974 and section 2 of Act No. 4760 of 30 April 1971 are means-tested. ***In these circumstances, the Committee would like to ask the Government to provide in its next report additional information on the types of benefits provided under the legislation quoted above and to indicate whether actuarial studies have been carried out with a view to assessing the financial implications of introducing a branch providing benefits to families, in accordance with Part VII of the Convention.***

### III. Questions raised by the Confederation of Workers Rerum Novarum (CTRN) and the Trade Union of Employees of the Ministry of Finance (SINDHAC)

The Committee took note of the comments made by the CTRN and the SINDHAC, as well as of the Government's full reply to these comments. Referring to its 2003 observation, the Committee reiterates that the reference under *Article 29(I)(a)* of the Convention to the qualifying period of "20 years of residence" refers to universal non-contributory schemes and does not, therefore, refer to schemes which are financed by contributions.

## Democratic Republic of the Congo

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1987)

The Committee recalls that the Democratic Republic of the Congo has accepted the obligations under Convention No. 102 in relation to old-age benefit (*Part V*), family benefit (*Part VII*), invalidity benefit (*Part IX*), and survivors' benefit (*Part X*). The Democratic Republic of the Congo has also ratified the *Equality of Treatment (Social Security) Convention, 1962 (No. 118)*, and the *Employment Injury Benefits Convention, 1964 (No. 121)*.

In 2004, following the comments that it has been making for many years concerning the need to bring the national legislation fully into conformity with the standards referred to above, the Government established a Committee on Social Security Reform with the mandate of preparing a draft revision of the Social Security Code (Ministerial Order No. 12/CAB.MIN/TPS/DC/FMK/066/04 of 8 December 2004). In 2005, by Decree No. 05/176 of 24 November, the Government also created the National Social Protection Support Programme (PNPS).

The Committee notes that, according to the information provided by the Government in its latest report, it has not been possible to finalize the reform of the social security system as the body responsible for approving the draft of the new Social Security Code, the National Labour Council, is experiencing financial difficulties in holding its 30th Session. It also notes that the Government has availed itself of ILO technical assistance for the preparation of the draft text of the new Social Security Code, and that this assistance covered, among other matters, the reinforcement of the institutional capacities of the National Social Security Institute and the extension of social protection to populations hitherto not covered.

*The Committee trusts that the Government will take all the necessary measures to finalize the reform of social security in the near future. It also hopes that the Government will provide detailed information in its next report due in 2012 on the manner in which the legislation gives effect to Convention No. 102, and on any difficulties encountered in practice in the application of the Convention. Please provide a copy of the new Social Security Code or the draft text approved by the National Labour Council, as appropriate.*

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)**

The Committee notes with *regret* that, notwithstanding the comments that it has been making for many years, the Government's latest report does not indicate any tangible progress achieved in bringing the national legislation into conformity with the Convention and does not provide the information requested previously on the following points:

- the need to add to the schedule of occupational diseases, diseases caused by the toxic halogen derivatives of the aliphatic series hydrocarbons and those caused by benzene or its toxic homologues (*Article 8 of the Convention*);
- the need to specify the manner of calculation and actual payment for the periodic benefits due in respect of temporary incapacity for work, including incapacity at its initial phase, and benefits in respect of the total or partial loss of earnings capacity, or the death of the breadwinner, in accordance with the report form for the Convention under *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*);
- the need to indicate how the periodic benefits due in respect of total or substantial loss of earnings capacity and survivors' benefits are reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living (*Article 21*);
- the need to explain the manner in which appeal procedures operate in practice in the case of refusal of the benefit or complaint as to its quality or quantity (*Article 23*);
- the need to describe the manner in which the State assumes general responsibility for the proper administration of the institutions or services concerned in the application of the Convention (*Article 24, paragraph 2*).

*The Committee hopes that the Government will take all the necessary measures with a view to resolving the issues referred to above in the very near future.*

## Djibouti

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Ever since the Convention was ratified in 1978, the Committee has been drawing the Government's attention to the need to amend section 29 of Decree No. 57-245 of 1957 on the compensation of occupational accidents and diseases in order to bring the national regulations into conformity with *Article 1(2) of the Convention*. According to this provision, the nationals of States that have ratified the Convention and their dependants must receive the same treatment as Djibouti grants to its own nationals in respect of workers' compensation. Under the terms of this section of the Decree, unlike nationals, foreign workers injured in industrial accidents who transfer their residence abroad no longer receive a periodical payment but a lump-sum payment equal to three times the periodical payment they received previously. The Government previously referred to a draft reform of the labour legislation aimed at the full application of the principle of equal treatment and the formal repeal of the residence requirement laid down by the Decree of 1957. The Government also stated that this residence requirement has only been applied occasionally to foreigners. In its last report, the Government indicates that the Committee's observations will be studied by the National Council for Labour, Employment and Vocational Training with a view to bringing the national legislation into conformity with the Convention. It hopes that the conditions allowing for this process to resume will be met as soon as possible. Nevertheless, the Government points out that the Djiboutian system does not apply any reduction to the amount of the periodical payment transferred abroad. *The Committee trusts that, in view of the situation which prevails in practice, the Government will seize the opportunity represented by the reform of the system of social protection currently under way and will formally repeal section 29 of Decree No. 57-245 so as to bring both the letter and spirit of the national legislation into full conformity with Article 1(2) of the Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Ecuador

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** (ratification: 1970)

With reference to its previous observation, the Committee notes the indication contained in the Government's report of 2007 that the Constitutional Tribunal declared several provisions of the Social Security Act of 2001 unconstitutional. *In order to clarify the situation in law, the Committee reiterates its request to the Government to provide, in its next detailed report due in 2012, information on the extent to which the amended legislation gives effect to each of the provisions of the Convention, as well as the statistical information requested in the report form. Please supply also any regulations that have been adopted to apply the new Act.*

*Article 5 of the Convention (in conjunction with Article 10). Payment of benefits abroad.* The Government confirms in its report that the payment abroad of old-age, invalidity and survivors' benefits, and of workers' compensation in cases of accidents, occupational diseases or the death of the worker, is made in each individual case on the basis of a resolution issued by the Benefits Committee of the Ecuadorean Social Security Institute (IESS). Referring to the conclusion of the Multilateral Ibero-American Social Security Convention and the Andean Instrument of Social Security (Decision No. 583) establishing the principle of equality of treatment and exportability of benefits among the ratifying parties, the Government also indicates that where bilateral social security agreements have been concluded, special liaison offices have been created with respect to the transfer of benefits abroad. *The Committee once again requests the Government to legitimize the practice of authorizing the payment of benefits abroad by adopting a specific provision ensuring that Articles 5 and 10 are applied both in law and in practice, as it had previously expressed the intention of doing. The Committee asks the Government to send information on the progress made in this regard in its next detailed report due in 2012.* The Committee recalls in this respect that the scope of obligations assumed by Ecuador under Convention No. 118 goes beyond the circle of the countries party to the Andean Instrument of Social Security or the Multilateral Ibero-American Social Security Convention. By ratifying Convention No. 118, the Government has undertaken to guarantee, in accordance with its *Articles 5 and 10*, payment of the above benefits to the nationals of any other Member which has accepted the obligations of the Convention in respect of a given branch, as well as to its own nationals and to refugees and stateless persons, in the event of residence abroad, irrespective of the new country of residence or the conclusion of any reciprocity agreement.

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)** (ratification: 1978)

*Further to its previous observation, the Committee requests again that in its next report, due in 2012, the Government provide detailed information on all the Articles of the Convention, as required by the report form, and that it indicate the measures taken or envisaged to ensure that the following Articles of the Convention are actually applied:*

*Article 8 of the Convention. Recognition of occupational diseases.* The Committee notes that the legal provisions on occupational diseases are to be found in the Labour Code of 2005 (sections 349, 363, 364, etc.), Chapter VII of Social Insurance Act No. 2001-55, particularly in section 158, and in resolution No. 741 (general regulations on occupational risk insurance). The Committee observes in this connection that section 363 of the Labour Code contains a schedule of

occupational diseases and that section 364 allows for a Risk Assessment Committee to add other occupational diseases to those already listed. Resolution No. 741, section 4, lists the specific agents carrying a risk of occupational disease, and section 6 lists the occupational diseases they are liable to cause, with the requirement that the “presence and action” of the agent concerned must be demonstrated. Section 9 of the resolution allows for the Disability Evaluation Committee to add other occupational diseases on condition that this Committee first establishes a causal link between the work performed and the acute or chronic ailment. It should be noted that the Labour Code says nothing of the need for proof of a causal link, either in connection with the list of occupational diseases or in relation to the decisions of the Risk Assessment Committee. **Consequently, the Committee requests the Government to specify the coverage of the various provisions referred to above as regards the lists of occupational diseases, and to specify which of these lists it deems to be consistent with the provisions of the Convention. The Committee also asks the Government to provide copies of decisions by the Risk Assessment Committee and by the Incapacity Assessment Committee so that the burden of proof regime governing occupational diseases not included in the lists can be assessed. The Committee further requests the Government to take appropriate steps to amend section 5 of resolution No. 741, so as to establish a presumption of occupational origin in favour of workers suffering from a disease enumerated in Schedule I of the Convention when they are engaged in the types of work mentioned in the schedule.**

*Article 9. Coverage of chronic diseases.* The Committee notes that in its report the Government construes sections 10, 12, 14 and 19 of resolution No. 741 and section 177 of the IESS Codified Statute to mean that benefits under employment injury insurance are not subject to length of employment, duration of insurance membership or payment of contributions. The Committee observes, however, that in section 14 of the above resolution, under which occupational diseases are treated on a par with employment accidents, reference is made to acute, but not to chronic, occupational diseases. **Consequently, to avoid all ambiguity, the Committee asks the Government to confirm that its interpretation of the abovementioned provisions also applies to chronic diseases.**

*Articles 13, 14 and 18 (in conjunction with Articles 19 and 20). Amount of periodical payments.* The Committee notes the information in the Government’s 2007 report to the effect that the calculation of cash benefits is based on Article 19 of the Convention. **If this is so, the Committee invites the Government to explain in its next detailed report, due in 2012, how it determines the skilled manual male employee in accordance with Article 19(6), specifying the amount of his earnings, benefits and family allowances as established in Parts I–V of the report form or under Article 19 of the Convention.**

*Article 21. Review of the rates of cash benefits.* The Committee notes with *interest* that the Social Security Act was amended in 2009 by the Act to Amend the Social Security Act, the Armed Forces Social Security Act and the National Police Force Social Security Act, which entered into force on 30 March 2009 (supplement to *Official Gazette* No. 559). Thus, section 234 of the Social Security Act has been amended by section 11 of the amending Act which establishes that cash benefits shall be increased at the beginning of each year by a percentage equal to that of the previous year’s inflation. **The Committee invites the Government to provide the statistical information requested under Article 21 of the report form.**

## Greece

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1955)

With reference to its previous observation, the Committee takes note of the Government’s reply of 16 May 2011 to the comments made by the Greek General Confederation of Labour (GSEE), dated 29 July 2010, under article 23 of the ILO Constitution on the application by Greece of a number of Conventions, including the present Convention, in relation to the legislative measures taken for the implementation of the support mechanism for the Greek economy. The Committee also takes note of the discussion that took place at the Committee on the Application of Standards during the 100th Session of the International Labour Conference (June 2011) with regard to the application by Greece of the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*. It notes that the Conference Committee welcomed the Government’s indication that it was working on arrangements with the ILO for the visit of a high-level mission proposed by the Committee of Experts to facilitate a comprehensive understanding of the issues raised by the GSEE in its comments. The Conference Committee also considered that contact with the International Monetary Fund (IMF) and the European Union (EU) would assist the mission in its understanding of the situation (*Provisional Record* No. 18, Part II, pages 68–72). The Committee takes note of the report of the high-level mission which visited the country from 19 to 23 September 2011 and held further meetings with the EU and the IMF in Brussels and Washington, DC, in October 2011. Furthermore, notwithstanding the fact that the detailed report of the Government on the Convention due in 2011 has not been received, the Committee notes that the 29th annual report (2011) of Greece on the application of the European Code of Social Security, being a detailed report, contains all the information requested in the report form on the Convention, as well as the Government’s reply to questions raised in the Committee’s previous comments concerning the general responsibility of the Government for the sustainable financing and management of the national social security system in the context of the grave economic and financial crisis. Finally, the Committee takes note of Act No. 3863/2010 on the

“New Social Security System and Relevant Provisions” (FEK A’115) of 8 July 2010, the provisions of which are contested by the GSEE.

The Government states that the distortions accumulated in the operation of the social security system have rendered it socially ineffective and economically unsustainable. As the population was rapidly ageing (four workers for one pensioner in 1950 and today, one worker for 1.7 pensioners), the expenses of the system had run out of control and were projected to reach 13.2 per cent of GDP in 2020 and 24 per cent in 2050. This unsustainable situation was amplified by the economic crisis, making it necessary to change the structure of the social security system in order to safeguard its long-term viability and public character. The adoption of the Act No. 3863/2010 introduced a unified and consolidated architecture of the pension system, which was a precondition to raising its functional efficiency and effectiveness. Different funds were merged into three covering workers, farmers and the self-employed. The supplementary pension scheme was reconstructed on consistent insurance principles by withdrawing state subsidies while introducing strict actuarial monitoring of the contributions/benefits ratio. This insurance pillar was complemented by a universal tax-financed scheme, which secured a minimum guaranteed pension for all citizens, including those who were not insured or did not fulfil the qualifying conditions. A transitional period was foreseen (2010–15) for gradually increasing the qualification requirements; pension rights acquired by 31 December 2010 were maintained in full and a number of adjustments were made to avoid hardship to certain categories of persons in the transition phase. Under Act No. 3863 an actuarial evaluation should be carried out one year after the introduction of the reforms, to assess their sustainability.

The Committee notes that in planning substantial changes to the pension system the Government sought advice and technical assistance of the International Labour Office, who insisted on the absolute necessity to adopt parametric and financing reforms to guarantee the overall sustainability of the Greek pension system. In May 2010, following the signature of the Memorandum of Understanding between the Government of Greece and the IMF, the European Commission, the Eurogroup, and the European Central Bank, an ILO mission visited Greece at the request of the National Actuarial Authority and the Ministry of Labour and Social Security to support the quantitative analysis of a set of consolidating reforms of the pension system under the provisions of the draft law No. 3863. The ILO projections delivered on 1 June 2010 showed that the reform would trigger substantial long-term savings for the pension system, to the extent that the deficit, even in view of mounting demographic pressures, would be more or less stabilized during the next five decades, provided that the assumptions of the costing held good. Noting that the new design and parameters of the Greek pension system, which should become fully operational in 2015, are in line, conceptually and technically, with the minimum standards laid down by the Convention, the Committee nevertheless considers that, in the context of the rapidly deteriorating economic situation of the country, the initial costing assumptions in the ILO projections might need to be reviewed, and that the ongoing actuarial evaluation of the Act No. 3863 presents the best opportunity for this. The Committee also considers that, in view of the international obligation of Greece under the Code, it would be prudent for the Government to specifically include among the basic parameters for the projected scenarios for the future development of the national pension system the minimum standards of the Code. The Committee wishes to underscore that an objective actuarial study drawing a red line alerting the Government to conditions which might lead to the possible violation of the minimum international social security standards, will equip the Government with an invaluable tool to exercise effectively its general responsibility for the proper governance of the social security system and seek an enlightened acceptance of the reforms by the social partners in full knowledge of the situation. ***Bearing this in mind, the Committee asks the Government to explain in detail in its next report the basic assumptions and the resulting conclusions of the current actuarial evaluation of the reforms introduced by Act No. 3863.***

Besides the concerns over the long-term viability of the pension system, in the immediate future the country is facing the risk of the social security system being unable to withstand the continuing contraction of the economy, employment and public finances and compelled to reduce the level of protection, which may fall below the minimums guaranteed by the Convention. According to the information collected by the high-level mission of the ILO, which has specifically covered social security among other areas, it was estimated that, in the event that unemployment increases to 1 million people from the current 800,000, social security funds would be losing €5 billion annually and the sustainability of the benefits provided by them would be called into question. Already, in addition to pension cuts operated by Act No. 3863, Act No. 4024/27-10-2011 on “Provisions concerning pensions, the common pay-scale and grading system [in the public sector], the labour reserve and other provisions for the implementation of the mid-term fiscal strategy 2012–15” introduced new cuts in the pensions over €1,000 received by persons below and above 55 years of age of the order of 40 per cent and 20 per cent respectively, as well as reductions in the supplementary pensions. The high-level mission noted that such drastic reductions in the level of benefits undermine the people’s trust in the social security system and raise concerns for social justice in handling the crisis. The Committee observes that the general responsibility of the Government for the proper governance of the social security system obliges it to restore people’s confidence in its ability to be an effective and just regulator and provider of services in the interests of the Greek people. To achieve this, the following principles of social solidarity and justice on which the Convention is based, become particularly important when times are bad:

- that the cuts in benefits, likewise their costs, shall be borne collectively, spreading fairly among the members of the society in a manner which avoids hardship to persons of small means and takes into account the economic situation of the country and of the classes of persons protected (*Article 71(1)* of the Convention);

- that the cuts in benefits shall not result from the unilateral withdrawal of the State or of the employers from the financing of the benefits, thus leaving the employees protected to bear more than 50 per cent of the total of the financial resources allocated to the protection of employees and their families (*Article 71(2)*);
- that the cuts in benefits and related austerity measures shall be decided and managed in consultation with the representatives of the persons protected as well as of the employers and of the public authorities through the established mechanisms of tripartite social dialogue (*Article 72(2)*).

In the light of these principles, the Committee considers that it is incumbent upon the Government to assess, with all the parties concerned by the implementation of an international support mechanism for Greece, the resources available to those who evade contributing to the country's efforts, in order to ensure that they are forced to contribute by legal means. ***The Committee would like the Government to explain to what extent it abides by the above principles of social solidarity and justice in introducing the social austerity measures in the context of the implementation of the support mechanism for Greece.***

Furthermore, the need to strengthen the governance of the social security system would require the Government to plan and assess past and future social austerity measures in relation to one of the main objectives of the Convention, which consists in the prevention of poverty among the categories of the persons protected. The social security system would not fulfil its role if the benefits it provides would be so low as to push the workers below the poverty line; in such cases the State will be seen as failing to fulfil its general responsibilities under *Articles 71(3) and 72(2)* of the Convention. ***In this context, the Committee would consider it the duty of the Government to assess, together with all the parties involved in the implementation of the international support mechanism for Greece, the spread of poverty in the country, particularly among persons of small means, and the ability of the available social security benefits to withstand this trend and “maintain the family of the beneficiary in health and decency” (Article 67(c) of the Convention). In doing so, the Government should establish a comprehensive system of statistical monitoring of poverty and consider social security policies in coordination with its tax, wage and employment policies in the context of the obligations undertaken under the international support mechanism.*** The Committee would like to point out in this respect, as it has done already in its General Report of 2009, that “social security and the overall economy were inseparable, particularly in periods of crisis, and needed to be governed and managed together, at both the national and global levels. It meant that bringing the economy out of the crisis required enhanced measures of social protection and, indeed, making social security part of the solution.” Exploring exclusively fiscal solutions at the expense of cutting non-wage labour costs and basic welfare could eventually lead to the collapse of the internal demand and the social functioning of the State, condemning the country to years of economic depression. ***Taking into account the gravity of the situation, the Committee calls on the ILO to continue to provide comprehensive technical assistance to Greece in reforming its social security system, and to draw the attention of all the parties implementing the support mechanism for Greece to the need, in order to prevent the drastic impoverishment of the population and mounting social unrest, to maintain social security benefits at least at the minimum levels prescribed by the Convention, as well as to establish the statistical monitoring system of the spread of poverty among different categories of the population and use its indicators to closely coordinate social security, tax and employment policies.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Guinea

### ***Equality of Treatment (Social Security) Convention, 1962 (No. 118)*** ***(ratification: 1967)***

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 5 of the Convention. Payment of benefits in case of residence abroad.* The Committee recalls that the Government, in its earlier reports, indicated that the new Social Security Code, when adopted, would give full effect to *Article 5* of the Convention under which the provision of old-age benefits, survivors benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreements with such country, both to nationals of Guinea and to nationals of any other State which has accepted the obligations of the Convention for the corresponding branch. However, in its last report, the Government indicates that the new Social Security Code does not entirely fulfil the requirements of the provisions of *Article 5* of the Convention, in that it does not provide for maintenance of payment of the various benefits in case of change of residence, and that this restriction is a constant feature of the legislation governing the field in the States in the subregion. However, the Government hopes that further negotiation of bilateral agreements with other States will make good this weakness in the Social Security Code.

In this connection, the Committee notes that under section 91, paragraphs 1 and 2, of the new Code, benefits are cancelled when the beneficiary definitively leaves the territory of the Republic of Guinea, or are suspended while she or he is not resident on national territory. It notes however that, under the last paragraph of that section, these provisions “are not applicable in the case of nationals of countries which have subscribed to the obligations of the international Conventions of the International Labour Office regarding social security ratified by the Republic of Guinea, or where there are reciprocal agreements or multilateral or bilateral social security agreements on the provision of benefits abroad”. ***Since, by virtue of this exception, the nationals of any State which has accepted the obligations of Convention No. 118 for the corresponding branch, may in principle now claim benefits in case of residence abroad, the Committee requests the Government to indicate whether this is in fact the case and, if so, whether a procedure for the transfer of benefits abroad has been established by the national social***

security fund, to meet the possible demands for such foreign transfer. In addition, the Committee requests the Government to state whether the exception provided in the last paragraph of section 91 is also applicable to Guinean nationals in the event of their transferring their residence abroad, in accordance with the principle of equal treatment established under Article 5 of the Convention as regards the payment of benefits abroad.

*Article 6. Payment of family benefit.* With reference to the comments it has been formulating for many years regarding the provision of family allowances in respect of children residing abroad, the Committee notes that, under section 94, paragraph 2, of the new Code, to obtain the right to family allowances, dependent children “must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Office, reciprocal agreements or bilateral or multilateral agreements”. With respect to reciprocal agreements or bilateral or multilateral agreements, the Committee recalls that to date Guinea has concluded no agreement of this sort for the payment of family allowances in respect of children residing abroad. Regarding the special provisions of the ILO Conventions, it recalls that under Article 6 of Convention No. 118 any State which has accepted the obligations of the Convention for *branch (i)* (family benefit) must guarantee payment of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of this Convention for that branch, as well as for refugees and stateless persons, in respect of children who reside on the territory of any such State, under conditions and within limits to be agreed upon by the States concerned. In this connection, the Government states in its report that the payment of family benefits is guaranteed to families of whom the breadwinner has been regularly insured by the social security system, and is in order regarding the payment of his own contributions, and those of his successive employers. *The Committee therefore hopes that the Government will be able to confirm formally in its next report that the payment of family allowances will also be extended to cover insured persons up to date with their contributions, whether they are nationals, refugees, stateless persons or nationals of any other States which have accepted the obligations of the Convention for branch (i), whose children reside on the territory of one of these States and not in Guinea. The Committee would also like to know in these cases how the condition of residence is dispensed with for the application of section 99, paragraph 2, of the new Code, which only recognizes as dependent those children “that live with the insured person”, and also for section 101, which makes payment of family allowances subject to an annual medical examination of the child, up to the age where she or he comes under the school medical service, and the regular medical care for beneficiaries of school age attending courses in educational or vocational training establishments.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)**

The Committee notes with *regret* that the Government’s report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 8 of the Convention. Occupational diseases. The Committee asks the Government to provide a copy of the list of occupational diseases revised in 1992, indicating whether it is now in force.*

*Article 15(1). Conversion of periodical payments into a lump sum.* In accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). *The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.*

*Articles 19 and 20. Amount of benefits. In the absence of the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention, the Committee once again asks the Government to indicate whether it avails itself of Article 19 or of Article 20 of the Convention in establishing that the percentages required by Schedule II of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under Article 19 or 20, depending on the Government’s choice.*

*Article 21. Review of employment injury benefit rates. In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government’s next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.*

*Article 22(2). Payment of employment injury benefits to dependants. The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.*

The Committee notes the Government’s statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. *It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.*

*Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guinea-Bissau

**Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)**  
(ratification: 1977)

**Workmen's Compensation (Accidents) Convention, 1925 (No. 17)**  
(ratification: 1977)

**Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)** (ratification: 1977)

**Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)**  
(ratification: 1977)

*Reporting obligations.* The Committee notes the Government's reports on Conventions Nos 12, 17, 18 and 19, received for the first time since the year 2000, notwithstanding the numerous reminders sent to the Government. It *regrets*, however, that they still do not reply to most of the questions raised in the comments of 2001 and repeated in 2008, 2009 and 2010. The National Workers' Union of Guinea (UNTG) in its observations on the Government's reports on ratified Conventions, stressed that the Government should step up its efforts to comply with international labour standards and bring its legislation in line with the ILO Conventions. In the UNTG's opinion, the Government should take all necessary measures to strengthen its technical, material and financial capabilities to enforce the application of the labour standards in the private and public sectors. *The Committee hopes that the Government will take these observations into account and will not fail to include the information requested in its next detailed reports on these Conventions due before 1 September 2012. The Government is also reminded to provide detailed information on the practical application of these Conventions as required in Part V of the report forms, particularly on the number and nature of the occupational accidents reported and the amount of benefits paid.*

*Legal framework of protection against occupational accidents and diseases in Guinea-Bissau.* The said legal framework is composed of several laws and decrees, including Decree No. 4/80 on Compulsory Insurance on Occupational Accidents and Diseases (6 February 1980), Regulatory Decree No. 6/80 regulating Decree No. 4/80, Legislative Decree No. 5/86 on Establishment of a Social Protection Regime (29 March 1986), Legislative Decree No. 1/97 on the Replacement of the National Insurance and Social Protection Institute by the National Institute of Social Security (INPS) and GUIBIS-Guinea-Bissau Insurances SÀRL (29 April 1997), and Act No. 4/2007 on the Legal Framework for Social Protection (3 September 2007). Decree No. 4/80 governs compulsory insurance against occupational accidents and diseases providing for the workers' (and their family members') right to compensation. It sets the definition of occupational accidents and diseases and rules regarding the exercise of the rights to compensation under the compulsory insurance scheme, and financed through employers' and workers' contributions, operated by the INPS. Regulatory Decree No. 6/80 establishes different types of benefits to which a worker suffering an occupational accident or disease is entitled according to the degree of incapacity, and sets forth the rules to determine the base salary upon which compensation is paid. Legislative Decree No. 5/86 repeals the provisions of the Agricultural Code and establishes the basis of the general regime of social security. Legislative Decree No. 1/97 replaces the former National Insurance and Social Protection Institute with the INPS. Lastly, Act No. 4/2007 establishing a Legal Framework for Social Protection for the population of the country, consists of three schemes: Citizenship Social Protection of a non-contributory nature; Mandatory Social Protection, which is a contributory regime covering all wage earners (nationals or foreigners); and a voluntary Complementary Social Security scheme. *The Committee would ask the Government to complete the above description of the legal framework existing in the country and providing protection against occupational accidents and diseases, clarifying in particular: (i) whether Act No. 4/2007 has entered into force and been regulated; (ii) whether Decree No. 4/80 and Regulatory Decree No. 6/80 have been repealed by Act No. 4/2007; (iii) the relations between Regulatory Decree No. 5/86 and Act No. 4/2007, with respect to their scope of application, rules regarding foreign workers, benefits and degrees of compensation for incapacity of workers due to occupational accidents and diseases; (iv) proposals for reforming this framework and elaborating new legislation.*

*Adoption of the list of occupational diseases.* The Committee recalls that back in 2000, the Government stated that the INPS, which has competence for workers' compensation for occupational accidents and diseases, was having difficulty in identifying occupational diseases, and consequently, the Ministry of Public Health had not been able to adopt a list of such diseases. In its 2011 report on Convention No. 18, the Government regretted that Guinea-Bissau has neither enacted a legal regime regulating occupational diseases nor adopted a list of such diseases but reported that a Commission had been established to review the legislation regarding industrial accidents and to draft legislation and establish a list of occupational diseases. While taking due note of these developments, the Committee wishes to remind the Government that by ratifying Convention No. 18 it has made the list of diseases in Schedule to *Article 2 of the Convention* part of the national legal order. That list was elaborated by the International Labour Conference back in 1925 specifically for the purpose of providing countries, which had no capacity to establish their own lists, with a ready-made compendium of diseases recognized as occupational on the basis of the best international experience available at that time. Since then, the ILO list of occupational diseases has been complemented on several occasions (see Conventions Nos 42 and 121 and

Recommendation No. 194) by new diseases the professional origin of which was ascertained by the evolution of scientific knowledge. The diseases listed in Convention No. 18 ratified by Guinea-Bissau therefore constitute the minimum protection to be guaranteed and must be automatically recognized as occupational where contracted in the conditions prescribed in the Schedule by all the national authorities for the purposes of workmen's compensation. ***The Committee would like the Government to explain what legal or other reasons prevented it for so long from bringing this list to the attention of the national labour administration, social insurance and judicial authorities in order to ensure the practical implementation of the obligations assumed by the country under Convention No. 18. The Committee again expresses the hope that the Government will take all necessary steps to ensure, through the adoption of the new legislation referred to in its report, that the list of occupational diseases established by the Convention becomes fully operational and legally enforceable in the country for the purpose of workmen's compensation.***

***Compensation for occupational accidents and diseases.*** The Committee notes from the report on Convention No. 17 that, in practice, compensation may be paid wholly as a lump sum. ***Please indicate what authority is competent to decide that payment shall be made in a lump sum and what guarantees, if any, for the proper utilization of the lump sum it ordinarily requires, in accordance with Article 5 of Convention No. 17.*** The report also states that public servants are not subject to any legal framework in relation to compensation in case of industrial accidents, but, if a public servant suffers a personal injury due to an industrial accident, he/she receives compensation in the form of a sum of money. ***The Committee would ask the Government whether any consideration was given to the possibility to include public servants within the legal framework protection against occupational accidents and diseases.*** Finally the Committee notes that, according to section 17(2) of Decree No. 6/80, where the incapacity is such that the injured person must have the help of another person or special care, the pension may be increased to up to 100 per cent of the basic wage. ***Please indicate the number of people who are actually receiving such an increased pension.***

***Application to agricultural wage earners.*** In its previous reports on Convention No. 12, the Government had indicated that Decrees Nos 4/80 and 6/80 governing compulsory insurance against occupational accidents and diseases applied to agricultural wage earners. In its 2011 report, the Government indicates that, according to section 1(b) of Chapter I of Legislative Decree No. 5/86 only agricultural wage earners whose employers can be identified are mandatorily covered, while independent agricultural wage earners who do not perform their work in a "family regime", as set out in section 2(2)(d) of Decree No. 4/80 are excluded from coverage. Section 17 of Act No. 4/2007 provides, however, that wage earners in all branches and sectors are to be included in the Mandatory Social Protection System, provided that the employer they work for can be identified, with the exclusion only of domestic workers who are subject to a special regime. ***The Committee would like the Government to explain what agricultural wage earners are covered by the "family regime" and whether they benefit from the protection given by the legislation cited above. Please explain also the special regime applicable to the domestic workers.***

Section 6 et seq. of Decree No. 4/80 set forth a general definition of occupational accidents as well as the definitions related to specific sectors such as agriculture, where according to the Government, occupational accidents are defined as the wrong use of chemical products and protection equipment. ***The Committee wishes to point out that the principle of equality of treatment of agricultural wage earners implies that they should benefit from the same definition of occupational accidents that is applicable to other workers. The Government should therefore consider harmonizing the different definitions of occupational accidents so that workers in different sectors of activities would benefit from the same protection and compensation.***

The Government states that it has no statistics on occupational accidents and diseases because most of agricultural wage earners are not aware of their obligation under section 20 of Decree No. 4/80 to report the occurrence of any occupational accident or disease to the National Institute of Social Security. The General Labour Inspectorate has neither special knowledge in the field of agricultural work nor financial nor human resources to carry out inspections in this sector. Most occupational accidents and diseases are caused by the fact that agricultural workers do not wear suitable protection equipment in carrying out their tasks. Some companies fail to comply with their obligations under occupational accidents and diseases legislation and some others are not even registered with the INPS. The Committee notes the practical difficulties encountered by the Government in the application of Convention No. 12. It observes that these difficulties will not go away without systemic and vigorous action taken by the Government in cooperation with the social partners to raise awareness of workers and companies of their respective rights and obligations, establish simple and rapid procedures for reporting occupational accidents supported by insurance compensation and labour inspection, promote the use of protection equipment and safer technologies, etc. ***The Committee asks the Government to step up its efforts to reduce the gap between the agricultural and the industrial sectors with regard to protection against occupational accidents and diseases and to indicate the concrete measures taken in this respect in its next report.***

***Equality of treatment of foreign workers.*** In its previous comments concerning Convention No. 19, the Committee pointed out that section 3(1) of Decree No. 4/80 is inconsistent with the Convention in that it lays down reciprocity as a requirement for equality of treatment between foreign workers employed in Guinea-Bissau and national workers. In response, the Government mentions that article 28 of the Constitution forbids any discrimination between foreigners and citizens and that under the current legal order, equality of treatment regarding accident compensation is granted to all workers. In practice, the Government indicates that the General Labour and Social Security Inspectorate did not find any

situation amounting to unequal treatment of injured workers, and that no judicial decisions have been rendered evidencing unequal treatment between foreign and national workers.

The Committee also notes that section 17(2) of Act No. 4/2007 provides that workers who suffered injuries as a result of an industrial accident are covered by the mandatory social protection scheme without any condition as to residence in the country, and section 3 requires the Government to foster the conclusion or adherence to international agreements aiming at the reciprocal recognition of equality of treatment of the nationals of the countries concerned. *The Committee recalls, in this respect, that Convention No. 19 lays down a system of automatic reciprocity between the 121 ILO member States which have ratified it, and thereby ensures that nationals of all countries party to the Convention, as well as their dependants, benefit from national treatment in respect of workmen's compensation. It would therefore be more consistent with the Convention and the Act No. 4/2007 for section 3(1) of Decree No. 4/80 to be amended so as to delete the reciprocity requirement. The Committee also requests the Government to indicate whether, pursuant to Article 1(2) of the Convention, any compensation is paid for injured persons or their dependants residing outside the country, and if so, to provide the statistical data confirming these payments.*

## Guyana

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1966)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee recalls that it has been drawing the Government's attention since 1971 to the need to amend the list of occupational diseases attached to Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security. It notes with regret, from the information communicated by the Government in its last report, that this list has still not been amended but that the competent authorities have been requested to accelerate the review procedure of the relevant regulation. It further notes that the Government no longer refers to the legislative reform regarding occupational safety and health. *The Committee trusts that the Government will be able to take the measures necessary as soon as possible to amend the list of occupational diseases to ensure full application of the Convention on the following points:*

- (a) *No. 1(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms all halogen derivatives of hydrocarbons of the aliphatic series;*
- (b) *No. 7, which refers to certain disorders due to radiation should include all pathological manifestations due to radium and other radioactive substances or X-rays and the list of processes likely to induce these should be completed;*
- (c) *No. 1(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include lead alloys and mercury amalgams respectively;*
- (d) *No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include the inorganic compounds of phosphorus;*
- (e) *No. 2 should include, among the processes likely to induce anthrax infection, all loading and unloading or transport of merchandise of any kind;*
- (f) *silicosis with or without pulmonary tuberculosis and the industries or processes involving the risk of this infection should also be added to the list.*

The Committee wishes to remind the Government that it may request technical assistance from the ILO in this domain.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Kenya

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1964)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the adoption of the Work Injury Benefits Act which replaced the Workmen's Compensation Act as of June 2008 and addresses certain issues previously raised as regards the manner in which the Convention is implemented in the country. The necessary regulations for the effective implementation of the new Act are yet to be developed and the social partners are being consulted on the matter. The Committee encourages the Government to rapidly adopt the necessary implementing regulations and to give favourable consideration to the following remarks.

*Article 5 of the Convention. Payment of compensation in the form of periodical payments.* In accordance with section 28 of the Work Injury Benefits Act (WIBA), an employee who suffers temporary total or partial disablement due to an accident that incapacitates the employee for three days or longer is entitled to receive a periodical payment. In case of permanent disablement, section 30 of the Act maintains the payment of a lump sum granted under the previous system, only increasing the amount of the compensation granted to 96 months' earnings as opposed to the 48 months granted under the previous system. While it welcomes this increase, the Committee wishes to recall that *Article 5* of the Convention guarantees that the compensation payable to the injured workers, or their dependants, where permanent incapacity or death results from the injury, needs to be paid in the form of periodical payments; it may only be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilized. *The Committee therefore once again invites the Government to seize the opportunity of the ongoing reform so as to provide for the payment of the compensation in a lump sum only for injured persons with a slight degree of incapacity or for whom the competent authority is satisfied that the lump sum will be properly*

*utilized. Other victims of occupational accidents suffering permanent incapacity or their dependents in cases of fatal accidents need to be provided with periodical payments.*

*Articles 9 and 10. Medical, surgical and pharmaceutical aid free of charge.* Section 47 of WIBA provides that an employer must defray any expenses reasonably incurred by an employee as the result of an accident arising out of, and in the course of, the employer's employment in respect of, inter alia, dental, medical, surgical and hospital treatment, the supply of medicine and surgical dressing, as well as the supply, maintenance, repair and replacement of artificial limbs, crutches and other appliances and apparatus. *The Committee asks the Government to indicate the manner in which this provision gives effect to the principle of free of charge medical, surgical and pharmaceutical aid to the victims of occupational accidents without any participation, even temporary, to the cost of such aid by the victims. Please also clarify how the term "reasonable expenses" incurred by victims of occupational accidents is defined and applied in practice given that the Convention guarantees injured workers the right to such medical aid as is recognized to be necessary in consequence of their accidents.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Malaysia

### Peninsular Malaysia

#### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1957)

##### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

*Article 1(1) of the Convention. Equal treatment of foreign workers.* The Committee recalls that since 1 April 1993, the Malaysian social security system has contained inequalities of treatment that run counter to the provisions of the Convention. This inequality is due to national legislation that transferred foreign workers, employed in Malaysia for up to five years from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which guaranteed only a lump sum payment of a significantly lower amount. On several occasions, the case of Malaysia has been discussed by the Conference Committee on the Application of Standards. Most recently, in June 2011, the Conference Committee urged the Government to take immediate steps in order to bring national law and practice into conformity with *Article 1* of the Convention, to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries, and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with the labour-supplying countries under *Articles 1(2)* and *4* of the Convention.

In its report received in August 2011, the Government replied that it is considering bringing its national law and practice into conformity with *Article 1* of the Convention. A technical Committee including all stakeholders will be formed under the Ministry of Human Resources to pursue the formulation of the right mechanism and system to administer this issue considering the following three options: (i) extension of ESS coverage to foreign workers; (ii) creation of a special scheme for foreign workers under the ESS; and (iii) raising the level of the benefit provided by the WCS so as to be equivalent to that of the ESS benefit. Upon completion of the study by the technical Committee, the Government will consider engaging technical assistance of the ILO to facilitate bringing the national legislation in compliance with the principle of equality of treatment between nationals and non-nationals.

The Committee notes that an ILO mission visiting the country from 3 to 7 October 2011, was briefed on action being taken to rectify the situation. The Committee also notes the comparative tables supplied by the Government with its report, listing in detail the characteristics of both the WCS and the ESS with respect to qualifying conditions, conditions for the granting of benefits and the calculation formulas used to compute benefits. It notes that there are considerable differences in the levels of benefits granted by the WCS and ESS, as illustrated by the fact that the WCS does not grant invalidity pensions in case of permanent total invalidity and that the WCS benefit in case of permanent partial disability represents only 6.5 per cent of the ESS benefit. *The Committee hopes that in determining the most suitable option among those mentioned above, the Government will act with the best interests of migrant workers in mind and will treat them on an equal footing with Malaysian workers. The Committee trusts that the Government will accomplish this task in the very near future so as to be able to report success in its next report to be supplied by 1 September 2012.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### Sarawak

#### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1964)

*Article 1(1) of the Convention. Equal treatment of foreign workers.* *The Committee invites the Government to refer to the comments made under Peninsular Malaysia.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Mauritius

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1969)

*Articles 5, 7, 9, 10 and 11 of the Convention. Ongoing reform of national legislation.* For many years, the Committee has been drawing the Government's attention to the need to include in the Workmen's Compensation Act, 1931 (Cap. 220) provisions giving effect to the following Articles of the Convention: *Article 5* (the principle of the payment of compensation in the form of periodical payments in the case of permanent incapacity or death), *Article 7* (additional compensation for workmen injured in such a way as to require the constant help of another person), *Article 9* (free entitlement to the necessary medical and surgical aid), *Article 10* (supply and renewal of artificial limbs and surgical appliances) and *Article 11* (guarantees against the insolvency of the employer or insurer). Since 1999, the Government reiterates that a merger of the Workmen's Compensation Act and the National Pensions Act, 1976 (NPA), which gives effect to the above provisions, was envisaged with a view to ensuring the full application of the Convention and that the Bill was to be introduced to the National Assembly. The Government's latest report indicates that the reform is still in the process of being completed, but gives no further details. ***In these circumstances, the Committee cannot but request the Government to take all necessary measures to complete the reform so as to bring the Workmen's Compensation Act into full compliance with the above provisions of the Convention.***

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1969)

*Article 1 of the Convention. Equality of treatment.* For many years, the Committee has been drawing the Government's attention to the need to amend section 3 of the National Pensions (Non-Citizens and Absent Persons) Order, 1978, as amended by the National Pensions Act (NPA), under which foreign nationals may not be affiliated to the insurance scheme unless they have resided in Mauritius for a continuous period of not less than two years. In its reports, the Government had repeatedly indicated that a bill revising this section 3 was being prepared and would be introduced to the National Assembly as soon as it has been accepted by the State Law Office. In its latest report of 2011, the Government does not make any reference to the above bill but instead refers to the draft legislation merging the Workmen's Compensation Act and the National Pensions Act. ***The Committee requests the Government to clarify the above issue and expresses the firm hope that all necessary measures will be taken in the very near future so as to bring the national legislation into compliance with the principle of equal treatment between national and foreign residents guaranteed by the Convention without any condition as to residence.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Mexico

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1961)

The Committee notes the Government's detailed report received in October 2011, which contains information requested under *Parts I and III to VI of the report form on the Convention* adopted by the ILO Governing Body, as well as a partial reply to the Committee's previous observation. This information concerns exclusively the application of the Act on the State Workers' Social Security and Services Institute (ISSSTE). With regard to *Part II* of the report form, the Committee observes that, while the last sentence of the report indicates that information on the application by ISSSTE of each of the corresponding articles of the Convention is given under *Part II* of the report form, this part of the Government's report has not been received by the Office. ***The Committee therefore hopes that the Government will not fail to supply this information as soon as possible.*** It wishes to remind the Government in this respect that the detailed report should not be confined to only one piece of legislation, as the ISSSTE Act in this case, but should cover all national legislation giving effect to the Parts of the Convention accepted by Mexico (*Parts II, III, V, VI and VIII to X*). ***The Committee expects to receive such a comprehensive report before 1 September 2012.***

With respect to *Parts III and V* of the report form which ask about enforcement, inspection and the difficulties encountered in the application of the Convention in practice, the Government informs that in the period from 1 June 2008 through 31 March 2011, 138,728 labour inspections have been carried out nationwide in 80,284 places of work without detecting any violations or workers' complaints relating to the subject matter of Convention No. 102 of the ILO, which covers 9,251,838 workers in Mexico. In the light of this information, the Committee would like to know whether the Government sees no difficulties and is generally satisfied as to how the Convention is applied in practice. From its side, the Committee observes a great disparity between the high number of the workers' complaints dealt with by the judiciary bodies and the zero number of violations registered by the labour inspection. ***Recalling that Mexico has not ratified the Labour Inspection Convention, 1947 (No. 81), the Committee asks the Government to specify whether its labour inspection services have the legal competence to supervise the application of the social security legislation and, in particular, pension insurance. Please also supply information on the organization and working of the inspection in social security, as requested in Part III of the report form.***

With respect to *Part IV* of the report form which asks for information on court decisions involving questions of principle relating to the application of the Convention, the Government refers to 42 jurisprudential criteria of the Supreme National Court of Justice (SCJN) concerning constitutional complaints (*amparos constitucionales*) and 23 decisions of other national tribunals concerning only the ISSSTE. ***The Committee would like to know whether in the reporting period of 2006–11 the national courts of law have rendered decisions of principle concerning other branches of the Mexican social security system.*** As regards the decision of the national tribunals concerning ISSSTE, the report specifies that they have not led to any modification of this Act. In terms of legislative implications of the decisions taken by the SCJN, the Government states that the declaration of unconstitutionality of certain provisions of the ISSSTE Act does not affect the nature and operation of the pension system established by it. In relation to the judgments rendered by the SCJN whereby articles 25, second and third paragraphs, 60, last paragraph, 136, 251 and Tenth Transitional Provision of the ISSSTE Act were found to be unconstitutional, the Government reports that the SCJN observed that the authorities responsible for the implementation of the said Act should take into account its interpretation of these provisions regarding the system chosen by the employee (the new system of individual accounts or the previous pension system), and that when dealing with claimants' cases these authorities should refrain from implementing the provisions declared unconstitutional until they are repealed or amended. For this purpose, the competent authorities shall take the necessary measures to ensure that all authorities, which, by reason of their functions, are responsible for the enforcement of the judgments upholding the protection of claimants' rights, shall be aware of decisions of the SCJN regarding the scope of the provisions of the ISSSTE Act and the persons covered by them. ***The Committee would like the Government to explain what measures have been taken by the competent authorities to that end.***

The Committee thanks the Government for maintaining an active dialogue with the trade unions, having considered every aspect of the observations submitted by the various trade union organizations mentioned in the Committee's previous comments. It notes that many of the questions raised by the trade unions concerning ISSSTE Act have been the subject of the jurisprudential criteria of the SCJN referred to above. In particular, in connection with the allegation made by the unions that there were irregularities during the approval process of the ISSSTE Act, the Federal Legislative Power considered that both the form and mechanisms were fully in conformity with the legislation: the SCJN also found that there were no flaws in the legislative process, and that the law contained the required preliminary recitals. Regarding the allegation that the new system introduced by the ISSSTE Act involves the privatization of the social security system, the SCJN concluded that this situation is not tantamount to the privatization of the regime, given that this is a process whereby services previously monopolized by the State are now freely rendered by individuals, and that the fact that the old-age benefits agency (*Pensionisste*) is authorized to invest the resources of individual accounts, which never cease to be owned by workers, in order to obtain higher returns, does not imply, in any way, a privatization. In this regard, the Government asserts that regardless of the use *Pensionisste* makes of the funds contained in the individual accounts of workers, this agency shall always bear responsibility for them in accordance with the ISSSTE Act. The Committee further notes that the report refers to additional replies to the workers' questions concerning the ISSSTE given under each Article of the Convention in Part II of the report form, which has not been received.

In August 2011, new comments on the application of the Convention were forwarded by the Revolutionary Confederation of Workers and Agricultural Labourers (CROC) and the "Vanguardia Obrero" Federation of Workers (FTVO), affiliated to the CROC in relation to domestic workers. In September 2011, the Trade Union Delegation of "Radio Education" (SNTE) and the National Union of Workers (UNT) also submitted comments on the ISSSTE Act and, in October 2011, the Union of Masons, Assistants and General Related-Construction Activities and Private Companies presented comments on issues relating to old-age benefits. ***The Committee hopes that the Government will reply to these new comments of the workers' organizations in 2012.*** Finally, the Committee took note of the Government's explanations provided in reply to the communication, dated 22 February 2010, from the Trade Union of Telephonists of the Mexican Republic concerning the situation of the AVON company workers.

Furthermore, the Committee notes that the Government's report does not reply to the questions raised in its previous observation concerning certainty as to the level and sustainability of benefits, which read as follows:

In its previous observation, the Committee pointed out that the reform of the ISSSTE made it necessary to conduct an overall actuarial valuation of the entire social security system to ensure the financial equilibrium of the new system, which should henceforth include the part corresponding to the ISSSTE scheme, and asked the Government to indicate whether such a valuation has been carried out and, if so, to provide the results thereof. The Government's report of 2008 has not provided the information requested, indicating that the information processing systems of the two social security institutions – ISSSTE and IMSS – are in the process of coordination. In the meantime, the managing board of the ISSSTE has approved the actuarial report for 2008, which concludes that in the period 2008–13 the resources available to the Institute would on average cover only 88 per cent of the total cost of benefits it would have to deliver under the new law. ***The Committee asks the Government to supply a copy of this report and to indicate measures taken or envisaged by the Government to make up the deficit and ensure the due provision of benefits under the ISSSTE scheme.***

Taking into account that the reform of the state workers' scheme necessitated transfer to the ISSSTE of the social security funds from the general scheme (IMSS), the Committee once again stresses the importance of an actuarial evaluation of the entire social security system, which should cover the various pension schemes 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. Indeed, only an overall actuarial valuation 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. ***The Committee accordingly asks the Government to take the necessary measures to conduct such an actuarial study, as required by Article 71(3) of the Convention.***

With regard to the question of the level of benefits, which the Committee has been addressing to the Government in its previous comments under *Part XI* of the Convention (Standards to be complied with by periodical payments), in the fully funded defined contributions scheme the amount of the pension is not determined in advance but depends on the capital saved in the workers' personal accounts and on the return thereon. ***The Committee therefore requests the Government to explain, with reference to the relevant actuarial forecasts, what replacement level the ISSSTE scheme aims to achieve after 30 years of contributions and whether the replacement level of 40 per cent required by the Convention would be attained for the standard beneficiary.***

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 3,034.20 pesos. The Government indicated in its report of 2008 that this amount represents the double of the minimum pension level established by the Convention and that the amount of the average pension equalled four minimum wages and was four times higher than the Convention's minimum. The Committee noted this information but did not find in the Government's report the statistical information requested in its previous observation under *Article 66* of the Convention, to enable the Committee to ascertain whether the minimum amount of the old-age pension attains the percentage prescribed by the Convention. ***The Committee asks the Government to substantiate the above statements by comparing the amount of the guaranteed pension with the reference wage of an ordinary adult male labourer, as required in the report form under Article 66 of the Convention.***

In the general IMSS scheme, 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. According to the statistics provided previously by the Government, the amount of the minimum guaranteed pension for 2006 attained 42.95 per cent of the wage of an ordinary adult male labourer selected in accordance with the provisions of *Article 66* of the Convention. ***The Committee wishes the Government to explain the difference between the guaranteed pension under the ISSSTE, which, according to the Government, represents double the minimum pension level established by the Convention, and the guaranteed pension of the IMSS, which is scarcely above this minimum.***

The Committee notes in this respect that, according to the trade unions' observation of 2007, neither the guaranteed pension under section 92 of the ISSSTE, nor the old age and invalidity pensions under sections 91, 121 and 139 of the ISSSTE ensured the replacement level of 40 per cent required by the Convention. Referring to the Government's reply to the trade unions' observation, the Committee observes that in contesting these allegations the Government does not refer to any statistical data and seems to confuse the general minimum wage for the Federal District with the wage of an ordinary adult male labourer, which should be used as the reference wage for measuring the replacement level of the guaranteed pensions. ***The Committee therefore once again asks the Government in its next detailed report due in 2012 to provide the statistical information requested by the report form under Article 66 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.***

*[The Government is asked to report in detail in 2012.]*

## Myanmar

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(ratification: 1956)***

The Committee recalls that, since 1967, it has been urging the Government to amend the national legislation in order to align it with the following provisions of the Convention:

*Article 5 of the Convention.* The Workmen's Compensation Act of 1923 provides that in case of personal injury followed by death or permanent disability, compensation is paid in the form of a lump sum payment, whereas according to *Article 5* of the Convention, it shall be in the form of periodical payments which may be wholly or partially converted into a lump sum, if the competent authority is satisfied that it will be properly utilized.

*Article 10.* Article 4(3) of the Workmen's Compensation Act and Regulation No. 65 taken under the Social Security Act of 1954 impose a ceiling for the supply and normal renewal of necessary artificial limbs and surgical appliances to victims of occupational accidents in contradiction with the Convention, which does not authorize such limits to be set.

In reply, the Government states in its reports of 2007 and 2011 that the Workmen's Compensation Act of 1923 and the Social Security Act of 1954 are being reviewed by the Law Scrutiny Central Body with a view to repealing the provisions which have become obsolete, and to adding the provisions which are in conformity with the Convention.

*The Committee consequently requests the Government to submit copies of the draft amendments to these Acts elaborated by the Government and to explain in detail how their amended provisions would give full effect to Articles 5 and 10 of the Convention. The Committee wishes to remind the Government that its report of 2011 should have been prepared according to the report form on the Convention adopted by the Governing Body of the ILO, and hopes that the Government will not fail to supply a detailed report by 1 September 2013.*

*[The Government is asked to report in detail in 2013.]*

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1927)**

*Article 4 of the Convention. Situation of Myanmar migrant workers in Thailand.* The Committee notes the Government's report, received in August 2011, describing the legislative provisions on accident compensation and including statistics related to workmen's compensation cases in Myanmar. The Committee has been following with concern for a number of years, the situation of more than 2 million irregular migrant workers employed in Thailand, who are denied the right to affiliate to the Thai Workmen's Compensation Fund (WCF). The humanitarian problems raised by this situation have also been under the continued scrutiny of UN Human Rights bodies and have been a matter of serious concern among Thai trade unions and human rights NGOs. In order to be authorized to affiliate to the WCF in Thailand, a circular No. RS0711/W751 of the Thai Social Security Office requires migrant workers to engage in a nationality verification process with a view to obtaining temporary passports or migrant identification documents. Recently, the Government of Thailand, in cooperation with the Governments of Cambodia and Lao People's Democratic Republic, authorized state officials from these countries to proceed to nationality verifications of their nationals in centres located in Thailand in order to facilitate the completion of the verification process by migrants from these countries. The Memorandum of Understanding concluded between Myanmar and Thailand to facilitate the delivery of migrant identification documents has, for its part, been inoperative for a number of years with the consequence that migrant workers were required to return to Myanmar in order to obtain the documents required by Thai authorities. The bilateral cooperation between Thailand and Myanmar was recently reactivated on the occasion of a ministerial meeting which took place in June 2011, with the Government of Myanmar having committed itself to give all needed assistance through its diplomatic and consular representations and to issue in the near future the remaining temporary passports necessary for the completion of the nationality verification process by Myanmar migrants working in Thailand.

The Committee takes due note of these developments and underlines the need to protect the rights of migrant workers from Myanmar returning from other countries and to assist them effectively. It also recalls that, in accordance with *Article 4* of the Convention, all ratifying members undertake to afford each other mutual assistance with a view to facilitating the application of the Convention and the execution of their respective laws and regulations on workmen's compensation. The Committee further notes, in this context, that the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, also invites States receiving and sending migrants to closely cooperate, in particular, to resolve the cases of undocumented migrant workers. In view of the fact that Myanmar and Thailand both have ratified the present Convention, the Committee hopes that they will actively pursue cooperation with a view to overcoming the administrative difficulties in the application of the Convention. *The Committee asks the Government to indicate the measures taken to afford the authorities of Thailand the assistance necessary in this respect, in accordance with Article 4 of the Convention.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Netherlands**

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1966)**

The Committee notes the Government's detailed report received on 29 August 2011, which contains a reply to the Committee's previous observation concerning the compatibility with the Convention of the main aspects of the Work and Income (Employment Capacity) Act of 2006 (WIA). It also notes the comments on the report, dated 31 August 2011, submitted by the Netherlands Trade Union Confederation (FNV) and the National Federation of Christian Trade Unions (CNV), to which the Government replied in a letter of 18 October 2011. The Committee further notes that various meetings were held between the Dutch Government and senior officials of the Office concerning ongoing compliance issues involving the WIA.

The Committee would like to thank the Dutch Government for the additional efforts it undertook to clarify its position and legislation, as well as to maintain the social dialogue with the trade unions, which provided the Committee with in-depth information on the application of the Convention both in law and in practice. The Committee recalls that its previous observation was entirely directed to an analysis of the WIA, including WIA coverage of the contingency of total or partial loss of earning capacity likely to be permanent, as defined in *Article 6(c) of the Convention*. As indicated in its previous observation, the Committee has decided to examine in its present comments the protection accorded by other Dutch implementing legislation, specifically legislation addressing the contingency of a morbid condition due to an employment injury (*Article 6(a) of the Convention*), which is provided by the health insurance scheme. For that purpose,

the Committee has taken note also of the information contained in the Government's detailed report on the *Medical Care and Sickness Benefits Convention, 1969 (No. 130)*, both of which were ratified by the Government in view of the linkages between these two Conventions, and of the dialogue it has with the abovementioned trade union organizations. The Committee will examine at its next sessions the protection offered by the Dutch legislation against the contingency of temporary or initial incapacity for work (*Article 6(b)* of Convention No. 121), which is provided by the mixed private/public system based on employers' civil liability to maintain wages during the first two years of sickness underpinned by the public safety net established by the Sickness Benefit Act (ZW), as well as the contingency of loss of support due to the death of the breadwinner (*Article 6(d)*) covered by the General Surviving Relatives Act (ANW).

*Articles 7 and 8 of the Convention in conjunction with Article 26. Definition of industrial accident and occupational disease.* With respect to these provisions of the Convention, the Government limits itself to stating that there is no special scheme concerning industrial accidents or occupational diseases and employees are compensated regardless of the cause of the disability. **The Committee requests the Government to indicate whether the national labour or occupational safety and health legislation contains definitions of industrial accident and occupational disease, as well as a list of such diseases, established for the purpose of reporting and monitoring industrial accidents and occupational diseases. The Committee also requests that the Government provide information on accident and disease investigations by the labour inspectorate on the imposition of appropriate sanctions, and on the elaboration of measures for preventing industrial hazards, developing occupational health services, and determining employer liability for damages to workers' health. Please indicate whether the Netherlands collects statistical data on the frequency and severity of industrial accidents and, if so, supply this data with the Government's next report.**

### **Medical care and allied benefits**

The Committee notes that the Netherlands health insurance system has undergone a radical reform after the entry into force on 1 January 2006 of the Health Insurance Act, under which health insurance was fully privatized. **The Committee requests the Government to explain whether there remain any type of public health services or medical institutions in the area of occupational health and rehabilitation and, if so, whether health-care insurers are encouraged to use these services and institutions for the treatment of employment injuries.**

*Articles 4 and 9. Coverage by the health insurance scheme and conditions of entitlement to benefits.* The Committee notes that, in its comments under Convention No. 130, the FNV states that the Health Insurance Act is not a general public scheme in the sense that all citizens are compulsory insured, but a private insurance scheme under which all citizens are obliged to take out health-care insurance from private companies. The FNV further states that, given the private nature of the scheme, the Government cannot guarantee that all employees are protected and that in 2011 at least 150 000 persons of all classes and ages are not insured.

In reply, the Government's report on Convention No. 130 states that, while full coverage is not guaranteed, the essential factor is that there is a governmental measure that offers the protection desired. Whether the persons to be protected wish to accept such protection or not is up to them, but if they do not conclude a health insurance contract, they may end up being unable to pay the costs of the required care in case of serious illness or accident. In general, this outcome is not acceptable and the Government acts to urge such persons to take out health insurance. Furthermore, if, having concluded an insurance contract, a person for some reason does not pay the normal insurance premiums, the care insurer is entitled to terminate the health insurance. "After all", says the Government's report, "it is an agreement under private law". This situation too can lead to highly undesirable consequences if the insured person ends up needing care, and the Government reports that it is being taken care of through additional legislative measures.

With regard to the evasion of concluding health insurance contracts, the Government indicates in its report on Convention No. 121 that a new law took effect on 15 March 2011 designed to identify uninsured persons by means of database comparisons and obliging them to take out health-care insurance under the threat of two successive penalties equal to three times the standard premium. After two penalties have been imposed, the Health Insurance Board will take out insurance on behalf of anyone who is still uninsured, summoning this person to pay an administrative premium for 12 months, which, where possible, will be withheld at source. With the introduction of this measure the Government can guarantee that all persons legally residing in the Netherlands are protected. With respect to the evasion of paying health insurance premiums, the Government indicates that, starting on 1 September 2009, measures have been taken to reduce the number of people who do not pay premiums on time or do not pay at all. According to the Health Insurance Act, when the insured person is in arrears for an amount equivalent to six months' premiums, the obligation to pay the nominal premium to the care insurer is converted to an obligation to pay the Health Insurance Board an administrative premium equal to 130 per cent of the standard premium. The Board imposes this levy on the defaulter, bears responsibility for its collection and pays a compensation for the loss of premium to the care insurer.

The Committee notes the measures taken by the Government to ensure coverage of persons who would otherwise be left unprotected by the private health insurance scheme functioning with a view to profit. **It requests the Government to indicate how many employees were found by the Health Insurance Board to lack health insurance coverage and whether the employer has any obligation to check that its employees have the proper health insurance coverage.** The Committee further notes that all the measures to improve coverage are based on the imposition of substantial fines on those persons whom the Convention seeks to protect automatically and free of charge. The Committee points out that if,

for example, a partially disabled employee has no money to pay health insurance premiums, imposing additional fines on that person would only aggravate the situation of hardship, which the Convention prescribes the Government to avoid. ***The Committee wishes the Government to explain in this respect to what extent the improvement of coverage has been achieved through the social assistance mechanism established by the Health Care Allowance Act (Wet op de zorgtoeslag), under which persons for whom the nominal premium is too high in relation to their income may receive an allowance paid by the tax authorities.***

With respect to the right of private insurance companies under private law to desist themselves from the obligation to provide care in case of non-payment of premiums, the Committee points out that, according to the Convention, the national legislation concerning employment injury benefits shall protect all employees and ensure that benefits are provided without any supplementary conditions not mentioned in the Convention. *Article 9* of the Convention guarantees eligibility for benefits on the basis of the employment relation alone and forbids subjecting eligibility to the payment of insurance contributions or premiums. In the Netherlands' case, this would mean that employees suffering employment injury shall be given prescribed medical care and allied benefits even in the absence of a duly concluded individual health insurance contract or the required premium payment. ***The Government is invited to explain how and by virtue of which provisions of the national legislation the necessary emergency and follow-up medical treatment are provided to an employed person who at the moment of an industrial accident or manifestation of an occupational disease did not possess a health insurance contract or whose contract was terminated due to non-payment of premiums.***

*Article 10(1). Types of care to be provided.* The Government report states that all persons legally residing in the Netherlands, or non-residents who work and pay income tax in the Netherlands, are obliged to take out health-care insurance under the Health Insurance Act and the Exceptional Medical Expenses Act and that they then become entitled to benefits in kind or to reimbursement of the costs of the medical care they receive. The types of benefits to be covered by the insurance package are statutorily defined under the two Acts and are provided irrespective of the cause for the need of care. ***The Committee would like the Government to explain under which legal provisions and practical arrangements emergency and follow-up treatment in case of employment accident stipulated in Article 10(1)(g) would be provided free of charge at the place of work. Please also indicate under which provisions of the Health Insurance Act care provided by general practitioners and specialists includes domiciliary visiting, as stipulated in Article 10(1)(a) of the Convention.***

The report states that dental care for insured persons aged 18 and over is limited to specialized surgical dentistry (oral surgery), the associated X-rays, and dentures. People with an exceptional dental disorder, physical/mental disability or special dental problems resulting from medical treatment are entitled to complete dental care (subject to special conditions). The Committee recalls that *Article 10(1)(b)* and *(e)* of the Convention requires provision free of charge of complete dental care, not limited to surgery and including fillings, root-canal treatment, extractions, dental supplies, etc., in case such care is necessary as a result of occupational accident or disease. ***Please state what additional measures are foreseen under the Dutch health insurance scheme to provide such care to victims of employment injuries.***

*Article 10(2). Effectiveness of medical care.* The Government states in its report on Convention No. 130 that the care system in the Netherlands has been organized in a way that will reduce direct government involvement. This is achieved through the "functional description" of care covered by the insurance package. The Government lays down legal requirements only for the content and extent of coverage and the medical indications that trigger coverage. It is the responsibility of the care provider to decide who provides the care and where. According to the Government, the choice for having private insurance that assigns greater responsibilities to insurers who are allowed to make a profit makes it inappropriate for the Government to supervise the effectiveness of the way health insurance is operated. Therefore, the Government continues, the main objective in overseeing lawful performance of health insurance is for the Government to ascertain whether the care insurer is fulfilling its obligation to provide insured persons with the services they are entitled to under the Health Insurance Act.

The Committee points out that such limited supervision of the quality and effectiveness of the medical care provided by private insurers seeking to make a profit, and therefore perhaps interested in reducing the volume and cost of care, might not be sufficient in view of the obligation imposed on the Government by *Article 10(2)* of the Convention to ensure that the medical care afforded to employment injury victims conforms to the highest practicable standard, using all suitable means. ***The Committee therefore asks the Government to explain what procedures exist to include among reimbursable care new technologically advanced treatments, which might help to restore health in particularly serious cases and whether there exist medical centres specializing in treatment of industrial accidents and occupational diseases that possess state-of-the-art knowledge in this area. Please indicate whether the Health Care Inspectorate (IGZ) which is entrusted with overseeing the quality of public health, or the occupational health services, possess any system of indicators measuring effectiveness of medical and professional rehabilitation of employment injury victims.***

*Article 11(1). Participation in the cost of medical care.* In its previous observation, the Committee asked the Government to examine whether persons in need of prolonged care or particularly expensive treatment may find themselves in a situation of hardship in view of the fact that victims of employment injuries are required to share costs for certain types of medical care, and are subject to limitations in duration and number of treatments. In this respect the Committee notes from the Government's reports on Conventions Nos 121 and 130 that victims of employment injuries are subjected to the same limitations on the quantity of care as other persons insured under the Health Insurance Act. Types of

care typically offered by medical specialists may be excluded by the insurance companies from reimbursement; physiotherapy and remedial therapy are confined to the treatment of chronic disorders, excluding the first 12 treatments for each disorder; occupational therapy, which is particularly important in case of employment injuries, is provided up to a maximum of ten treatment hours per year; dental care is limited to specialized oral surgery, the associated X-rays and dentures. The cost of treatment in excess of these limitations would have to be assumed by the persons concerned, who are also required to pay fixed contribution amounts to the cost of various types of medical care included in the basic health insurance package up to a maximum of €170 per year for 2011 (so-called “compulsory deductible”). Persons who incur structural care expenses due to chronic illness or disability receive financial compensation so that they do not pay more in terms of compulsory deductible than an average insured person who receives no compensation. For most types of care under the Exceptional Medical Expenses Act, a personal contribution is also required, the amount of which depends on the taxable income, age, marital status and the living situation of the person concerned. In 2011, the cost sharing in case of residential care in an institution amounted to a maximum of €764.40 per month during the first six months of stay and to a maximum of €2,097.40 per month thereafter. As of 1 January 2009, the Chronically Ill and Disabled Persons (Allowances) Act (Wtgc) has introduced a number of measures to offset extra care expenses incurred by these categories of persons. The Government emphasizes that these measures together with the establishment of the maximum for the compulsory deductible are taken to ensure that cost sharing does not involve hardship for insured persons.

The Committee observes that the rules on cost sharing and limitations of certain types of medical care laid down in the Dutch legislation are designed for the general population and do not take into account the special needs and the financial situation of the persons suffering employment injuries, particularly those requiring prolonged and expensive care. The Committee further notes, from the Government’s report on Convention No. 102, that in order to receive a discount on the insurance premium, persons with good health as a rule choose a health insurance policy with a high level of personal contribution to the cost of care (personal excess). At the meetings with ILO officials referred to above, the Government confirmed that the present cost-sharing requirements and limitations in duration and number of treatments paid by the insurance did not exclude the possibility of some employment injury victims finding themselves in a situation of hardship and compelled to refuse further necessary treatment due to lack of money. Situations where victims of employment injuries are compelled to stop medical treatment because of the inability to pay for it would contradict the very purpose of the Convention, which makes the Government responsible for the due provision of medical and allied benefits with a view to maintaining, restoring or improving the health of the injured person (*Articles 10(2) and 25 of the Convention*). ***The Committee would therefore ask the Government to conduct a thorough study of the existing limitations and cost-sharing arrangements with respect to the statutory medical benefits, so as to identify and prevent possible situations of hardship that may affect the standard beneficiary (man with wife and two children) who has fallen victim of a serious employment accident or a chronic occupational disease.*** The Committee notes in this respect that insurance covering the costs of the medically necessary transport of patients includes a hardship clause, which provides for reimbursement of additional transport costs encountered by persons following a prolonged treatment. ***The Committee would ask the Government to consider incorporating similar hardship clauses into the insurance rules covering other types of costly medical care and allied benefits, which may be identified by the study mentioned above.***

*Article 24. Participative management of the health insurance scheme.* The Committee notes that in the Netherlands the administration of health insurance is not entrusted to an institution regulated by the public authorities, but is entirely in the hands of private insurance companies which run it for profit. For such schemes *Article 24(1)* of the Convention requires the national legislation to prescribe conditions for the participation of the representatives of the persons protected in the management of the scheme. To promote its management on a tripartite basis, the legislation may provide for the participation of representatives of employers and of the public authorities. The Convention also requires the Government to accept general responsibility for the proper administration of the health insurance institutions and providers of medical services. With respect to the application of these provisions of the Convention, the Government’s 2011 report indicates no changes and refers to the previous reports, whereas the previous report of 2009 simply states that *Article 24* is not applicable. In its report on Convention No. 130 under *Article 31*, which contains similar provisions concerning the participative management of the health insurance schemes, the Government states that the basic principle of health insurance in the Netherlands is that insured persons must be able to exert influence on the policy of the company that insures them. A care insurer’s articles of association must ensure that insured persons possess a reasonable degree of influence over the company’s policy. The Committee wishes to point out in this respect that reliance on the private care insurer’s articles of association is not sufficient to give effect to these provisions of the Convention, which require the right of the persons protected to be able to influence the company’s policy through participation of their representatives in the company’s management as directed under national law. The Committee also points out that *Article 24* of Convention No. 121 remains fully applicable to the Netherlands. Moreover, the Government carries the general responsibility for ensuring that the national health insurance scheme is managed in a democratic and transparent manner with the proper participation of the trade unions and other organizations representing the persons protected together with the professional associations representing care providers and the medical profession. ***The Committee therefore asks the Government to supply full information in its next report on the application of Article 24 of the Convention in Dutch law and in practice.***

### *The Work and Income (Employment Capacity) Act of 2006 (WIA)*

In its previous observation, the Committee had concluded that the WIA was incompatible with Convention No. 121 on the following points:

- that the WIA leaves victims of employment injuries with incapacity up to 35 per cent without any form of compensatory benefit, contrary to *Article 14(4)* of the Convention;
- that the Income Provision Scheme for Fully Occupationally Disabled Persons (IVA) permits the benefit to be reduced by 70 per cent of the income earned by the beneficiary from employment or self-employment, whereas the Convention does not authorize any reduction of the benefit in case a fully incapacitated person finds the force to earn additional income from any gainful occupation, permitting him to combine disability benefit with income from work;
- that under the Return to Work Scheme for the Partially Disabled (WGA) the qualification requirements for entitlement to the wage-related WGA benefit and to the wage supplement impose restrictive conditions that are contrary to the Convention;
- that the nature and the extent of the obligations and sanctions in case of non-compliance, to which the WIA subjects the recipients of the follow-up WGA benefit, go beyond limitations permissible under *Article 22* of the Convention and should be reviewed;
- that the disproportionately low level of the follow-up WGA benefit might result, contrary to the objective of *Article 14(5)* of the Convention, in hardship for many partially disabled persons, obliging them to apply for social assistance in case they do not find sufficiently paid employment.

The Committee has examined the Government's report on the Convention and its reply on the legal inconsistencies mentioned above in the context of the Government's stated objective to reduce by all means the number of claimants of disability benefits and the Committee has taken due note of the explanations provided by government officials during the consultations with the Office, which have permitted clarification of certain technical questions.

The Committee nevertheless decides that there are no new elements that would cause it to change its previous conclusions on the WIA. It notes, however, that the Government has disagreed with these conclusions and has challenged the Committee's understanding of the content of related provisions of the Convention. In particular, the Government has considered that, although Convention No. 121 refrains from explicitly mentioning the possibility of imposing sanctions on an occupationally disabled person who fails to cooperate with his/her reintegration, the provisions of a Convention must not be interpreted statically, but in line with social developments; it is thereby appropriate to impose sanctions if the person concerned fails to cooperate with his/her reintegration.

The Committee also notes that the comments submitted by the trade union organizations contest the arguments advanced by the Government, and describe the worsening employment and income situation of disabled workers as calling into question the effectiveness of the WIA and of the overall government policy concerning the invalidity benefit scheme.

The Committee observes that responding in full to the Government's position would require lengthy explanations of the scope and purpose of different provisions of the Convention in the context of the evolution of international social security law, and this would run into scores of pages, well beyond what can be reasonably accomplished during a single session of the Committee. The Committee further observes that certain questions raised by the trade unions in their disagreements with the Government take the discussion into policy areas and consideration of alternative solutions, well beyond the legal framework of the Convention. ***In this situation, the Committee invites the Office to make contact with the Government in order to find the most suitable way of providing it with the necessary background information on the contested provisions of the Convention and thereafter identify the remaining issues on which the Government would then still like to solicit the explanations of the Committee. The Committee would like to be informed of these issues sufficiently in advance to be able to respond to them at its next session in November–December 2012, but in any case not later than 1 September 2012.***

## **New Zealand**

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(ratification: 1938)***

*Article 9. Co-payment of costs of medical treatment by injured workers.* With reference to its previous comments, the Committee ***regrets*** to note that the Government has not taken advantage of the recent revision of the Accident Compensation Act (AC Act 2010) in order to abolish the financial participation by the victims of occupational accidents in the cost of care provided to them. The Government states that full compliance with the Convention is currently unaffordable and that the amendments made to the AC Act constituted a response to the significant losses in the accounts of the Accident Compensation Commission (ACC) with a view to securing the long-term future of the scheme. The Government however confirms its commitment to gradually increasing compliance with the Convention over time in order to maintain the financial sustainability of the ACC scheme and refers to the initiatives it has taken in this direction since

2001: increased ACC contributions towards the costs of medical treatment in a number of areas; the introduction of the Accredited Employer Programme where employers pay in full the cost of medical treatment in return for paying lower contributions to the ACC; and the Community Services Card for persons with low incomes, limiting their co-payments to medical treatment. *Taking due note of the Government's repeated commitment to comply with the Convention, the Committee would like it to conduct the necessary actuarial studies and calculations to establish the financial impact on the ACC scheme of the introduction of the legal provisions abolishing participation of the victims of occupational accidents in the cost of required medical care.*

*Article 5. Lump sum compensation.* The Committee notes that a lump sum compensation for workers who suffer from a permanent incapacity due to a personal injury has been reintroduced (Section 54, Part 3 of Schedule 1 (Entitlements) to the AC Act of 2010). The minimum lump sum compensation is NZD2,500 for a minimum incapacity of 10 per cent up to a maximum of NZD100,000 for persons with a permanent incapacity of 80 per cent or more, indexed to inflation (Section 56, Schedule 1). Persons with a permanent incapacity that occurred before 1 April 2002 are not entitled to a lump sum but to a pension (independence allowance). *The Committee would like the Government to state if the Accident Compensation Commission, when deciding on the payment of a lump sum, requires guarantees for the proper utilization of this compensation. Please indicate also whether persons with a permanent incapacity of 80 per cent or more, who have inadvertently spent the lump sum payment they have received, would be entitled to any other income maintenance benefits.*

*Survivors' benefits.* The Committee notes that the period during which weekly compensation is provided to the surviving spouse of a victim of an accident is limited to five consecutive years where the surviving spouse does not have the care of any child under the age of 18 years or any other dependant of the deceased (Section 56, Schedule 1). *The Committee requests the Government to examine the situation of the surviving spouse who is no longer receiving the weekly compensation under Section 56 of Schedule 1 of the AC Act of 2010 and who has not yet reached the retirement age and is incapable of self-support.*

*Article 10. Artificial limbs and surgical appliances.* According to Section 13 of Schedule 1 of the AC Act of 2010, injured workers are supplied with aids and appliances and the ACC shall decide whether to provide them or to contribute to the cost of such aids or appliances. *The Committee wishes to point out that, according to Article 10 of the Convention, injured workers are not required to contribute to the costs of the supply and normal renewal of artificial limbs and surgical appliances by the insurer.*

## Nicaragua

**Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)**  
(ratification: 1934)

**Workmen's Compensation (Accidents) Convention, 1925 (No. 17)**  
(ratification: 1934)

**Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)** (ratification: 1934)

**Sickness Insurance (Industry) Convention, 1927 (No. 24)**  
(ratification: 1934)

**Sickness Insurance (Agriculture) Convention, 1927 (No. 25)**  
(ratification: 1934)

The Committee recalls that Nicaragua has ratified the Conventions relating to social security protection in the event of occupational accidents and illnesses (Conventions Nos 12, 17 and 18) and protection in the event of illness (Conventions Nos 24 and 25). In view of the fact that, according to the information contained in the Government's reports, the problems raised by the application of these Conventions are essentially of the same kind, the Committee has seen fit to formulate a general comment concerning all the social security Conventions ratified by Nicaragua. The Committee has also used the information sent by the Government in its report supplied under article 19 of the ILO Constitution in the preparation of the General Survey on social security instruments, and also the information sent by the Trade Union Unification Confederation (CUS) concerning Conventions Nos 17, 18 and 24. In its previous comments concerning all the abovementioned Conventions, the Committee emphasized the need to extend the coverage provided by the social security system, the total number of persons affiliated to which represented some 18 per cent of the population in 2008. With this in mind, the Government indicates in its reports a progressive extension of the coverage provided by the social security system launched in 2007, which forms part of five strategic components of social security policy including, inter alia, stabilization of administrative costs, strengthening of controls connected with the effective collection of contributions, performance of actuarial studies in relation to decision-making and stimulating investment. As a result of these measures, coverage provided by the system increased by 27 per cent between 2007 and 2011.

As regards protection against occupational risks, the statistics provided by the Government in its report on Convention No. 17 show that, between 2007 and 2011, the number of protected employees and apprentices increased by 24.5 per cent and that 98.4 per cent of workers registered with the Nicaraguan Social Security Institute (INSS) are currently covered against occupational risks. In its reports on Convention No. 12, the Government mentions the conclusion of numerous agreements aiming to extend to the agricultural sector – especially agricultural, fish-farming or stock breeding cooperatives – the protection provided by the system against invalidity, old age, death and occupational risks. These agreements aimed to extend to the whole territory the coverage provided by the social security system, by reducing to ten and then to five the minimum number of employees in enterprises for the purpose of affiliation to the system (Agreement Nos 8 and 9) or by extending social insurance to the agricultural sector (Agreement No. 10). These measures resulted in a 122 per cent increase in the number of agricultural workers protected against occupational risks between 2006 and 2011. Nevertheless, according to the CUS, certain categories of workers, in respect of which Article 2 of Convention No. 17 authorizes States to make exceptions that they deem necessary (casual workers, home workers, non-manual workers whose earnings exceed a certain limit, members of the employer's family), are rarely affiliated to the scheme providing protection against occupational accidents. Moreover, it happens that workers affected by occupational diseases do not receive the compensation to which they should be entitled. ***The Committee requests the Government to identify the categories of workers the coverage of whom by the system poses difficulties, and also the measures taken to resolve them.***

As regards sickness insurance coverage, the Government indicates in its report on Convention No. 24 that the INSS has held information days intended for employers and workers concerning the issue of the extension of sickness insurance to all persons covered by the Convention. It also indicates in its report on Convention No. 25 that 56.8 per cent of the 51,451 agricultural workers have sickness and maternity coverage. An agreement was concluded with the Directorate of Cooperation for the Export Processing Zones with a view to promoting affiliation to the social security system for new enterprises. Efforts were made to ensure better coordination between central government and its autonomous entities and thereby achieve a better exchange of information enabling the creation of a register of newly established employers. The CUS points out that there are still many cases in which enterprises do not in practice respect the obligation to affiliate their employees to the social security system. In order to redress this situation, a plan of action was adopted for 2011, one of the objectives of which is to increase the number of inspections undertaken by the labour inspectorate in order to promote fulfilment by employers of their social security obligations, the Penal Code now explicitly penalizing offences in this area. ***The Committee requests the Government to provide information on the results of the plan of action and also on progress made with a view to extending coverage of the system to the export processing zones.***

The Committee notes that the objective of extending the coverage provided by the social security scheme is also reflected in the inclusion of this priority under the Decent Work Country Programme (DWCP) for 2008–11. According to the DWCP, only about 26 per cent of the economically active population are covered by the INSS, especially because of the size of the informal sector, the fact that protection focuses on workers in the formal sector and the impossibility for the INSS to provide assistance to those in greatest need in the informal sector. In order to rectify this situation, the DWCP provides for the drawing up of actuarial studies and also of long-term reforms sustained on a tripartite basis and aimed at extending the coverage provided by the social security system while observing the principles of solidarity, equity and universality. The Committee notes that the information supplied by the Government shows a positive dynamic in social security necessary for achieving the level of coverage required by Convention No. 12 (*Article 1*), Convention No. 17 (*Article 2*), Convention No. 18 (*Article 1*), Conventions Nos 24 and 25 (*Article 2*). Furthermore, the Committee notes that the information, especially statistics, at its disposal show that the Government has a system for evaluating progress made on the basis of detailed data. ***The Committee requests the Government to supply comprehensive statistics in its next report on the current coverage provided by the system by branch in the various sectors of activity (industry, agriculture, informal economy, etc.) in relation to the total number of workers, in accordance with the questions contained in the report forms for the various Conventions concerned. The Government is also requested to send the results of the actuarial studies provided for by the DWCP, indicating the priorities adopted for the progressive extension of the coverage provided by the social security system and also any actions to this end already undertaken in the context of the DWCP.*** The Committee notes that, according to the information supplied by the CUS, the Ministry of Labour (MITRAB) does not adequately enforce the national legislation in practice and offending enterprises are not systematically prosecuted or the resulting penalties imposed, especially where they fail to register their employees in the social security system. According to the Committee, this is especially damaging to the sustainable management of social security institutions as the latter are required by national regulations to grant the corresponding benefits despite the non-payment of social contributions by the employers (section 109 of the General Regulations relating to the Social Security Act, read in conjunction with Decree No. 975 of 1 March 1982). ***In view of the above, the Committee considers it useful to intensify the dialogue with the Government and the social partners in order to enable them to fully exploit the potential of international social security standards as an instrument of social development. These standards provide that States must assume the general responsibility of ensuring the sound management of social security institutions and services with the involvement of representatives of the persons protected.***

***The Committee encourages the Government to fully involve the social partners in the management of social security institutions (as required, in particular, by Article 6 of Conventions Nos 24 and 25) in order to ensure transparent and durable management and hence extended coverage.***

The Committee observes that its comments should be able to help countries in the formulation of an exhaustive national strategy for the development of social security. Nicaragua has already established a national policy whose main priorities coincide with the objectives established in the General Survey, aiming in particular at the extension of coverage, the quest for good governance, the collection of contributions, effective inspection and durable planning, by conducting actuarial studies. ***The Committee observes that the policy implemented by the Government might benefit from the addition of measures ensuring closer coordination of social security with employment policy, especially with a view to extending coverage to the informal sector, and refers the Government to the relevant developments in this area in the General Survey (paragraphs 496–534).***

Finally, the Committee considers that the Government's efforts would be better targeted if its adopted priorities included the objective for the country to match the minimum social security standards established by the up-to-date Conventions in this area and which, to date, have not been ratified by Nicaragua. It recalls that the Government, in its report under article 19 on social security instruments, provided detailed information in the form of a comparative analysis of national law and the *Social Security (Minimum Standards) Convention, 1952 (No. 102)*. The analysis concluded that Nicaragua is in a position to ratify this Convention and to accept *Parts III (Sickness benefit), V (Old-age benefit), VI (Employment injury benefit), VIII (Maternity benefit), IX (Invalidity benefit) and X (Survivors' benefit)*, with the proviso of having recourse to the possibility allowed by Article 3 of Convention No. 102 to limit, for an initial period, the personal scope of application of the Convention to enterprises that employ more than 20 workers. The Committee considers that the ratification of Convention No. 102 represents a key element for guiding the process of reform by establishing minimum criteria to be achieved on the basis of international standards. The International Labour Conference, at its 100th Session, recalled that Convention No. 102 still serves as a point of reference for the progressive establishment of comprehensive social security coverage and that increasing the number of ratifications remains a key priority. ***The Committee therefore encourages the Government to pursue the objective of ratification of Convention No. 102 and to consider the possibility of including the ratification of this Convention among the objectives of the next DWCP, which would enable it to mobilize any technical assistance from the Office which it might need. The Committee also hopes that the programme which will cover the next period will maintain and develop the objectives pursued so far, and in so doing will take the present comments into consideration. The Committee requests the Office to ensure the dissemination, through all of its bodies, including regional ones, of the present observation to the various interested parties and to provide them with any technical support needed for this purpose.***

## Norway

### ***Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168) (ratification: 1990)***

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 21 of the Convention. Suspension of benefit.* In the Committee's previous observation, the Government has been urged to review the guidelines of the Directorate of Labour and Welfare (LWS) so as to ensure that unemployed persons are not sanctioned for refusing to accept unsuitable job offers at least during the initial period of 26 weeks provided for in *Article 19(2)(a)* of the Convention. The Government emphasizes that during the first three months of unemployment, the jobseeker has the primary responsibility of finding a job, and will therefore determine which jobs the jobseeker finds suitable. However, as time passes, the jobseeker must be ready to adjust expectations and expand the job search. On the basis of the jobseeker's curriculum vitae and the labour market, the job request will be evaluated every third month. This evaluation can result in an agreement between the jobseeker and the LWS to expand the job search. The Committee understands from these explanations that, in practice, the suitability of jobs searched for and offered is being assessed for every new period of three months with a view to expanding the acceptable types of jobs by relinquishing certain criteria of suitability. It understands also that under this arrangement special rules apply for the initial period of unemployment of three months when the decision on the suitability of available jobs is largely left at the discretion of the jobseeker himself. ***The Committee invites the Government to consider how the existing practice of giving unemployed persons primary responsibility for a job search during the initial three months of unemployment and therefore a certain discretion in the selection of job offers could best be reflected in the guidelines of the Directorate of Labour and Welfare. Such consideration would assist the implementation of section G.4.1 of the guidelines, which forbids applicants for employment to make reservations as regards the type of occupation they will work in and requires them to accept work even in occupations for which they are not trained or in which they have no previous experience.***

As regards sanctions imposed on unemployed persons, the Government reports that in 2007 less than 200 jobseekers got their benefit stopped during the first three months of unemployment because of refusal to accept: offered work, work in another part of the country or part-time work. ***The Committee would like the Government to verify that in all these cases the jobseekers concerned were not sanctioned for having refused to take up jobs that were not suitable to their acquired professional status.*** It therefore invites the Government, if necessary, to follow the example of Denmark where, in order to assess the extent to which the unemployed persons refuse job offers due to the job not being "suitable", the National Directorate of Labour, which deals with complaints and supervision in relation to the Unemployment Insurance Act, had in 2005 manually examined all cases (352 files) of sanctions for refusal to take up a job offer. The Committee hopes that the results of this verification would help the Government to decide whether or not the guidelines of the Directorate of Labour and Welfare need to be changed in order to ensure that the discretionary power to sanction the behaviour of the unemployed persons in the current labour market situation is being applied with due respect for their acquired professional and social status.

In this connection the Committee further notes the assurances of the Government that the unemployed will normally not get offered jobs from the Labour and Welfare Service, unless it is a job that corresponds to his or her education and qualifications. The LWS will initially devote a lot of time, to identify the jobseekers' qualifications, working experience and job requests. The

goal is to help the unemployed to get a suitable job. When considering whether the work is suitable, the LWS should – according to the Directorate of Labour and Welfare’s guidelines, section A, article 4.18 – also consider:

- how long the jobseeker has been unemployed;
- the probability of getting a job which corresponds to his or her qualifications;
- whether the offered job can give valuable working experience; and
- whether the remuneration offered for the job involves an unreasonable reduction of income compared to what the person is receiving by way of unemployment benefits.

*The Committee would like the Government to explain how this last criterion, which requires the jobseeker to consider job offers remunerated at the level below the unemployment benefit, could still be retained in the guidelines of the Directorate of Labour and Welfare after the abolition since 1 January 2006 of the legal provisions, which previously made it possible to compel unemployed persons to accept jobs offering less income than the unemployment benefit.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Panama

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1958)

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 of the social security legislation in relation to compensation for employment injury with a view to giving effect to *Articles 5 and 7 of the Convention*.

*Article 5 (in conjunction with Article 2(1)). Payment of compensation in the form of periodical payments without limit of time.* The Committee recalls that 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. In this respect, the Committee has requested the Government on numerous occasions 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. In its reply, the Government reiterates the reasons put forward previously to the effect that, in order to amend these provisions, it is necessary to undertake actuarial studies and to have the agreement of the sectors concerned in relation to occupational risks. The Committee *deplores* the fact that over almost two decades the Government has not undertaken the necessary actuarial studies and has not initiated dialogue with the social partners with a view to undertaking the reforms indicated.

*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 this respect, the Government indicates in its report that “... at the present time, there has been no initiative in this respect either by the social partners, or by the executive authorities”.

*The Committee regrets to note that the Government has not, for such a long period, taken any steps to initiate the reform process of the legislation on employment risks and it urges the Government to take appropriate measures in the near future to bring its legislation into conformity with Articles 5 and 7 of the Convention.*

## Peru

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1961)

The Committee notes the report submitted by the Government on 3 September 2010; the comments submitted on 14 September 2010 by the Coordinator of the Trade Union Federations CUT–GCTP–CTP–CATP; the comments submitted on 28 August 2010 by the General Confederation of Workers of Peru (CGTP); the Government’s reply of 15 October 2010 to the observations made by the Coordinator of the abovementioned federations; the comments of 18 November 2010 by the National Confederation of Private Business Institutions (CONFIEP) (Chamber of Commerce of Lima); the Government’s new report submitted on 19 September 2011; the comments on the Government’s new report submitted on 23 September 2011 by the Single Confederation of Workers of Peru (CUT). The Committee thanks the Government and the social partners for having maintained a substantial and constructive dialogue on the questions raised in its general observation regarding all the social security Conventions ratified by Peru (Nos 12, 19, 24, 25, 35 to 40, 44 and 102). The Committee trusts that the dialogue will facilitate formulation of a national strategy for the consolidation and sustainable development of the social security system that will enable the State to make full use of the potential afforded by international social security standards, with a view to securing sound administration of social security schemes and gradually extending coverage to the whole population. In this context, the Committee wishes to draw the attention of the Government and other interested parties to the following matters:

### 1. *Observance of the basic principles laid down by the international Conventions on social security*

The Committee notes the opinion expressed by the CGTP, which is reflected in the General Survey of 2011 on social security instruments (paragraph 545), namely, that as a result of a strong tendency towards privatization in the 1990s, the social security system violates the principle of collective financing of benefits, both in the private system and in the public system; the level of the benefits paid is not sufficient to guarantee minimum compensation throughout the contingency and there are no technical criteria for the adjustment of pensions; there is no democratic participation of workers in the administration and management of social security; there are serious deficiencies in the mechanisms for complaint and appeal concerning entitlement to social security benefits. In view of these repeated allegations, the Committee considers that the Government needs to draw on all its technical knowledge to review the structure of the national social security system in the light of the fundamental principles of good governance established by the international community during the past 60 years, namely:

*The principle of collective financing of social security.* According to this principle, the cost of benefits and the cost of administering them shall be borne collectively by way of contributions or taxes (*Article 71(1) of the Convention*), and the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of the employees (*Article 71(2)*). In contradiction with this principle, under Peru's Private Pension System (SPP) only the insured contribute to individual capitalization accounts and the financing of old-age, invalidity and survivors' insurance, and the administration costs are borne solely by workers affiliated to the Administrators of Private Pension Funds (AFPs). As to the National Pension System (SNP), the Government stated in its report of 3 September 2010 that this system "is based on contributions and solidarity on the part of workers and employers", and that according to Legislative Decree No. 19990, Title III, section 6 and the amendments thereto, the system is financed by contributions from employers and employees. However, in its reply of October 2010 to the comments of the trade union federations, the Government states that the laws governing the SNP establish that the obligation to contribute falls entirely on the workers. What is more, the website of the National Supervisory Authority for Tax Administration (SUNAT) states that contributions to the Office of Standards for Welfare (ONP) (which administers the SNP) will be borne by the employee and that the employer's role is merely to deduct contributions at source. ***In view of these conflicting statements, the Committee would be grateful if the Government would explain the extent to which the principle of the collective financing of social security is observed for the SNP.***

*Principle of democratic administration of the social security system.* According to this principle, where administration is not entrusted to an institution regulated by the public authorities or by a government department accountable to Parliament, representatives of persons protected must participate in the administration or be associated and have advisory powers (*Article 72(1)*). The SPP affords its members no opportunity to participate in the management of the AFPs. In its report of 2010, the Government stated that it planned to examine the possibility of establishing a supervisory board, in which representatives of SPP members would participate, along the lines of the Supervisory Board provided for in Legislative Decree No. 862 respecting Investment Funds and their Administrators, and which would be able to collect information on pension fund administration from the AFPs. However, in its last report of 2011 the Government gives no account of any progress in involving representatives of the insured in the administration of the AFPs, at least in a consultative capacity. According to the CUT, there was no tripartite consensus on the SPP reforms and the objectives established were not met. The Committee observes that, paradoxically and by contrast, in the SNP the Government reinforces participation by representatives of the insured in the government bodies of the system. Thus, pursuant to section 16 of Legislative Decree No. 817 of 1996 (law on state social security), a Consolidated Pension Reserve Fund has been set up with an administrative board that includes two representatives of the pensioners, who are proposed by the National Council for Labour and Employment Promotion (CNTPE) and appointed by a decision of the Ministry of the Economy and Finance. In view of the Government's wish to promote the principle of shared management in the SNP, the Committee would be grateful if the Government would explain to what extent provision is made for applying the principle to the SPP so as to allow participation by representatives of persons insured under the AFPs, in accordance with *Article 72(1)*. As to participation by protected persons in the administration of health insurance, the situation is much the same as that of participation by beneficiaries in the SNP. However, the Committee notes that in the case of private insurers such as private institutional administrators of health insurance funds (IAFAS), health provider entities (EPS), institutional providers of health services (IPRESS) or private health insurance companies, no provision is made for insured persons to participate in administration. According to information on the National Supervisory Authority for Health Insurance (SUNASA) website, the EPS, which are established under the Act to Modernize Health Social Security (No. 26790), may be private, public or mixed, and their function supplements that of EsSalud, the health social insurance system. They are supervised directly by the Supervisory Authority for Health Provider Entities (SEPS) pursuant to the fourth supplementary provision of Decree No. 009-97-SA, which regulates Act No. 26790 mentioned above, though there is no requirement for private or mixed EPSs to appoint representatives of insured persons to participate in their administration. As to EsSalud, an autonomous decentralized public body responsible for administering the Health Social Insurance Contribution Scheme, the Government states in its 2011 report that the Board of EsSalud is made up of representatives of the State, employers and insured persons, the latter consisting of representatives of public sector workers, private sector workers and beneficiaries. The Committee notes with *interest* that the principle of shared management, laid down in the Framework Act on Universal Health Insurance, is defined as "the exercise of citizenship in the formulation and monitoring of universal health insurance policies". Section 9 of the Regulations to that Act provides

that the Ministry of Health (MINSA) shall establish the public oversight mechanisms to be developed by regional and local governments with a view to allowing people to exercise their rights under universal health insurance. Accordingly, MINSA issued Resolution No. 040-2011 establishing general policy guidelines for public oversight. However, the document mentions several Public Oversight Committees established by the Health Ombudsman while recognizing that there is no evidence as yet that they are operating at national level. These public oversight mechanisms, which are to be established by regional and local governments, will pay particular attention to universal health insurance in terms of observing the guarantees of quality, suitability and financing, without prejudice to the competence of the SUNASA. The Committee observes that these public oversight mechanisms could act in supplementary capacity but do not obviate the need to appoint representatives of insured persons in IAFAS. ***The Committee accordingly asks the Government to envisage the possibility of establishing a mechanism in private EPS, IPRESS, or private health insurance companies, enabling representatives of the insured to participate in the administration of these bodies or to be associated with them, in a consultative capacity, without prejudice to the public oversight mechanisms that regional or local governments may establish in due course, so as to bring the legislation into line with Article 72(1) of the Convention.***

***Principle of guaranteed minimum benefits.*** The Committee points out that the introduction of guaranteed minimum pensions should be accompanied by the establishment of a poverty line or a subsistence minimum and the increase of the minimum pensions above this parameter. The Committee is concerned by the fact that social security schemes, which are naturally designed so as to provide adequate benefits, have degenerated in many developing countries to the point that benefits are paid at levels below the poverty line; in such cases the State may be seen to be failing to fulfil its responsibilities (see General Survey of 2011 on social security instruments, paragraphs 459 and 460). The Committee notes in this context the information supplied by the Government to the effect that there are different ways of calculating pensions depending on whether they are granted under Legislative Decree No. 19990, Act No. 25967 or Act No. 27617. Pensions under Legislative Decree No. 19990 are calculated on the basis of the average insurable remuneration of the insured person and according to the number of years of contributions. Under Act No. 25967, the amount of pensions granted to insured persons who show that they have contributed for 20 full years shall be equal to 50 per cent of their reference remuneration (section 2 of the Act provides for three different methods of calculating reference remuneration based on the number of years of contributions), and under Act No. 27617, the reference remuneration is determined on the basis of the average remuneration of the 60 months preceding the last month of contribution, and the amount of the pension is determined on the basis of a table, which was not sent with the Government's report. The Government confirms in its report of 2011 that in the SPP there is no guaranteed replacement rate. In the SNP, on the other hand, payment of pensions is insured and guaranteed by the ONP, the Consolidated Pension Reserve Fund and the national Government through the transfer of funds from the Treasury's regular budget. However, the CUT asserts that the amount of the pensions paid is below the minimum threshold established in Convention No. 102 for wage replacement. ***The Committee accordingly asks the Government to indicate the minimum amount of each type of pension mentioned above as compared to the minimum amount laid down in the Convention, and to state how the amounts are updated.***

The Committee also notes the measures under way to increase SNP pensions, in particular section 4(a) of Act No. 28449 providing that pensions granted under Legislative Decree No. 20530 shall be increased for beneficiaries aged 65 and over, taking account of annual cost of living trends and the financial capacity of the State. The Committee also notes in this context the forthcoming implementation of the "Pension 65 Programme", initially to be run by the Presidency of the Council of Ministers, under which a non-contributory pension of 225 soles (PEN) (equal to approximately US\$90), with an initial budget of PEN225 million, will be granted to persons aged 65 and over who have never contributed, and which will in principle be limited to the poorest regions in the country. The Committee is bound to stress the advantages to be gained from extending the system of guaranteed lower pensions to all persons of a certain age, which would enable the State to guarantee a reduced minimum old-age pension for all persons whose old-age benefits have suffered unduly, particularly as a result of the present economic and financial crisis. ***The Committee asks the Government to provide information in its next report on the measures it plans to take in order to extend the Pension 65 Programme to all regions of the country, together with details of its implementation and progress made.***

The Committee notes the actuarial assessment, mentioned by the Government in its report, conducted by the Ministry of the Economy in connection with the extension of a minimum pension to all low-income residents with a minimum of 15 years of contributions, with the aim of assessing the impact of the measure recommended by the Committee of Experts for the introduction of a pension consistent with *Article 29(2)* of the Convention. ***The Committee asks the Government to provide a copy of the actuarial assessment conducted by the Ministry of the Economy.***

The Committee notes the information supplied by the Government to the effect that in 2009, the SNP's Consolidated Pension Reserve Fund broke even, in that it exceeded the maximum level reached prior to the 2008 crisis. As to the SPP, the Supervisory Authority for Banking, Insurance and AFPs has indicated that pension funds have been recovering and have even exceeded the maximum level reached prior to the international crisis. The Committee notes the Government's rather optimistic evaluation to the effect that the pension system appears to have overcome the negative effects of the financial crisis. ***The Committee would be grateful if the Government would confirm that this is indeed the present status of the pensions system, and to indicate the measures taken or envisaged to support persons who were compelled to retire at the height of the crisis and who sustained heavy losses in their pensions.***

*Principle of granting benefits throughout the contingency.* The old-age benefits managed under the private administration system are calculated on the basis of the capital accrued in the individual accounts of the insured. Once that capital is exhausted, the entitlement of the individual account holder may cease to exist and insured persons exceeding the average life expectancy could be deprived of their sole source of income (see section 45, “Programmed Retirement” of the Act (Single Harmonized Text) on the Private Pension System). Such a situation is not consistent with the principle laid down in international Conventions whereby benefits are to be paid throughout the contingency at a guaranteed minimum rate.

## 2. Improving the operation of the public pension system

In its previous observation the Committee took note of allegations that no up-to-date record of members’ contributions exists and that the burden of proof regarding the contributory period lies not with the ONP but with the insured person and that procedures for granting pensions are extremely complex. In its report the Government refers to various measures taken by the ONP that have led to improvements in the way the State administers social security. Noteworthy among these are: the substantiation of decisions; improvement of the checking and accreditation of contributions in that failure by the employer to deposit with the ONP the contributions withheld from wages does not affect workers, who need only present their work certificates in order to obtain the benefit from the ONP; the efforts made to operate a single contributions register (RIA) and the adoption of measures to optimize computer systems; measures to simplify the processing of benefits due – the process consisting of 11 stages has been replaced by a four-stage process. However, the Committee notes the information supplied by the CUT to the effect that in around 15,000 cases, pension processing took more than 306 days on average, and that over 90,000 files were awaiting “rubber stamping”, i.e. recognition of the pensioners’ eligibility. The CUT further states that the ONP’s unwarranted refusal to entertain beneficiaries’ claims and the role played by the external legal advisers hired by the ONP were responsible in part for the fact that claimants had to apply to the courts to assert their pension rights.

The right to have a recourse duly examined has been considered by the Committee as falling under the general responsibility of the State to guarantee the proper administration of social security institutions. Any dysfunctions in social security recourse procedures therefore have to be duly addressed by the State in conformity with the principles guaranteed by international social security law. The Committee has also observed in this respect that the existence of appropriate recourse procedures should not be used abusively by forcing beneficiaries to file claims against decisions systematically denying their right to benefits. The Committee points out in this context that according to *Article 71(1)* of the Convention, claimants shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity (see General Survey of 2011 on social security instruments (paragraph 433)). The Committee accordingly observes that the ONP’s unwarranted refusal to entertain the applicants’ claims offends against the right of claimants to have access to simple and rapid complaint and appeal procedures, particularly where simplicity and promptness in such proceedings are essential because in most cases the claims are for social security benefits that constitute the claimants’ sole economic support. The Committee further points out that the general principles laid down in international social security instruments, which call for recourse procedures to be simple and rapid, also militate in favour of the harmonization of the applicable procedural law throughout dispute settlement procedures in social security matters. Dispute settlement bodies should therefore ensure that individual claimants have reasonable opportunities to assert or defend their rights. The Committee notes in this connection the ruling on Case No. 05561-2007-PA/TC of 24 March 2010, in which the Constitutional Court found the ONP’s participation in court proceedings pertaining to payment of statutory or accrued interest on pensions to be an “unconstitutional state of affairs”, and ordered the ONP to waive such proceedings. This decision by the Constitutional Court is of great significance as the ONP will have to waive proceedings that concern the payment of statutory or accrued interest, which will allow cases to be dealt with more expeditiously. Citing the Constitutional Court’s ruling, the CUT also states that the ONP should likewise desist from challenging workers’ court claims pertaining to evaluation and payment of old-age benefit, since the proceedings in such cases are cumbersome and delay the effective exercise, by thousands of workers, of the right to receive old-age benefit. ***The Committee therefore asks the Government to provide information on the repercussions the abovementioned ruling of the Constitutional Court has had in practice, and urges the Government to speed up the process of evaluation and payment of benefits due to workers by simplifying complaint and appeal proceedings, thereby giving effect to Articles 70(1) and 72(2) of the Convention.***

## 3. Combating evasion of the obligation to join the social security system

According to a study conducted by the ILO (2009), in 2007 only 35 per cent of the wage earning economically active population had old-age, invalidity and survivors’ coverage. As regards health protection, only 36 per cent of the total population was covered. Overall, these figures reflect the worrying situation that has arisen due to evasion of the obligation to belong to the social security system, especially on the part of large enterprises in the formal economy, and indicate a need for the State to reinforce significantly the supervision carried out by the national body responsible for the collection of taxes and social contributions, SUNAT. The Committee also notes the measures undertaken by the Government to improve collection and supervision in respect of the payment of contributions by employers by setting up a unit in EsSalud to monitor the debiting and auditing practices of employers that are supervised and audited by SUNAT. The Committee also notes the efforts made by EsSalud to get SUNAT to attach greater importance to the Strategic Plan to supervise taxes and monitor payment of contributions, and the Inter-institutional Cooperation Agreement concluded with the Ministry of Labour and Employment Promotion (MTPE), whose objectives include measures to improve the detection

of practices by employers that affect workers' access to payroll records and health social security. The Government also refers to the MTPE's efforts to bring the workforce into the formal economy through inspection, which have led to a significant increase in the social security contributions collected in recent years. The Government also reports that a Technical Committee analysed measures to improve the SNP and the SPP and enable the two systems to coexist in the medium and long term, thereby extending the level of coverage.

While noting the measures taken by the Government to curb social security evasion by setting up close cooperation between social security institutions and other public services responsible for supervision and enforcement, such as the tax authorities and the labour inspectorate, the Committee is bound to stress the magnitude of the problem the Government has to tackle given the extent of social security evasion. According to information provided by the CUT, the classification of offences and the penalties for social security evasion by employers are not sufficiently dissuasive. In the SPP, every month AFPs file 8,000 complaints with the courts against enterprises that fail to record employees' pension contributions, and up to the year 2008, 300,000 complaints had been lodged against enterprises that deducted their workers' contributions but failed to transfer them to AFP individual capitalization accounts. The CUT also refers to two bills (2866-2008CR and 2890-2008-CR) proposing that SUNAT take on the collection and auditing duties pertaining to AFPs, so that there would be a single social security register covering the SPP and the SNP. ***The Committee points out that the obligation to improve collection of social security contributions falls within the State's general responsibility for the proper administration of the institutions and services involved, in accordance with Article 72 of the Convention. The Committee accordingly asks the Government to step up its efforts to secure supervision of the payment of contributions by employers, to adopt measures to prevent non-compliance by intensifying inspection, and to secure closer cooperation between social security institutions and the tax authorities (such as the measures proposed by EsSalud to SUNAT). The Committee also asks the Government to provide information on the progress through Parliament of the abovementioned bills that seek to make SUNAT responsible for collection and supervision in both systems (SPP and SNP).***

The Committee welcomes the promulgation of the Framework Act on Universal Health Insurance, No. 29344 ("AUS Framework Act") laying the foundations for the extension of health insurance to all residents in Peru, so as gradually to achieve universal coverage based on solidarity and participation. The Committee nonetheless observes that because there are so many health service providers, whether public, private or mixed, it is difficult to secure sound administration of all the service providers participating in the universal health insurance process. It should be pointed out that the law establishes a National Health Insurance Supervisory Authority responsible for safeguarding and guaranteeing the right of every person to full and progressive access to health insurance based on the principles of universality, solidarity, unity, comprehensiveness, equity, irreversibility and participation. It is nonetheless worth noting that while in the rest of the world there is a trend towards unification of health service providers, the AUS Framework Act provides for at least nine options for insurance, by public, private or mixed bodies. ***The Committee suggests that the Government might look into simplifying the provision of health insurance in the interests of harmonizing and rationalizing health services and so contribute to better administration and greater efficiency in such services. It also asks the Government to send information on the progress made in extending the coverage of universal health insurance, by economic sector and geographical region.***

#### 4. Measures for micro and small enterprises

The Committee recalls that when Peru ratified this Convention in 1961, it availed itself of the possibility that the Convention affords to any Member whose economy and medical facilities are insufficiently developed, of applying the provisions to only 50 per cent of the workers in enterprises with more than 20 employees instead of 50 per cent of all employees (*Article 3* of the Convention). ***States that opt for the abovementioned exception must indicate in their periodical reports the measures taken progressively to extend the scope of the persons covered, specifying whether the reasons for maintaining reduced coverage subsist, or stating that they renounce the right to avail themselves of the exception in the future. The Committee asks the Government to provide this information in its next report.***

The Committee notes in this context the promulgation of Legislative Decree No. 1086 introducing measures to promote the competitiveness of micro and small enterprises which enable the employees and heads of the enterprises to affiliate to the Social Pension System (SPS), which the State will subsidize in an amount equal to that paid in by the member (4 per cent of basic minimum remuneration). Under the SPS, (see section 14 of the abovementioned legislative decree), protected persons who have reached the age of 65 and who have made 300 effective contributions to the social pensions fund are entitled to retire. Section 11 provides that contributions to the SPS must be paid into an individual member's account, to be administered by an AFP, an insurance company or a bank selected by tender. The Committee is bound to reiterate here the comments it made in point 1 of this observation concerning the basic principles of social security. Section 17 of the Legislative Decree No. 1086 allows members fulfilling the same requirements as those laid down in section 14 to apply for refund of the amounts accrued in their individual accounts plus any interest. The Committee points out that this provision is contrary to *Article 30* of the Convention, since old-age benefits are to be provided throughout the contingency.

Furthermore, the CUT has informed the Committee that the SPS, established by the abovementioned decree, has not been positive for Peru's pension system because membership is voluntary, so workers refrain from joining to avoid a reduction in their wages; that it is necessary to have reached the age of 65 and to have 25 years of contributions; that it

allows applications for the refund of contributions plus any interest. The CUT also points out that the State's contributions are not guaranteed since they depend on budgetary resources, and that at the time of writing, no such provision had been made in the budget. *The Committee requests the Government to provide information on the implementation of the system established in Legislative Decree No. 1086 for the provision of old-age, invalidity and survivors' pensions and on the resources allocated in the national budget to fund the contributions to the SPS. Bearing in mind that affiliation to the SPS will be voluntary for workers and heads of microenterprises, the Committee asks the Government to provide information on the measures adopted or envisaged to align the SPS with the provisions of Article 6 of the Convention laying down the principles to be observed by voluntary insurance schemes (supervision by the public authorities or joint administration by employers and workers, coverage of a substantial part of persons with low income, and compliance, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.*

## Rwanda

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1962)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Coverage of apprentices and casual and temporary workers against the risk of employment injury.* The Committee notes the information provided by the Government in its report, including the law regulating labour in Rwanda, No. 13/2009 of 27 May 2009 (Labour Law) and the National Social Security Policy document of the Ministry of Financing and Economic Planning of February 2009. Section 2 of the new Labour Law provides that this law applies to the labour relations between workers and employers as well as between the latter and the apprentices or the trainees under their authority as per contract. Casual and temporary workers are included in the scope of application by virtue of section 3, while section 47 establishes the obligation of the employer to affiliate workers to the social security scheme. On the basis of the above sections of the newly adopted Labour Law, the Committee notes with satisfaction the extension of the national legislation on the protection against employment injury to apprentices and casual and temporary workers.

The Committee also welcomes the National Social Security document, which provides an analysis of the current social security programme and policy orientations for its improvement with the objective of achieving social security coverage for all. As regards employment injury, the policy document indicates the Government's commitment to reinforce measures to establish 100 per cent coverage for employment injury of all workers in the formal sector. In the absence of coherent legal texts defining the basic social security framework, the policy document recommends a legal reform through an organic law, which will be guided inter alia by the provision that employment injury benefits are managed by the Rwanda Social Security Board and mandatory for all workers with a formal employment contract. *The Committee asks the Government to continue providing information on the progress made in developing a legal framework for the social security system in Rwanda.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Saint Lucia

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1980)

With reference to its previous observation, the Committee notes the reply of the Government that, contrary to *Article 7 of the Convention*, no provision is made in national legislation for the payment of additional compensation for injured workers requiring the constant help of another person; and that compensation for all expenses (medical, surgical or pharmaceutical, etc.) is limited to 20,000 East Caribbean dollars, whereas no such ceiling is foreseen in the Convention in case of occupational accident (*Articles 9 and 10 of the Convention*). The Committee *regrets* to note that since the entry into force of the Convention in 1980 the Government has been unable to bring the provisions of the national legislation in conformity with *Articles 7, 9 and 10 of the Convention*. *In this situation, the Committee deems it necessary to ask the Government to undertake an actuarial study which will determine the financial implications of the introduction into the national insurance scheme of the benefits guaranteed by these Articles of the Convention. The Committee wishes to remind the Government of the possibility to avail itself of the technical assistance of the Office in this respect.*

## Sao Tome and Principe

### **Workmen's Compensation (Occupational Diseases) Convention, 1925** (No. 18) (ratification: 1982)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that the change of administration prevented the finalization of the adoption of the schedule of occupational diseases which should have supplemented Act No. 1/90 on social security. However, the Government indicates that its programme includes the reactivation of this process and the reopening of dialogue with UNDP with a view to the adoption of a schedule of occupational diseases recognized in the country. *Recalling that it has been examining the issue of the establishment of the schedule of occupational diseases for many years, the Committee hopes that the Government will spare no effort for the*

*adoption of a schedule of occupational diseases recognized in the country as soon as possible, including at least those enumerated in the schedule attached to Article 2 of the Convention. It also draws the Government's attention to the possibility of having recourse to ILO technical assistance in this respect.* This is a fundamental protection which, in accordance with the Convention, has to be guaranteed to men and women workers in the country engaged in certain industries and occupations involving exposure to the risk of contracting certain diseases, which must therefore be duly recognized and compensated by reason of their occupational origin.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Senegal

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)** (ratification: 1962)

The Committee notes that the Government's report, received in September 2011, merely states that there has been no change either in the legislation or in the methods of monitoring its application by the competent authorities. The Committee also takes note of the information provided by the Government in its 2010 report submitted under article 19 of the Constitution of the International Labour Organization, as well as the observations made by the National Federation of Independent Trade Unions of Senegal (UNSA) received in June 2010.

According to the report under article 19, the Government intends setting up a system of universal social protection to extend social coverage to all categories of persons at present excluded from social protection and has established a national social protection strategy to cover all citizens for this purpose. According to the Government, the issues of minimum income support and medical care for older persons are at present being examined; it also refers to the implementation of the SESAM plan to provide medical care for the elderly. The report specifies that ILO technical assistance is required to reform the social security system and draft the Social Security Code. *Hoping that the Government will take the necessary steps to request ILO technical assistance, the Committee would be grateful if it could send a copy of the national social protection strategy drawn up by the Government as well as the plan to put in place a minimum old-age benefit for all Senegalese over 60 years of age.*

In this context, the UNSAS points out that the social protection of workers made redundant on account of restructuring or the closing of enterprises is a major concern for the trade union organizations in Senegal but that, until now, no preliminary study has been carried out with a view to introducing unemployment benefit. The Government's report under article 19 mentions, in this respect, the drafting of terms of reference for a feasibility study on introducing an unemployment benefit scheme. *The Committee hopes that the Government will provide information, in its next report, on the progress made with respect to the feasibility study on introducing an unemployment benefit scheme.*

According to the information provided by the Government in its report under article 19, the wage replacement rate for the old-age pension in the public sector is approximately 99 per cent, since pensions are based on officials' contributions (12 per cent of the wage) and those of the State (23 per cent). In the private sector, however, the replacement rate is approximately 20 per cent, which does not provide for decent working conditions upon retirement. According to the Government, this low replacement rate is due to the inadequate resources of the Social Insurance Institute for Old-Age Pensions (IPRES), caused to a large extent by the scheme's demographic imbalance (more retired persons than contributors), by considerable contribution evasion in social security and the low contributions themselves. The UNSAS adds that the existing system encourages contribution evasion and fraud, and that the absence of social security accounts at macroeconomic level means that any financial information is inaccessible. *The Committee requests the Government to indicate whether any studies or actuarial calculations have been recently carried out concerning the financial balance of the general scheme in application of Article 71(3) of the Convention, and to point out any measures taken or envisaged to curb contribution evasion in social security, to combat job insecurity and preserve jobs so that the level of contributions does not continue to decline.*

## Sierra Leone

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)** (ratification: 1961)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 5 of the Convention. Payment of compensation in the form of periodical payments without limit of time.* The Government indicates, in reply to the comments made for many years by the Committee, that a Bill on Workmen's Compensation has been formulated but not adopted as yet. It further states that the abovementioned draft legislation reflects the provisions of the Convention concerning the payment of injury benefits throughout the period of contingency and that copy of the revised legislation will be communicated to the ILO as soon as it is adopted. The Committee notes this information as well as the Government's request for technical assistance from the Office in order to accelerate the implementation process of the revised legislation. *The Committee expresses the hope that the draft legislation will soon be adopted and requests the Government to provide a copy of it. On the basis of the new legislation, the ILO would certainly be able to discuss with the Government the terms of the requested technical assistance.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Slovenia

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1992)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

In its previous direct request of 2007, the Committee had asked the Government to reply in detail in 2008. In September 2008, the Office had received the Government's report on the application of the Convention for the period from 1 June 1999 to 31 May 2006, which had been already furnished to the ILO in November 2006. No reply has been given to the Committee's previous direct requests of 2006 and 2007. The Committee is bound to draw the Government's attention to its obligation under article 22 of the ILO Constitution to comply with the reporting obligation in good faith. It trusts that the Government will do its utmost to supply a full detailed report on the Convention, according to the report form adopted by the Governing Body, and that this report will also contain a detailed reply on the following points:

*Article 8 of the Convention. List of occupational diseases.* The Committee notes that the list of occupational diseases adopted in 1983 under a "self-management agreement" is still in use, but that it shall be replaced by a new list which is currently being prepared for the purpose of harmonizing it with the European legislation. *The Committee hopes that the new list will also be in compliance with the list of occupational diseases contained in Schedule I to the Convention, in particular as regards the list of work involving exposure to the risk concerned (items 1–12, and 15 of Schedule I), and that the Government will supply a copy of it, when adopted.*

*Articles 13 (temporary incapacity benefit), 14 (permanent incapacity benefit) and 18 (survivors' benefit), (in conjunction with Article 19).* *The Committee once again asks the Government to supply, with respect to each of the benefits provided by the abovementioned Articles, the statistical information in the manner set out in the report form adopted by the Governing Body under the corresponding titles of Article 19. The Committee trusts that the Government will have no difficulty to determine the reference wages of a skilled manual male employee as defined in Article 19(6)(d) of the Convention, by using for this purpose the average gross wage in the Republic of Slovenia.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Spain

### **Unemployment Provision Convention, 1934 (No. 44) (ratification: 1971)**

*Article 2 of the Convention. Application of the Convention to training contracts.* With reference to its previous comments, the Committee notes with *satisfaction* the adoption of Act No. 35/2010 adopting urgent measures to reform the labour market which, among other effects, amended the Workers' Charter with a view to extending protection against unemployment to persons engaged in training, in accordance with *Article 2* of the Convention. According to the information provided by the Government, this measure has resulted in a substantial improvement in the legal rules governing training contracts with a view to promoting employment and making this type of contract more attractive for both enterprises and workers.

## Suriname

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1976)**

*Article 7 of the Convention. Additional compensation for the constant help of another person.* Since 2006, the Government indicates that the Ministry of Labour has undertaken the total revision of labour legislation, including the revision of the Industrial Accidents Act of 10 September 1947 (No. 145 of 1947), in order to bring the national legislation into conformity with international labour standards. *The Committee asks the Government to supply a copy of the draft provisions revising the said Act, indicating those which aim at ensuring, in line with Article 7 of the Convention, additional compensation in cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### **Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1976)**

The Committee notes that since 2006, the Government has been indicating that the Ministry of Labour was involved in the total revision of labour legislation, including the revision of the Industrial Accidents Act of 10 September 1947 (No. 145 of 1947, as amended), in order to bring the national legislation into conformity with international labour standards. *Taking into account similar statements the Government has been making for the last 20 years, the Committee asks it to supply a copy of the draft provision which should have been prepared in order to complete the list of occupational diseases established by section 25 of this Act, by including among the activities likely to cause anthrax infection the "loading and unloading or transport of merchandise", as required by the Convention.*

The Committee notes that section 25 of the Act does not refer to the specific trades, industries or processes mentioned in the Schedule to the Convention with regard to diseases produced by lead and mercury, but covers all

activities where workers manipulate these substances. *The Committee requests the Government to confirm in its next report that workers employed in activities listed in the Schedule with regard to poisoning by lead and mercury, would not be required to prove the occupational origin of their disease.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Thailand

### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** (ratification: 1968)

In its previous observation, the Committee expressed *deep concern* over the situation of more than 2 million migrants, mainly from Myanmar, working in Thailand. Although the right to equal treatment of foreign workers in case of a work-related accident is recognized by the Workmen's Compensation Act B.E. 2537 (WCA) of 1994, additional conditions for the implementation of this right, established by the Social Security Office (SSO) in circular No. RS.0711/W751 of 2001, have prevented legally employed migrants from affiliating to the Workmen's Compensation Fund (WCF), pending completion of a complex and lengthy nationality verification procedure. Calling attention to the dire humanitarian situation of these workers, the Committee requested the Government to take positive and urgent measures to review the policy and legal framework concerning social security coverage and protection of migrant workers in case of occupational accidents and to instruct the SSO to lift restrictive conditions and facilitate access of migrant workers to the WCF irrespective of their nationality.

The Government states in its report of February 2011 that migrant workers who come to work in Thailand holding a passport and a work permit are fully covered by the WCA on an equal footing with Thai nationals and without any discrimination. If they suffer work-related injuries or sickness, these workers are entitled, in accordance with section 18 of the WCA, to disability benefits, medical care and rehabilitation services, as well as to survivor benefits and a funeral grant for their dependants in case of death, provided by the WCF. The Government further states that irregular migrants, on the contrary, will be arrested, detained and sent back to their countries, in accordance with the Immigration Act B.E. 2522 (1979). However, given the number of irregular migrants waiting for repatriation, the Government had decided, since 1996, to authorize those of them who have undergone registration with the national authorities – 1 million persons approximately – to work temporarily in Thailand pending their repatriation. In case an occupational accident occurs to such registered migrants, the competent official of the SSO adjudicates the case at an amount equal to the compensation paid to Thai employees, in accordance with section 50 of the WCA, and orders the employer to pay compensation directly to the victim. Employers failing to comply are to be prosecuted, and employees or their families may bring the case to the courts.

In an attempt to facilitate the registration of all irregular migrant workers, a Cabinet resolution of 19 January 2010 allowed undocumented migrants from Cambodia, Lao People's Democratic Republic and Myanmar to register until 28 February 2012 and to work legally in Thailand, provided that they engage in the nationality verification process required by the SSO with a view to obtaining temporary passports. For nationals from Lao People's Democratic Republic and Cambodia, their countries of origin have dispatched officials in nationality verification centres located in Thailand. By contrast, the nationals of Myanmar continue to be required by their Government to travel back to their country in order to obtain the necessary documents and complete the nationality verification process, as domestic regulations prevent government officials from operating outside Myanmar. The Thai Government reports that, as of September 2010, 188,323 migrant workers from Myanmar had, nonetheless, completed this process and become eligible to affiliate to the WCF on the same footing as regular migrants and Thai nationals, in accordance with the SSO announcement on the registration of Laotian, Cambodian and Myanmar migrants with verified nationalities, dated 8 October 2010 (B.E. 2553).

With regard to other migrant workers who have not yet completed the nationality verification process, the SSO proposed to set up a separate fund, in order to accord registered migrant workers who suffer work-related injuries, sickness, or death the same protection as that received by Thai workers under the WCF. In an effort to address its labour shortage problem and to decrease the employment of unregistered migrant workers, the Government has also taken measures, through diplomatic channels, aimed at recruiting new, so called "fresh", migrant workers from the neighbouring countries. These "fresh" workers will be able to enter Thailand legally and be allowed to stay and work in the country for a renewable period of two years. Finally, the Ministry of Labour has started a policy of enforcing the law on labour inspection by targeting the risks of forced labour and human trafficking for labour exploitation.

According to the information provided by the State Enterprise Workers Relations Confederation (SERC) in September 2011, irregular migrants in Thailand represented 90 per cent of all migrants in the country and an estimated 5 to 10 per cent of the country's labour force. Some 980,000 migrant workers have registered and obtained work permits from the Thai authorities. These temporary documents delivered by Thai authorities, however, are not recognized by the SSO and the workers concerned are required to complete the nationality verification process.

In many cases, these migrants are left without any guarantee of compensation for a work-related accident. This is because many employers also disregard the SSO orders to pay compensation, while the workers concerned often are unaware of their rights, face language barriers, and are unable to prosecute their employers in courts following a work

accident. In some instances reported by the SERC, victims of occupational accidents are denied access to health care institutions with fatal consequences. The numerous cases referred to the Supreme and Administrative Courts by the SERC have so far remained unconsidered for many years, and no national court had accepted competence to review the 2001 SSO circular.

In this situation, the Government has recently taken new amnesty measures allowing more undocumented migrants to register and obtain the work permit. It approved the resolution of 14 June 2011, establishing a new Work Accident Insurance Fund for migrant workers undergoing the nationality verification process. This fund would be separate from the WCF and open to registered migrants possessing identification cards or identity documents issued by the Ministry of Interior or the Ministry of Labour. In contrast to the WCF, the affiliation of migrant workers to the newly established fund would be voluntary and no penalties would be imposed on employers who fail to contribute to this fund. The SERC concludes that the new scheme continues to discriminate against migrant workers by denying them equal access to the WCF and, together with the National Congress of Thai Labour (NCTL), demands that the Government repeal the 2001 SSO circular.

The Committee takes note of the above information and observes that the question of the protection of the rights of migrants in Thailand remains under the constant scrutiny of UN human rights bodies. In October 2011, the Government stated in the framework of the Universal Periodic Review of Thailand, held under the auspices of the Human Rights Council, that migrant workers from neighbouring countries make valuable contributions to the Thai economy and that it will seek to uphold international labour standards while preserving Thailand's economic, social, and national security interests. The Government indicated that it has already taken action to address the problems faced by migrant workers by allocating funds to provide health care subsidies for people without status; launching campaigns to disseminate information on the rights and duties of employers and employees, as well as information pertaining to labour rights published for migrant workers in their native languages; and providing financial assistance for expenses incurred during the judicial process. The Government also indicated that it intends to ratify Conventions Nos 87 and 98 to protect the rights of Thai and migrant workers alike and to fully engage the civil society in the follow-up review aimed at enhancing human rights protection for migrant workers and preventing human trafficking.

The Committee recalls that a key principle on which the right to social security is premised is non-discrimination and pertains to all persons, irrespective of status and origin. The Committee recognizes that extending the right to social security, including the right to medical care to non-citizens is a key challenge for many societies today. With regard to non-citizens, even where they are in an irregular status on the territory of another state, such as undocumented workers, they should have access to basic benefits and particularly to emergency medical care (see General Survey on social security instruments, 2011, paragraph 260). ***In view of the foregoing, the Committee understands that the Government fully realizes the need to implement effectively the measures announced to protect the human rights and dignity of migrant workers, and that the Government also realizes the determination of the international community to help resolve the problems involved as soon as possible. The Committee urges the Government to ensure that these measures achieve rapid and substantial results on the ground in the near future and, that the measures effectively eliminate cases of denial of emergency medical care and related benefits to uninsured migrant workers suffering industrial accidents referred to by the SERC.***

With regard to the question of the affiliation to the WCF of registered migrant workers, the Committee notes that, in law, the SSO circular No. RS.0711/W751 of 2001 continues to require that registered migrant workers who do not hold national passports complete the nationality verification procedure before they can affiliate to the WCF. The Committee ***regrets*** that the Government's report is silent regarding the demands to amend or repeal this circular, or at least to instruct the SSO to recognize for affiliation purposes the temporary identity documents and work permits issued by the Government agencies to registered migrant workers. Considering the current legal impasse involving judicial proceedings initiated domestically by the SERC to contest the legality of the circular, the Committee also ***regrets*** that the report does not reply to the questions raised in its previous comments with regard to the procedures existing in the Thai legal system to supervise, review and revoke contested circulars issued by a governmental agency.

The Committee observes that the restrictions established by this circular, in contradiction with the Workmen's Compensation Act of 1994, remain a major obstacle to the enjoyment by hundreds of thousands of registered migrant workers from Myanmar of the right to equality of treatment guaranteed to them by *Article 1 of the Convention*. In this situation, the Committee notes the Government's decisions to re-open the possibility for irregular migrants not yet registered to do so and obtain work permits, and also to create a new Work Accident Insurance Fund (WAIF) specifically intended to ensure their coverage during the nationality verification phase, following which they would be, in principle, entitled to affiliate to the WCF. However, the Committee understands that the affiliation to the WAIF would be left to the discretion of employers. Those deciding not to contract the new insurance would remain directly liable to pay their workers compensation in case of employment injury. In practice, the creation of the WAIF does not bring the Government closer to guaranteeing the right to equality of treatment recognized by the Workmen's Compensation Act of 1994 for migrant workers registered by the Thai authorities and given work permits. The creation of this new fund also risks introducing a double standard of protection, by giving employers a legal opportunity not to insure their migrant workers against occupational accidents.

Moreover, the decision to re-open the registration procedure to new undocumented migrants and provide for their voluntary insurance coverage by the WAIF during the nationality verification process may lead to institutionalizing the discriminatory status of these workers, few of whom end up actually protected by the WCF on a par with Thai nationals. The Committee observes that this long train of factors – the lengthy nationality verification procedure, the SSO prohibition for employers to affiliate their registered migrant workers to the WCF, the paralysis of the judiciary system unable to consider the legality of the SSO circular, the voluntary nature of the affiliation to the WAIF, and the poor enforcement of employer liability to pay compensation to victims of industrial accidents who are not covered by either fund – in effect, incites employers to evade paying any compensation or social insurance costs for their workers and creates vast opportunities for exploitation that have been denounced by trade unions and numerous non-governmental organizations.

The Committee also observes that this state of affairs defies the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, signed by Thailand, which calls upon the Thai Government to adopt a comprehensive migration policy promoting, in particular, the welfare of migrant workers through access to social welfare services and to the legal and judicial system in case they are victims of discrimination, abuse, exploitation or violence. ***The Committee calls on the Government to exercise its general responsibility for the proper functioning of the social security system and to ensure that the SSO adopts a proactive approach that will bring registered migrants under the protection of the existing employment injury scheme and at the same time to enforce the effective functioning of the direct employer liability scheme. The Committee considers that in order to change the current situation for the better and ensure the gradual transition of migrant workers to be under the protection of the WCF on an equal footing with Thai nationals, the Government should take urgent measures to strengthen and integrate all the available means of protection into a comprehensive safety net providing basic protection to all migrant workers in case of employment injury. It should also require employers to take out an insurance policy for each registered migrant worker employed by them, enforced by a regime of sanctions sufficient to dissuade employers from evading their legal obligations. The Committee invites the Government to provide detailed information regarding its plans and actions in this respect together with the complete statistical data on the number of migrant workers registered by the Thai authorities and given work permits, the number of migrant workers subjected to the nationality verification process and voluntarily affiliated to the WAIF, and the number of migrant workers that have completed this process and are compulsorily insured in the WCF.***

The Committee also wishes to emphasize that, in accordance with *Article 4* of the Convention, all ratifying members undertake to afford each other mutual assistance with a view to facilitating the application of the Convention and the execution of their respective laws and regulations on workmen's compensation. In this respect, the Government of Thailand reports measures, taken in cooperation with Cambodia and the Lao People's Democratic Republic, to make the nationality verification process easier for registered migrants originating from these countries, facilitating the fulfilment of the conditions for their subsequent affiliation to the WCF. The Committee also notes that the bilateral cooperation framework between Thailand and Myanmar has been reactivated recently on the occasion of a ministerial meeting which took place in June 2011. As part of this reactivation, the Government of Myanmar has committed itself to give all needed assistance through its diplomatic and consular representations and to issue in the near future the remaining temporary passports necessary for the completion of the nationality verification process by Myanmar migrants working in Thailand. The Committee underlines the need to protect the rights of migrant workers and to assist them effectively. ***In view of the fact that Myanmar and Thailand both have ratified the present Convention, the Committee hopes that they will pursue their cooperation with a view to overcoming the administrative difficulties in the application of the Convention.***

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Tunisia

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1965)**

*Articles 4 and 5 of the Convention. Old-age, invalidity and survivors' benefits in case of residence abroad.* In the comments it has been sending to the Government for many years, the Committee has recalled 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 concerning the organization of social security schemes in the agricultural sector, provide that the granting of the above benefits to nationals of Tunisia is subject to the applicant residing in Tunisia on the date on which the application is made, although this requirement is lifted for foreign nationals of countries bound to Tunisia by a bilateral or multilateral social security treaty. Under this legislation, Tunisian nationals do not benefit from equality of treatment with foreign nationals, in accordance with *Article 4(1)* of the Convention, and they may be refused old-age, invalidity and survivors' benefits contrary to *Article 5(1)* of the Convention, if they apply for the benefit when they are residing abroad in a country that has not concluded a bilateral treaty with Tunisia. The Committee had therefore requested the Government to bring the national legislation into full conformity with the Convention by abolishing the above residence requirement for Tunisian nationals.

In its reports received in June 2010 and May 2011, the Government points out that, wishing to bring Tunisian legislation fully into line with the Convention, the competent government services have held in-depth discussions with the ILO. A bill intended to adapt the abovementioned provisions has been put forward with a view to finalizing the reform in respect of the Convention. As an immediate measure, the Government points out that it has instructed the national social security fund to cease requiring the physical presence of the beneficiary who applies for an invalidity, old-age or survivors' benefit or for employment injury and sickness benefits. Furthermore, social security funds have received clear instructions to neutralize the residence requirement provided for under the abovementioned texts, with respect to entitlements and the payment of benefits, both in the case of nationals of Tunisia and nationals of States bound to Tunisia by international agreements, in which the residence clause for the same branches has been lifted.

The Committee notes with *interest* the measures taken by the Government to bring national practice into line with *Articles 4 and 5* of the Convention. ***The Committee requests the Government to provide information on the way in which the instructions given are applied by the social security institutions by supplying statistical information on the transfer of benefits abroad. The Committee hopes that the Government will finalize the reform of the abovementioned provisions with ILO technical assistance in order to anchor the established practice in national legislation.***

## Uganda

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(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:

The Committee notes the information provided by the Government reporting the adoption in 2000 of new legislation respecting workers' compensation. In this respect, it notes with satisfaction that, following the many comments that it has made for many years, the Government has taken the opportunity to adopt the above Act in order to bring the national legislation into conformity with certain principles set out in *Article 5 of the Convention*. This is one of the essential provisions of the Convention which establishes that the compensation payable in the event of employment injury resulting in permanent incapacity or death shall, in principle, be paid in the form of periodical payments and may only be paid in the form of a lump sum when guarantees are provided to the competent authorities of its proper utilization. This provision is intended to protect victims of employment injury or their dependants against the improper use of funds intended to compensate the permanent loss of income resulting from an employment accident.

The Committee accordingly notes that, under section 3(8) of the Workers' Compensation Act of 2000 (Chapter 225), compensation in cases of permanent incapacity or death shall, in accordance with the provisions of the Convention, be paid in the form of periodical payments. In cases of total or partial permanent incapacity, any compensation due shall be paid by the employer to the district labour officer, who then pays such sums to the beneficiaries concerned (section 26). In practice, nevertheless, according to the Government's report, payments are still in the form of a lump sum, except in the case of minors, who receive periodical payments. The Government adds that the Commissioner for Labour decides whether the compensation is to be paid wholly or partially, but no guarantees of the proper utilization of the compensation are usually required.

***While welcoming the amendment of the national legislation establishing the principle of compensation due in the event of an employment accident resulting in death or permanent incapacity paid in the form of periodical payments, the Committee invites the Government to take the necessary measures (for example, through circulars addressed to the commissioners for labour in the various districts) to ensure compliance with this principle in practice and to provide information in this respect in its next report. The Committee also observes that, contrary to the provisions of the Convention, sections 5 and 6 of the Act of 2000 limit the amount of compensation to a sum equal to 60 months' earnings or to a percentage of this sum corresponding to the recognized percentage of loss of capacity. In this respect, it is bound to hope that the Government will make every effort to take the necessary measures in the near future to give effect in law and practice to Article 5 of the Convention, which provides in the case of both permanent incapacity and death for the payment of benefits in the form of periodical payments without limit of time.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## United Kingdom

### ***Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*** ***(ratification: 1949)***

*Article 9. Cost-sharing for pharmaceutical products.* The Committee *regrets* to note that no reply was received to its previous observations on the measures taken to include all victims of occupational accidents within the category of insured persons exempt from cost-sharing so that pharmaceutical assistance dispensed outside the hospital is provided free of charge to all victims of occupational accidents. ***The Committee requests the Government to indicate in its next report the measures taken to further reduce cost-sharing for pharmaceutical products outside the hospital for victims of occupational accidents and provide the corresponding statistical information.***

## Isle of Man

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)**

*Articles 9 and 10 of the Convention. Cost-sharing in the cost of medicines and appliances.* In its reply, the Government states that cost-sharing constitutes a contribution of the individual towards care and medical supplies and accounts only for a small proportion of the actual costs incurred. In principle, exemptions on cost-sharing should only apply to those who are not able or have a reduced ability to meet the statutory charges, including economically inactive persons or persons who suffer reduced incomes because of occupational accidents. Other exemptions to cost-sharing, which are related to specific conditions or diseases, are currently under review and could well be rationalized or removed in the future. The Government states that it would be inappropriate to seek to add any further exemptions to those currently in place until the review process has been completed. The Committee notes this information and wishes to recall that the purpose of *Articles 9 and 10* of the Convention is to relieve victims of occupational accidents from bearing any costs of prescribed medicines and artificial limbs resulting from employment injury. **Therefore, the Committee hopes that the Government will seize the opportunity of the current review of cost-sharing to reduce it so as at least not to cause any hardship for persons of small means who fall victims of industrial accidents. Please provide statistical information requested in Part V of the report form.**

## St Helena

### **Workmen's Compensation (Accidents) Convention, 1925 (No. 17)**

*Articles 5 and 9 of the Convention. Benefits in the form of periodical payments. Free-of-charge medical, surgical and pharmaceutical aid.* The Committee notes with **satisfaction** the adoption of the Employees' Compensation (Amendment) Ordinance, enacted on 1 July 2009, amending the principal Ordinance so as to bring it into line with the Convention. In accordance with *Article 5* of the Convention, section 9 of the Ordinance, as amended, provides that compensation payable where the death or disablement of an employee has resulted from an injury has to be paid by way of periodical payments to persons protected or their dependants. This provision also provides that compensation may be paid in a lump sum in cases where the responsible authority is satisfied that it will be properly utilized, as authorized by the Convention. The Committee also notes that, in conformity with *Article 9* of the Convention, section 14 of the revised Ordinance provides that the employer or the insurer bears the cost of all medical aid and such surgical and pharmaceutical aid as is reasonably necessary in consequence of an occupational accident.

## Uruguay

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1973)**

*Articles 13, 14 and 18 of the Convention (in conjunction with Article 19). Calculation of benefits.* The Committee notes with **regret** that, despite repeated previous requests, the Government has not supplied any kind of statistics in its reports to enable the calculation of cash benefits for partial incapacity (*Article 13*), for loss of earning capacity likely to be permanent (*Article 14*), and in the event of the death of the breadwinner (*Article 18*). **The Committee would be interested to know what obstacles are preventing the Government from presenting the information required under Articles 13, 14 and 18 of the report form relating to the Convention. The Committee also requests the Government once again to provide information on the application in practice of section 8, second subsection, of Act No. 16074, including statistics on the amount of benefits granted to dependent workers of employers who are not insured.**

*Article 21. Review of the rates of long-term cash benefits.* The Committee notes with **regret** that the Government's report received in September 2011 does not contain any reply to the comments made in its observations of 1999, 2000 and 2008 concerning the provision of statistics in relation to *Article 21* of the Convention. The Committee observes that the Government merely repeats, in its reports of 2008 and 2011 with regard to *Article 21*, that the form in which, and the interval at which, temporary benefits are paid are adjusted according to variations in the wage used as the basis for calculation. **The Committee therefore once again requests the Government to provide the statistical information corresponding to the 2000–11 period, as requested in the report form, so that the Committee is able to assess whether the rates of long-term cash benefits are reviewed following changes in the cost of living or general level of earnings. As the Committee has explained before, an assessment of the information provided for in the report form is essential to enable the Committee to reach conclusions with regard to the application in practice of Article 21 of the Convention.**

*Article 9. Abolition of the three-day waiting period. Article 11. Medical assistance at home.* Referring to its previous comments relating to the three-day waiting period for the payment of cash benefits, provided for in section 19(V) of Act No. 16074 of 1989, the Committee hopes that the Government will take gradual steps to abolish this waiting period and thus bring its legislation into line with *Article 9(3)* of the Convention. Moreover, the Committee observes that the provisions of section 11(2) of Act No. 16074 of 1989 are not in conformity with the provisions of *Article 10(a)* of the Convention, because section 11 of the aforementioned Act provides for the transfer of any worker who has suffered an

occupational accident from the medical assistance centre to his home and vice versa, whereas the obligation laid down in the Convention refers to the provision of medical assistance at the home of the worker, if necessary. *The Committee is therefore bound to reiterate the hope that the Government will take the necessary measures to give full effect to the abovementioned provisions of the Convention.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

## **Bolivarian Republic of Venezuela**

### **Social Security (Minimum Standards) Convention, 1952 (No. 102)**

*(ratification: 1982)*

### **Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1982)**

### **Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1983)**

### **Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1982)**

The Bolivarian Republic of Venezuela is a party to the *Social Security (Minimum Standards) Convention, 1952 (No. 102)*, the *Employment Injury Benefits Convention, 1964 (No. 121)*, the *Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)*, and to the *Medical Care and Sickness Benefits Convention, 1969 (No. 130)*. Following the adoption of the new Constitution in 1999, the Government embarked upon a process of the systematic reform of the social security system with the adoption in 2002 of the Organic Act on the social security system (LOSSS), followed in 2005 by the adoption of the Organic Act on prevention, working conditions and the working environment (LOPCYMAT). In 2009, 2010 and 2011, the Confederation of Workers of Venezuela (CTV) and the Independent Trade Union Alliance (ASI) provided comments concerning the social security Conventions ratified by the Bolivarian Republic of Venezuela, reporting dysfunctions in the social security system and problems in the transition to the new system. In view of the need to address in a coherent manner all of the issues related to the reform of the social security system, the Committee has decided to regroup them in a single comment under Convention No. 102, as this is the instrument which establishes, in conjunction with the other social security Conventions, the general framework for the international obligations assumed by the Bolivarian Republic of Venezuela in this field.

#### **I. Establishment of an integrated social security system**

The Constitution of 1999 establishes in article 86 the right of all persons to social security, which it defines as a non-profit-making public service providing guarantees for health and ensuring protection against the contingencies of maternity, paternity, sickness, invalidity, catastrophic diseases, incapacity, special needs, employment accidents, loss of employment, unemployment, old age, widowhood, the state of being an orphan, housing, the costs arising out of family life and in any other circumstance of social prevention. The State is assigned the obligation of ensuring that this right is given effect in practice through the establishment of a system of security that is universal, comprehensive, financed on the basis of solidarity, unified, efficient, participatory and based on direct or indirect contributions and regulated by a special organic act.

The LOSSS was adopted in 2002, providing for the establishment of an integrated social security system composed of six benefit schemes regulated by special legislation respecting health benefits, pensions and other cash benefits, social services, occupational safety and health and housing. A period of five years was established for the adoption of this legislation. The LOSSS also envisaged the creation of two new institutions: the Social Security Treasury, responsible for matters relating to affiliation, the collection of contributions and the payment of cash benefits; and the Social Security Supervisory Unit (*Superintendencia*), responsible for monitoring all the social security schemes providing benefits within the framework of the integrated social security system. The LOSSS represented considerable progress in the sustainable development of social security as it established a clear, firm and coordinated legal framework within which social security schemes were subject to the primacy of law, and accordingly facilitated the sound governance of social security schemes. Furthermore, the establishment of strong institutions responsible for administering and supervising the new social security system offered an important and indispensable guarantee of the operation and sound governance of the social security system.

The Committee notes that legislation has been adopted on social services, occupational health and safety and housing, thereby constituting a new institutional framework for social security. With regard to the two other schemes, namely the health and the pensions schemes, the special legislation envisaged by the LOSSS has still not been adopted, despite the fact that the period of five years established by the Organic Act has elapsed. According to the CTV and the ASI, the Government amended the LOSSS in 2007 to remove the five-year period initially set for the establishment of the integrated social security system. The latest reports provided by the Government in 2011 do not indicate the manner in which it intends continuing the implementation of the structural reform initiated by the LOSSS in relation to the

health-care scheme and the pensions and other cash benefits scheme. Moreover, up to now, the two new entities referred to above have not yet been established, with the Government confining itself to indicating that the establishment of the Social Security Treasury was entrusted in 2006 to the People's Ministry for Labour and Social Security. According to the ASI and the CTV, the lack of action by the Government demonstrates the absence of determination to implement the rights recognized both in the Constitution and the LOSSSS. While recalling the positive measures adopted by the Government, the ASI considers that they only constitute fragmentary and partial responses and that they reveal the absence of a legal conception of social security requiring, for its implementation, legislative responses preceded by studies of feasibility and economic necessity. The scarce information provided by the Government on its legislative intentions and the criticisms made by the trade unions lead to doubts with regard to the determination of the Government to continue the establishment of the integrated social security system as a whole. ***With a view to dissipating these doubts, the Committee would be grateful if the Government would indicate in its next report its political priorities for the implementation of the structures envisaged by the LOSSSS in relation to the two benefit schemes that have not yet been established, with an indication, where appropriate, of whether a new time frame has been established for this purpose. The Committee hopes that the Government will be able to indicate in its next report the tangible progress made in the establishment of the new institutions referred to above.***

## II. Promotion of social dialogue

According to the ASI and the CTV, the difficulty in gaining access to information is the principal problem in evaluating the performance of the management and the results obtained in relation to social security. The fact that it is impossible to gain access to clear, reliable and official information, including statistics, prevents the parties concerned from engaging in effective monitoring of the rate of coverage and the management of the social security system. The organizations add that workers are not represented in either the Venezuelan Social Insurance Institute (IVSS) or the other public institutions, such as the National Institute for Prevention, Occupational Safety and Health (INAPSASEL) and the National Institute for Socialist Educational Cooperation (INCES). The ASI also reports the procedural difficulties encountered by users of the social security system in asserting their rights before the courts, as the Supreme Court of Justice (TSJ) has given contradictory indications with relation to the development that should characterize the implementation of the fundamental right to social security, particularly through delays in procedures and reversals of case law. The Office of the Attorney-General could also discharge its functions better by seeking to identify, where necessary, the responsible state officials and calling for sanctions to be imposed in the event of corruption, investigating user complaints promptly and determining responsibilities for the failure to establish the health and pensions schemes.

The Committee notes that the Government has not provided in its reports, including those for 2011, documented replies to the many comments made by the ASI and the CTV, and there is no indication that it has engaged with the social partners in constructive social dialogue relating to the implementation of the reform of the social security system. Noting that the Constitution recognizes the right and duty of associations to participate in decision-making in relation to the planning, implementation and monitoring of policy on public health institutions (article 84), the Committee wishes to recall that the success of reforms depends on consensus among the social partners and wide social acceptance, involving civil society organizations, the community and local administration. In view of their considerable expertise in the subject, the effective involvement of the social partners in the establishment of the new social security system would contribute to achieving progress in social security through the determination of the appropriate combination of schemes for the country. The time devoted to dialogue therefore represents a good investment and a saving of time when such dialogue results in broad social and political support for the necessary reforms, thereby giving rise to substantial economic and social advantages (see the General Survey on the social security instruments, Report III(1B), ILC, 2011, paragraph 558). ***The Committee therefore hopes that the Government will accord special attention to the comments and criticisms made by the trade union organizations with a view to completing the establishment of the integrated social security system, the beginnings of which were initiated by the LOSSSS.***

## III. Health benefits scheme

The 1999 Constitution recognizes that health constitutes a fundamental social right and an obligation upon the State, which is the guarantor of the right to life (article 83). The State is under the obligation to establish, finance and manage a public health system of an inter-sectoral nature, which is decentralized and participatory, integrated into the social security system and governed by the principles of universal free care, integrity, equity, social integration and solidarity (articles 84 and 85). The LOSSSS established the legal framework for the implementation of these constitutional provisions and envisaged the adoption of specific legislation respecting health benefits for this purpose.

Nevertheless, the Government continues to refer to the 1967 Act on social insurance in relation to the legal framework applicable to health care. It also refers to the inclusion in the health programme of the progressive development of new medical consultation centres, comprehensive health services, the modernization of the hospital system and the construction of specialized health centres. According to the Government, this programme has resulted, up to now, in the establishment of some 1,600 consultation centres, 175 comprehensive diagnosis centres, 183 integral rehabilitation centres, six high-technology centres and a children's cardiology hospital, with a view to enabling the 60 per cent of the population currently excluded from health care to be granted protection ultimately. The Government also refers to the establishment of social services in the field of health (*misiones sociales Barrio Adentro I, II, III, IV*) with the

objective of protecting the health of the poorest persons and accordingly giving effect to the constitutional principle of free health care. The report provided by the Government in 2011 under Convention No. 130 is confined to indicating that there has been no change in the manner in which the Convention is applied.

On this subject, the ASI refers to a bill to implement the provisions of the LOSSSS in the field of health, which was adopted on its first reading by Parliament in 2004, but has not become law, as it was not placed on the legislative agenda by the Government. While noting the various positive measures adopted by the Government in the field of health, the ASI considers that they are of an isolated nature and in practice are liable to result in the establishment of a health system under the control of the People's Ministry of Health (MPPS), in parallel to the one administered by the IVSS, which would be in contradiction with the constitutional objective of the integration of the health system into the social security system. The ASI also expresses concern at the practice which consists of public institutions taking out health insurance for their employees with private providers for hospitalization, surgery and maternity. In practice, employees in the public sector continue to prefer using private health insurance because they consider that, in overall terms, the public health system is deficient. Although in 2009 the Government decided that all insurance policies of this type would in future be managed by a state body, it has still not determined the practical procedures for so doing. The consequence has been the transformation of the State into a collector of funding in support of the private health system, which prejudices not only the public social security system, but also workers, who are obliged to use part of their wages to cover health insurance in view of the absence of a public policy guaranteeing the constitutional rights to health and social security.

In light of this information, the Committee requests the Government to explain the reasons for the delays and impediments to the establishment of a public health-care scheme. The Committee recalls that the legislation on this subject, the 1967 Act on social insurance, is not adequate to guarantee that full effect is given to Convention No. 130. For many years, the Committee has been drawing the Government's attention to the need to amend this Act to bring it into conformity with the obligations deriving from the international social security Conventions ratified by the country. The points raised above concern in particular the following provisions of Convention No. 130: Articles 10 and 19 (in conjunction with Article 5) (the need for effective coverage of either all employees and their dependants, or 75 per cent of the economically active population and their dependants); Article 13 (the need to provide copies of the laws and regulations specifying the medical care provided to the persons protected, in compliance with the minimum levels envisaged by this provision of the Convention); Article 16(1) (the need to bring section 127 of the General Regulations of the Act on social insurance into conformity with the established practice of the IVSS, which consists of providing medical assistance throughout the contingency); Article 16(2) and (3) (the need to provide a copy of any decision, circular or administrative rule of the IVSS setting out the practice which consists of providing medical care when the beneficiary is no longer part of one of the groups of protected persons in the case of sickness which began when the person concerned was still part of that group); Article 28(2) (the need to amend section 160 of the General Regulations of the Act on social insurance, under which the pension is suspended when the contingency is a result of a violation of the law, a crime or an offence against morals or decency; and Article 22, in conjunction with Article 1(h) (concerning the level of cash sickness benefits). ***While awaiting the implementation of the part of the LOSSSS respecting health, the Committee requests the Government to indicate in its next report the measures adopted to give effect to each of the provisions of the Convention referred to above. The Committee also hopes that the next report will reply to the allegations made by the CTV and the ASI concerning the operation of the health system.***

#### IV. The pensions and other cash benefits scheme

In parallel with the situation regarding health benefits, the Committee notes that social security cash benefits are still governed by the 1967 Act on social insurance. Following the adoption of the new Constitution in 1999, invalidity, old-age and, since 2010, survivors' pensions have been provided at the rate of the minimum wage, which is adjusted each year. The Government adds that it has ensured the provision of all of the financial resources necessary for the social security system and has also assumed the responsibility entrusted to it by the Constitution by extending the coverage of social security and improving the effectiveness and equity of the distribution of public resources. The policy adopted has permitted a better redistribution of household income, an improvement in the situation in the poorest categories and a progression of the country in terms of the Human Development Index. In 2007, Presidential Decree No. 5316 extended old-age coverage to around 100,000 persons aged 70 and above residing in the country, in the context of an exceptional and temporary programme. In 2010, two other exceptional and temporary decrees were also adopted: Decree No. 7401 establishing an exceptional and temporary programme with a view to guaranteeing entitlement to an old-age pension to insured persons of pensionable age who, although they had paid at least a contribution during their professional life, do not fulfil the conditions for entitlement to a pension. Decree No. 7402 places the obligation upon the IVSS to pay old-age benefits to around 20,000 rural workers and fishers who have reached the age of 60 in the case of men and 55 in the case of women. According to the information provided by the Government, during the period covered by the 2006–11 report, the number of pensioners under the social security system is reported to have risen from 944,475 to 1,825,192 persons. The percentage of older persons (women aged over 55 years and men aged over 60 years) covered by the social security system rose from 24.36 per cent in 1998 to 57.06 per cent in 2009.

While emphasizing the efforts made by the Government to extend the coverage of the contributory system (6,701,444 persons covered in 2009) and to ensure old-age coverage to elderly persons who are excluded from it, the ASI recalls that over 1 million persons do not have old-age pensions and it expresses doubts as to the process selected by the

Government to guarantee this coverage, through the adoption of different decrees for each of the categories concerned. Measures for the provision of special pensions, in the view of the ASI, represent uncoordinated efforts lacking an integrated legal framework, which are largely inadequate to resolve the structural problem related to the coverage of the contingency of old age. The ASI also refers to the lack of clarity and legal certainty in relation to entitlement to cash benefits and their level, which has serious consequences on the operation of the judicial system and the recognition of acquired rights, both by the administration and by the courts. A ruling by the Supreme Court of Justice in 2005 ordering old-age and survivors' benefits to be calculated on the basis of previous earnings (TSJ, Social Chamber, Case No. 0816 of 26 July 2005) was accordingly ignored by the court entrusted with its enforcement, which approved the reduction of the level of pensions due to that of the minimum wage. Recently, a legal challenge, which is awaiting a ruling on its receivability by the Constitutional Chamber of the TSJ, lodged by the Venezuelan Programme for Education-Action in the Field of Human Rights (PROVEA) is calling for the failure to adopt legislation regulating the pensions system to be declared unconstitutional. According to the ASI, the adoption of the law on the pensions scheme and other cash benefits envisaged in the LOSSS would have the advantage of clarifying the situation in law and re-establishing the link between pension benefits and the previous earnings of beneficiaries. The ASI adds that the LOPCYMAT is still not applied in practice in relation to employment injury pensions, while awaiting the establishment of the new institutions envisaged by the LOSSS.

The Committee *regrets* that the Government has not replied to the detailed allegations made by the CTV and the ASI and that it has confined itself to indicating in its 2011 reports under Conventions Nos 121 and 128 that there is no change to be reported in the manner in which these Conventions are implemented, without indicating the way in which it intends to continue the implementation of the LOSSS. ***The Committee requests the Government to indicate its political intentions with regard to the adoption of the legislation respecting the pensions and other cash benefits scheme.***

With regard to the implementation of the social security Conventions by the legislation that is currently applicable, the Committee notes that the information provided by the Government is confined to referring to the various legislative provisions, even though it has been drawing its attention for many years to the need to provide all the information requested in the report form. ***The Committee therefore requests the Government to provide detailed information in its next report in relation to the instruments mentioned below, based on the report forms, indicating the manner in which the applicable legislation, including the various exceptional and temporary measures adopted by the Government, gives effect to Conventions Nos 102, 121 and 128.***

- *With regard to the level of benefits:* please demonstrate that cash benefits are of a level that is in conformity with the minimum established by Convention No. 121 in relation to employment injury benefit (*Articles 13, 14(2) and 18(1)*, in conjunction with *Article 19*); and by Convention No. 128 in relation to old-age, invalidity and survivors' benefit (*Articles 10, 17 and 23*, in conjunction with *Article 26*).
- *With regard to Convention No. 121:* *Article 4* (the need to cover effectively all employees (including apprentices) in the public and private sectors, including cooperatives, and, in the event of the death of the family breadwinner, the prescribed categories of beneficiaries); *Article 7* (the need to indicate the conditions under which a commuting accident shall be considered to be an industrial accident giving entitlement to compensation under the social security legislation); *Article 8* (the establishment of a list of occupational diseases in accordance with the Convention); *Article 10(1)* (the need to take the necessary measures to determine explicitly in the legislation the types of medical care provided by the IVSS to insured persons, which shall include at least the care enumerated in the Convention); *Article 18* (in conjunction with *Article 1(e)(i)*) (the amendment of section 33 of the Act on social insurance with a view to raising from 14 to 15 years the age up to which children shall be entitled to a survivors' pension); *Article 21* (the need to provide the statistical data required in the report form as a basis for assessing the real impact of the adjustment of pensions, taking into account variations in the general level of earnings and in the cost of living); *Article 22(1)(d) and (e) and (2)* (the need to amend section 160 of the General Regulations of the Act on social insurance, under which the pension shall be suspended when the contingency is due to a violation of the law, a crime or an offence against morals or decency).
- *With regard to Convention No. 128:* *Article 21(1)* (in conjunction with *Article 1(h)(i)*) (the need to amend section 33 of the Act on social insurance to raise from 14 to 15 years the age up to which children shall be entitled to a survivors' pension); *Article 29* (the need to provide the statistical data required in the report form as a basis for assessing the real impact of adjustments of pensions, taking into account variations in the general level of earnings or in the cost of living); *Article 32(1)(d) and (e)* (the need to amend section 160 of the General Regulations of the Act on social insurance, under which the pension shall be suspended when the contingency is due to a violation of the law, a crime or an offence against morals or decency); *Article 32(2)* (the need to provide that when benefits are suspended, a proportion shall be provided to the dependants of the beneficiary); and *Article 38* (indicate any increase in the number of employed persons protected in the agricultural sector).
- *With regard to Convention No. 102:* *Articles 50 and 52* (in conjunction with *Article 65*) (the need to bring section 143 of the General Regulations on social security into line with section 11 of the Act on social insurance).

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Comoros, Democratic Republic of the Congo, Madagascar, Malawi, Panama, Rwanda, United Republic of Tanzania, United Kingdom: Bermuda); **Convention No. 17** (Angola, Cape Verde, Czech Republic, Latvia, Morocco, Mozambique, Philippines, United Republic of Tanzania, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar, United Kingdom: Montserrat, United Kingdom: St Helena, Zambia); **Convention No. 18** (Latvia, Mauritania, Mozambique, Nicaragua, Pakistan, Zambia); **Convention No. 19** (Plurinational State of Bolivia, Botswana, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Guyana, Kenya, Republic of Korea, Lebanon, Lesotho, Lithuania, Madagascar, Mali, Mauritius, Montenegro, Morocco, Myanmar, Nicaragua, Nigeria, Papua New Guinea, Philippines, Poland, Saint Lucia, Sao Tome and Principe, Senegal, Spain, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, United Kingdom: British Virgin Islands, Yemen); **Convention No. 24** (The former Yugoslav Republic of Macedonia); **Convention No. 25** (The former Yugoslav Republic of Macedonia); **Convention No. 35** (France); **Convention No. 36** (France); **Convention No. 38** (Djibouti); **Convention No. 42** (Czech Republic, Morocco, Myanmar, Netherlands: Sint Maarten, Panama, Poland, Slovakia, Solomon Islands, United Kingdom: Montserrat); **Convention No. 44** (Spain); **Convention No. 102** (Albania, Croatia, Czech Republic, Denmark, France, Greece, Ireland, Italy, Luxembourg, Slovenia, Sweden, Switzerland, The former Yugoslav Republic of Macedonia); **Convention No. 118** (Cape Verde, Denmark, Guinea, Italy, Mexico, Netherlands: Sint Maarten, Philippines, Rwanda, Bolivarian Republic of Venezuela); **Convention No. 121** (Chile, Croatia, Finland, Sweden, The former Yugoslav Republic of Macedonia); **Convention No. 128** (Czech Republic, Slovakia); **Convention No. 130** (Czech Republic, Slovakia); **Convention No. 168** (Albania, Brazil, Romania, Sweden).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 12** (Italy, Poland, The former Yugoslav Republic of Macedonia); **Convention No. 17** (Poland); **Convention No. 19** (Panama, Zimbabwe); **Convention No. 24** (Latvia); **Convention No. 102** (Germany); **Convention No. 128** (Germany); **Convention No. 130** (Germany).

## Maternity protection

### Plurinational State of Bolivia

#### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1973)**

The Committee notes that the Government's report does not contain a reply to its previous comments, but indicates that the Ministry of Labour, Employment and Social Welfare and the Bolivian Central of Workers (COB) are working together on the formulation of the Bill intended to amend the current General Labour Act and which, inter alia, refers to matters relating to benefits for the birth of a child. *The Committee trusts that the Government will not fail to take this opportunity to bring its legislation into full conformity with the Convention in relation to the matters referred to below, and that it will indicate the progress achieved in this respect in its next report.*

*Article 1 of the Convention. Agricultural workers. In the absence of a reply by the Government to its previous comments concerning the protection of women agricultural workers, the Committee is bound to express once again the firm hope that the Government will not fail to take all the necessary measures in the very near future to ensure that all these women workers benefit in both law and practice from the maternity protection afforded by the national legislation (General Labour Act and Social Security Code).*

*Article 3(2). Duration of maternity leave. The Committee observes that the relevant provisions of the labour legislation (section 61 of the General Labour Act and Supreme Decree No. 2291 on women workers in the public administration) would need to be aligned with the social security legislation (section 31 of Decree No. 13214 of 24 December 1975) so as to establish explicitly and without ambiguity the right to maternity leave of at least 12 weeks, in accordance with the Convention.*

*Article 3(4). Late confinement. The Committee asks the Government to provide information in its next report on the measures adopted in practice for the inclusion in the General Labour Act, the Social Security Code and the legislation respecting public servants and employees of a provision explicitly establishing the possibility of extending prenatal leave where confinement occurs later than the presumed date, without any reduction in the minimum period of post-natal leave of six weeks prescribed by the Convention.*

*Article 4(1) and (3). Medical benefits. The Committee requests the Government to provide information on the establishment in practice of universal health insurance for mothers and children (Seguro Universal Materno Infantil) and in particular to provide statistics on the number of women workers covered in relation to the total number of employed persons, and the number of women workers who have received care from the health services in the context of the universal health insurance for mothers and children, with an indication of the nature of the medical care received. Please also provide copies of the implementing regulations envisaged in section 10 of the Act of 22 November 2002. The Committee would also be grateful if the Government would provide information in its next report on the results achieved and the difficulties encountered in the implementation of the new health policy.*

*Article 4(4) and (5) and (8). Entitlement to benefits. The Committee requests the Government to indicate the measures adopted or envisaged to ensure the provision of maternity benefit: (i) by means of public funds for women who are not yet covered by the social security scheme; and (ii) in the context of public assistance for those who fail to meet the qualifying conditions prescribed by the Social Security Code.*

*Article 5. Nursing breaks. The Committee is bound to request the Government once again to indicate in its next report the measures adopted or envisaged to supplement the legislation respecting conditions of employment in the public administration with a provision explicitly granting entitlement to nursing breaks to women workers in this sector.*

*Part V of the report form. The Committee requests the Government to provide detailed information in its next report, including statistics, on the application in practice of the system of maternity benefits, in both cash and in kind (regions and municipalities covered, number of employed persons who in practice benefit from the envisaged protection in relation to the total number of employed persons, summaries of inspection reports, number and nature of the violations reported and any other details relating to the application of the Convention in practice).*

### Panama

#### **Maternity Protection Convention, 1919 (No. 3) (ratification: 1958)**

The Committee notes the Government's reply to its observation of 2009 on *Articles 1, 3 and 4 of the Convention.*

*Article 3(c). Maternity benefits provided to women who do not meet the conditions for entitlement under social insurance. The Committee observes that under section 146 of Organic Act No. 51, the Basic Social Security Fund Act, in order to receive the maternity benefit, fund members must have paid into their individual accounts a minimum of nine monthly quotas in the 12 months preceding the seventh month of pregnancy. For women workers who are not eligible for social security benefits, section 107 of the Labour Code provides that payment of the maternity benefit is to be covered by the employer. The Committee observes, however, that Act No. 51 establishes a "compensation" mechanism*

(section 1(14)) under which an “economic benefit” is to be provided in a single payment where the requirements for the grant of a pension for the corresponding risk are not met (see provisions on invalidity benefit (section 165) and old-age benefit (section 171)). ***That being so, the Committee requests the Government to consider the possibility of extending the “compensation” mechanism to pregnant women who do not meet the legal requirements for grant of the maternity benefit by the Social Security Fund, so as to relieve employers of the obligation to cover directly the costs of the benefits due to women they employ.***

*Article 3(d). Nursing breaks.* The Committee observes that section 114 of the Labour Code gives women workers nursing their children the choice between 15-minute breaks every three hours or two half-hour breaks a day. The Committee notes that the Government stated previously that the first option was in practice seldom used, and states in its 2010 report that studies may be conducted to establish which of the two options is the most feasible for women workers in practice. The Committee reminds the Government that in earlier observations, it proposed including a provision in section 114 allowing for working women who are nursing their children a reduction in working time instead of the choice between 15-minute breaks every three hours or two half-hour breaks. ***The Committee accordingly asks the Government to adopt appropriate measures in the near future to enable nursing mothers to exercise this right in practice.***

## Sri Lanka

### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1993)**

#### **Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 100th Session, June 2011)**

Referring to its previous comments, the Committee notes the discussion which took place in 2011 in the Conference Committee on the Application of Standards on the implementation by Sri Lanka of Convention No. 103. It observes that both the Worker and Employer members of the Conference Committee expressed the hope that the Government would give greater consideration to the aims and principles of the Convention within the framework of responsibility shared between the public authorities and society at large and amend its legislation in consultation with the social partners. The Government representative indicated that an intra-ministerial committee had been formed to study the discrepancies existing between the national legislation and the Convention and that its findings would be discussed by a high-level tripartite forum, the recommendations of which would then be tabled before the National Labour Advisory Council (NLAC) for endorsement. In its conclusions, the Conference Committee regretted that for a number of years no concrete action had been taken by the Government to advance effectively the solution of the numerous and long-standing problems in the application of the Convention. It expressed the firm hope that the Government would do all in its powers to undertake in the very near future legislative action with a view to ensure compliance of the national legislation with the Convention and advance effectively the solution of all outstanding issues. The Conference Committee also welcomed the Government’s decision to avail itself of the technical assistance of the ILO to achieve tangible progress in the application of the Convention and requested the Office to provide such assistance.

In its 2011 report, the Government manifested its commitment to engage in an inclusive process aimed at progressively bringing national law and practice in conformity with the requirements of the Convention. It approached the International Labour Standards Department of the ILO with a view to organizing a national tripartite workshop which will establish priorities for legislative and other action in the field of maternity protection necessary to overcome the difficulties in implementation and raise awareness among the tripartite constituents of the main principles underlying the Convention. The Committee expresses its support for the Government’s approach to engage in a constructive process aiming at ensuring full application of the Convention, in association with the social partners and with the technical assistance of the Office. The said tripartite workshop represents a good opportunity for elaborating a roadmap detailing the Government’s efforts aimed at addressing progressively all discrepancies between national legislation and practice and the Convention. The Committee therefore expresses the hope that the national tripartite workshop will take place in 2012 and expects the Government to specify in its next regular report due in 2013 the measures taken or contemplated with a view to ensuring compliance with the Convention with respect to the following points:

*Article 3(3). Maternity leave. Compulsory post-natal leave of at least six weeks.* For many years, the Committee has been stressing that, unlike the Convention, the national legislation does not establish a compulsory leave of at least six weeks after childbirth for all categories of workers covered by the Convention. The compulsory nature of part of the postnatal leave is aimed at preventing women, following pressures from their employer, from resuming work during the first six weeks following childbirth to the detriment of their health or that of their children. In its latest report, the Government states that maternity leave is regulated differently for the various categories of women workers. Shop and office employees are required to take 28 working days of maternity leave after childbirth (Section 18B, Shop and Office Employees Act No. 19 of 1954). Taking into account the weekly rest days and official holidays, the overall duration of postnatal maternity leave of this category of employees exceeds five weeks. Other private sector employees shall not be employed by their employer during a period of four weeks immediately following confinement (section 2, Maternity Benefits Ordinance of 1939) and public sector employees are granted 70 calendar days postnatal leave. The Government states that the need to raise the duration of the compulsory postnatal leave to at least six weeks necessitates a detailed discussion with trade unions and employers’ organizations and proposes to initiate such consultations in time to come.

***The Committee trusts that the Government's next report will indicate the legislative measures taken to ensure compliance with this central provision of the Convention.***

***Article 3(2) and (3). Limitation on the length of maternity leave based on the number of children.*** Under section 3(1)(b) of the Maternity Benefits Ordinance a woman worker in the private sector having a third and subsequent child has reduced maternity leave entitlements (six weeks as opposed to 12) while the Convention provides for maternity leave of at least 12 weeks in each case, irrespective of the number of births. In its 2011 report, the Government indicates that the discussions within the Department of Labour and the Ministry of Labour and Labour Relations are taking place with a view to amending the national legislation so as to comply with the Convention and that the final decision will be forwarded to the tripartite NLAC to take suitable measures in the future. ***The Committee considers that, in order to secure the right to maternity leave to all women workers covered by the Convention, the measures taken by the Government should be based on the sound actuarial evaluations of the financial implications of the extension of maternity leave for third and subsequent child and reminds the Government of possibility to avail itself of the technical assistance of the Office in this regard.***

***Article 3(2) of the Convention. Minimum duration of maternity leave.*** In accordance with section 18B(2) of the Shop and Office Employees Act, women workers are entitled to 14 days prenatal and 28 days postnatal maternity leave whereas the minimum duration of maternity leave under the Convention is 12 weeks (or 84 calendar days). ***The Committee hopes that the discussions within the intra-ministerial committee and the NLAC will not fail to consider the concrete ways to bring the above legislation in line with the Convention.***

***Article 4(4) and (8). Cash and medical benefits.*** For many years, the Committee has been drawing the Government's attention to the need to reform maternity protection with a view to providing benefits by means of a compulsory social insurance scheme or out of public funds. In Sri Lanka, contrary to *Article 4(8)* of the Convention, maternity benefits continue to be provided by the employer. During the Conference discussion in June 2011, both the employer and worker members pointed out to the Government that compulsory maternity insurance would improve the situation of women workers on the labour market and avoid their discrimination in the workplace resulting from protection mechanisms based on employer's liability. The Conference Committee hoped that, notwithstanding the difficulties involved, the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme and would initiate the necessary studies for this purpose, bearing in mind the need to avoid any adverse effect on the employment of women and on the enterprises with a high number of women workers. In its 2011 report, the Government stresses that all citizens, including women during pregnancy, up to childbirth and thereafter, are granted free medical services through special clinical arrangements. It would, however, be difficult, according to the Government, to provide cash benefits by means of public funds or government-sponsored social insurance. ***The Committee wishes to point out that the difficulties invoked by the Government would be largely outbalanced by the social and economic advantages brought by the establishment of a social insurance mechanism to cover maternity benefits. It therefore invites the Government to undertake an actuarial feasibility study necessary for setting up a maternity insurance scheme and to report on the results of such a study and the measures envisaged in this respect.***

***Article 4(1) (in conjunction with Article 3(4), (5) and (6)). Entitlement to cash benefits during supplementary leave.*** Neither the Shop and Office Employees Act nor the Maternity Benefits Ordinance contain provisions extending the period of maternity leave in case of illness medically certified arising out of pregnancy or confinement. The Government indicates in its report that, for the employees in the private sector, the Maternity Benefits Ordinance provides security of employment during the prenatal and postnatal stages (section 10A), while public employees are entitled to an extension of maternity leave on a half paid or unpaid basis. The Government agrees however that, with a view to covering any situation of illness arising out of pregnancy or childbirth, the national legislation needs to be amended and hopes to discuss this matter within the NLAC taking into account the implications on the employment of women. ***The Committee hopes that the discussions within the intra-ministerial committee and the NLAC will permit it to determine the most adequate ways to guarantee cash benefits during any extensions of maternity leave due to delayed childbirth (Article 3(4)) and during a supplementary leave period (to be decided nationally) in case of pregnancy- or childbirth-related complications (Article 3(5) and (6)).*** The Committee considers that such measures should be based on the sound actuarial evaluations of the financial implications of the extension of maternity leave in these cases.

***Article 1. Application of the Convention to women workers in plantations and to domestic workers.*** The Government indicates that Sri Lanka adequately covers workers in agricultural occupations where a labour relationship exists, stressing at the same time that in practice most rural agricultural workers are self-employed. Action needs however to be taken with a view to repealing redundant provisions relating to alternative maternity benefits in the Maternity Benefits Ordinance, in consultation with the social partners. Discussions on this respect between the Department of Labour and the Ministry of Labour and Labour Relations are currently taking place and the final decision will be forwarded to the NLAC so as to take suitable measures in the future. ***The Committee trusts that the Government will ensure that the said redundant provisions in the Maternity Benefits Ordinance are repealed in the very near future.***

With regard to domestic workers, the Government indicates that, as Sri Lanka remains a developing country, the application of the Convention to domestic workers seems rather difficult. It will however forward this issue to the tripartite NLAC and suitable measures will be taken in the future. ***The Committee hopes that the roadmap, which the***

*Government intends to establish with a view to ensuring compliance with the Convention, will include concrete steps towards extending maternity protection measures to domestic workers.*

*Article 5. Nursing.* The Government indicates that the issue of ensuring nursing breaks to shop and offices employees will be discussed by the NLAC so as to reach a compromise. ***The Committee trusts that the Government, in consultation with the NLAC, will put forward proposals for amending the relevant legislation in order to guarantee breaks from work for the purpose of nursing, counted as working hours and remunerated accordingly, in accordance with this provision of the Convention.***

*Article 6. Protection against dismissal during maternity leave in the public sector.* The Committee recalls that the Establishment Code does not protect public employees against dismissal or a notice of dismissal during maternity leave. The Government indicates that there are no reported incidents of government sector employees being dismissed during the maternity period. This issue will however be discussed further with line ministries to get detailed information on the manner in which this provision is applied in practice. ***The Committee points out that, to apply Article 6 of the Convention, the Establishment Code must ensure that public employees may not be dismissed during maternity leave nor receive notice of dismissal expiring during such leave and requests the Government to keep it informed of measures taken or envisaged to ensure conformity with this provision of the Convention.***

In view of the numerous questions raised by the application of the Convention in Sri Lanka, the Committee welcomes the initiative of the Government to seek tripartite agreement aimed at ensuring better implementation of the Convention. ***The Committee hopes that the Government will undertake without further delay a thorough study of the state of maternity protection in Sri Lanka and to elaborate a legislative agenda ensuring that women workers could really enjoy the rights and benefits guaranteed to them by the Convention.*** The Committee notes in this respect that Sri Lanka's Decent Work Country Programme (DWCP) for the period 2008–12 sets the objective of enhancing labour administration and promoting equitable employment practices and specifically requests ILO's assistance to focus on elaborating strategies to expand the outreach of social security schemes. ***The Committee strongly advises the Government to integrate maternity protection into this Programme as an essential component of a comprehensive strategy focusing on the extension of social security.***

## Zambia

### **Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1979)**

*Article 3(1) of the Convention. Maternity leave.* For many years, the Committee has been drawing the Government's attention to the fact that section 15(A) of the Employment Act (Cap 268) does not comply with the Convention on the following points: (i) contrary to this provision of the Convention, section 15(A)(1) of the Employment Act, and section 7(1) of the Schedule to the Order of 14 January 2002, submit entitlement to maternity leave to the completion of two years of continuous service from the date of the first engagement or since the last maternity leave taken; and (ii) there is no provision in the national legislation providing for a compulsory period of postnatal leave of not less than six weeks.

In its reply, the Government indicates that the provisions on maternity leave (section 15(A) of the Employment Act (Cap 268)) have been supported by all partners in the Tripartite Consultative Labour Council and therefore no proposals were made to review this section. The Zambia Federation of Employers (ZFE) also states that this provision has been accepted by workers and employers and that so far no complaints have been raised by the workers. Both the Government and the ZFE report that women can take unpaid maternity leave if they do not meet the conditions of section 15(A). ***The Committee would like the Government to confirm, by reference to the corresponding provisions of the national law, that female workers, who do not fulfil the requirement of two years continuous employment, have the right to unpaid maternity leave in case of pregnancy and confinements, as well as the right to protection against dismissal.***

With regard to the compulsory nature of the six-week postnatal leave, the Committee points out to the Government and the social partners that this measure is considered essential to safeguard the health of the mother and child, particularly in view of the fact that women are often compelled to return to work as soon as possible after confinement for economic reasons. Nationwide, compulsory postnatal leave guarantees the preservation of the reproductive health of the population. The Committee refers in this respect to the statistical information of the 2007 Zambia Demographic and Health Survey that 61 per cent of married women are employed (table 16.1 of the Survey) and its conclusions, that mortality related to pregnancy and childbirth remains relatively high in the country (page 259 and table 15.4 of the Survey). ***The Committee requests the Government to do all in its powers to undertake in the very near future legislative action to bring the provisions of the Employment Act on maternity leave in conformity with the Convention.***

*Article 4(3). Medical benefits.* The Committee notes that no information that it had requested on the nature and scope of medical benefits which are guaranteed to female employees according to *Article 4(3)* of the Convention was received. In its reply, the Government states that it is still assessing how medical benefits could be managed and paid by the National Pension Scheme Authority. ***The Committee requests the Government to provide further information in its next report on the progress made in the establishment of free medical benefits to protect women during pregnancy and post-natal leave.***

*Article 4(4), (6), (7) and (8). Maternity cash benefits.* The Government reports that it is considering with the social partners how a scheme that is in conformity with the provisions of the Convention could be maintained and managed in Zambia. The ZFE specifies that it is opposed to amending section 15(A), as long as employers have to continue to bear the burden of paying at the same time a salary to a woman on maternity leave and to someone else to do her work. However, the ZFE specifies that employers may be in a position to reconsider amending the current legislation if the Government sets up a public fund or a compulsory insurance scheme where the costs would be shared between employers and employees, and urges the ILO to provide technical assistance to the Government in this respect. The Committee also notes the Government's statement that a progressive approach is being adopted to the application of the Convention and that it is currently engaged in determining the best way to implement it. ***Recalling that the maternity cash benefits should be financed collectively by way of insurance contributions or taxes, the Committee hopes that, notwithstanding the difficulties involved, the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme and requests the Government to keep the Committee informed of any measure taken or envisaged in this respect and recalls that the Government might wish to avail itself of the technical assistance of the Office.***

*Article 5. Nursing breaks.* The Government states that it has taken into consideration the observation of the Committee and incorporated the provision for nursing breaks in the draft Employment Act Bill. ***The Committee notes with interest this development and requests a copy of the draft provisions with an indication of the time frame for its adoption.***

*Article 6. Protection against dismissal.* The Committee notes with ***interest*** the Government's statement that section 7(4) of the Schedule to the Order of 14 January 2002, which is reproduced in section 15(B) of the Employment Act, has been repealed and replaced by Statutory Instruments Nos 1 and 2 of 2011 in order to take into consideration the comments of the Committee. As a result, a female employee shall not be dismissed in connection with her pregnancy and she will have six months beyond maternity leave in which she remains a protected employee. The Committee notes that in the previous version of the Employment Act, Section 15(B) the protection against dismissal was effective only during six months after delivery. ***The Committee requests a copy of the Statutory Instruments Nos 1 and 2 of 2011.***

## **Direct requests**

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 3** (Guinea); **Convention No. 103** (Plurinational State of Bolivia, Ecuador, Equatorial Guinea); **Convention No. 183** (Latvia, Luxembourg, Mali, Netherlands).

## Social policy

### Guinea

#### **Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)** (ratification: 1966)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Parts I and II of the Convention. Improvement of standards of living. The Committee requests that the Government provide indications of the way in which the improvement of standards of living is regarded as the principal objective in the planning of economic development within the strategy to combat poverty (Article 2 of the Convention). In this regard, the Committee reminds the Government that, pursuant to Article 1(I) of the Convention, "all policies shall be primarily directed to the well-being and development of the population".*

### Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 82** (United Kingdom: Bermuda, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas)); **Convention No. 117** (Democratic Republic of the Congo).

## Migrant workers

### China

#### Hong Kong Special Administrative Region

##### **Migration for Employment Convention (Revised), 1949 (No. 97)** (notification: 1997)

The Committee notes the communication of the International Trade Union Confederation (ITUC), and the Government's response thereto.

The Committee notes from the Government's report that as of 31 May 2010, there were 60,642 foreign professionals, 276,737 foreign domestic workers (4,331 men and 272,406 women), and 1,653 "imported workers" (i.e. workers from mainland China or other countries imported under the Supplementary Labour Scheme (SLS)) in the Hong Kong Special Administrative Region, China (SAR). Half of the number of female domestic workers originate from Indonesia while 47.5 per cent originate from the Philippines. Almost 80 per cent of the male domestic workers originate from the Philippines. Other foreign domestic workers mainly come from Thailand, India and Sri Lanka.

*Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution).* Since 2003, the Committee has engaged in a dialogue with the Government on the application of *Article 6 of the Convention*, in particular in the context of the follow-up to the recommendations of the Governing Body at its 288th Session (November 2003) on a representation made by the Trade Union Congress of the Philippines under article 24 of the ILO Constitution alleging non-observance by China of the Convention with respect to Hong Kong SAR. In this connection, the Committee had welcomed the measures by the Government to suspend, until 31 July 2013, the obligation for employers of "all imported labour" including foreign domestic workers, to pay the employees retraining levy (ERL) of 400 Hong Kong dollars (HKD) and the subsequent increases of the minimum allowable wage (MAW) of foreign domestic workers. With regard to the impact of the levy suspension on pre-existing contracts (before 1 August 2008) and wages of domestic workers, the Committee notes the Government's indication that employers are required to inform the Department of Immigration about any termination of contracts, without having to provide the reasons for such termination. The Government, however, states that the number of cases of premature termination of employment contracts does not indicate any significant changes following the implementation of the levy suspension arrangement. With regard to claims of underpayment by foreign domestic workers, the Committee notes from the Government's report that between 1 June 2007 and 31 March 2010, 1,036 complaints were submitted to the Labour Department. Of those cases, 59 were settled with the assistance of the Labour Department and 506 were subsequently referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board (MECAB). In the remaining cases, the foreign domestic worker was granted ex gratia payments from the Protection of Wages on Insolvency Fund (PWIF) due to bankruptcy of the employer. During this period, the Labour Department also issued 398 summonses involving underpayment of wages or other breaches of the Employment Ordinance by employers of immigrant workers (including foreign domestic workers), 247 of them resulting in conviction. The Committee further notes the Government's confirmation that the policy that operating expenses of the Employees Retraining Board, which is responsible for training and retraining of local workers, should primarily be met by the ERL remains unchanged. Noting that, in practice, this would mean that the ERL is primarily borne by employers of foreign domestic workers, representing 99 per cent of the "imported" labour in Hong Kong SAR, the Committee remains concerned about the potential disproportionate impact of the levy policy on wages of foreign domestic workers, once it again becomes operational. ***The Committee therefore asks the Government to continue to monitor the situation closely and to provide information on the measures taken or envisaged to ensure that the ERL is not having a disproportionate impact on the wages of foreign domestic workers, once the levy suspension expires (as of 31 July 2013). The Committee also asks the Government to continue to provide information, disaggregated by sex and country of origin, on the number of underpayment claims submitted by foreign domestic workers to the Labour Department, the Labour Tribunal and the Minor Employment Claims Adjudication Board, and their outcome for both workers and employers.***

*Article 6(1). Equality of treatment.* The Committee notes that the monthly MAW for foreign domestic workers has been increased to HKD3,740, effective 2 June 2011. It also notes the adoption of the Minimum Wage Ordinance No. 15 of 2010 which does not apply to "a person who is employed as a domestic worker in, or in connection with, a household and who dwells in the household free of charge" (section 7(2)). The Committee understands that the reasons given by the Legislative Council for advising that live-in domestic workers be excluded from the scope of the Ordinance were: (a) their distinctive working patterns; (b) enjoyment of benefits in kind; (c) significant socio-economic ramifications; and (d) the fundamental erosion of the policy on foreign domestic workers. The Committee notes that "distinctive working patterns" is meant to cover "round-the-clock work" and "providing service on demand". The Committee notes that the Minimum Wage Ordinance excludes both local and foreign live-in domestic workers and that according to the latest available statistics, the number of local live-in domestic workers totalled 1,400 in 2006 (Population by census conducted by the Census and Statistics Department) compared to 276,737 foreign domestic workers, of whom

98 per cent are women (2010 data). No information is provided on the number and wages of local live-out domestic workers.

The Committee recalls that, unlike local domestic workers or other foreign workers, foreign domestic workers are obliged to reside with the employer (paragraph 3 of the standard employment contract). The Committee notes that, in this context, ITUC draws attention to the vulnerability of foreign domestic workers, particularly those of Indonesian and Nepali origin, to violations of their statutory rights and employment contracts, including denial of rest days, excessive working hours (average of 16 hours a day), and sexual and physical abuse. ITUC calls on the Government to legislate hours of work, including standby hours, of domestic workers, and to conduct a survey on wage inequalities between local and foreign workers, as recommended by the Governing Body in 2003. ITUC is further concerned that the rule requiring foreign domestic workers to leave Hong Kong SAR, within two weeks of the expiration or premature termination of their employment contract drives foreign domestic workers to remain in or access new employment in abusive conditions. Furthermore, ITUC draws attention to the discriminatory nature of the immigration rules (section 4(a)(vi) of the Immigration Ordinance) specifically preventing foreign domestic workers (primarily women) from being eligible to seek permanent residence. With regard to the two-week rule, the Committee previously noted that the rule was exercised with flexibility and that applications for extensions of stay because of civil or criminal proceedings were generally approved, and that in a number of cases applications had been approved to change employer without returning to the home country. With regard to residency, the Committee understands that a Court of first instance ruled on 30 September 2011 that prohibiting foreign domestic workers from acquiring permanent residency was unconstitutional, but that the Government may have challenged the ruling in the Court of Appeal. The Committee notes the Government's reply that it will study the allegations made by ITUC and, if required, provide additional information regarding the application of the Convention. ***Noting the Government's commitment to protecting the well-being of its workforce, including foreign domestic workers, the Committee asks the Government to monitor closely whether its overall policy on foreign domestic workers (live-in requirement, wage policy, two-week rule and restrictions on permanent residency) is not in practice leading to less favourable treatment of foreign domestic workers with respect to the matters raised in Article 6(1)(a)–(d) of the Convention, and to provide detailed information on the measures taken in this regard. This should include steps to undertake research on wage inequalities and hours of work between local and foreign workers so as to verify whether the abovementioned reasons for exclusion are justified and do not lead to less favourable treatment. The Committee further asks the Government to provide information on the following:***

- (i) the measures taken to address the particular vulnerability of domestic workers including Indonesian and Nepali workers, to discriminatory treatment in respect of their wages, and steps taken or envisaged to legislate hours of work of domestic workers;***
- (ii) the number of applications for extension of stay beyond the permissible two weeks due to legal proceedings and the number of applications to change employer, and the reasons for any refusals by the Immigration Department;***
- (iii) a copy of the Court of first instance's decision and of the decision of the Court of Appeal, if any, regarding the unconstitutionality of the prohibition for domestic workers to apply for permanent residency, and the outcome of the decisions and their impact on the application of the Convention to foreign domestic workers.***

***Enforcement.*** The Committee notes ITUC's comments indicating that the Government is not effectively monitoring conditions of work contrary to *Article 6* of the Convention and that long proceedings combined with the fear of deportation results in many domestic workers being discouraged from filing a complaint. ITUC also raises concerns that the prohibition of foreign domestic workers who have filed a complaint and prematurely terminated their contracts to take up employment during the remaining time of their stay, has resulted in workers withdrawing their complaints or accepting lower settlements. The Committee notes the Government's reply that foreign domestic workers can access the range of free services (consultation and conciliation) provided by the Labour Department with branch offices located in various districts to resolve disputes with their employers, and can seek redress through the legal system, including provision of legal aid as long as the eligibility criteria, which are applicable to all, are met. The Committee also notes that the Government has taken measures to prevent abusive treatment of foreign domestic workers through various educational and information activities, and a 24-hour telephone inquiry service about rights and benefits under the Employment Ordinance and the standard employment contract. The Government further indicates that between 1 June 2007 and 31 May 2010 the Labour Department handled 7,082 claims from "imported workers" and foreign domestic workers concerning alleged breaches of the Employment Ordinance or the standard employment contract by their employers (other than the alleged underpayment cases referred to above). Of the cases that could not be settled by the Labour Department's conciliatory efforts, 1,995 were subsequently referred to the Labour Tribunal or MECAB. Regarding claims from domestic workers relating to abuse by their employers in relation to race, indecent assault as well as wounding and serious assault, there were 291 reported cases. No further information has been provided on the outcome of these cases, including the remedies provided for victims. ***The Committee asks the Government to provide information on the measures taken or envisaged to further strengthen the inspection and enforcement of the rights of foreign domestic workers under the Employment Ordinance and the standard employment contract, and to ensure that migrant workers who have applied for an extension of their stay due to legal proceedings have access to effective and speedy dispute resolution. The Committee also asks the Government to continue to provide information on the number and nature of claims submitted***

*by foreign domestic workers for violations of the relevant laws and regulations and the standard employment contract, including indications as to their outcome for both workers and employers.*

The Committee is raising other points in a request addressed directly to the Government.

## France

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1954)

The Committee notes the communication from the General Confederation of Labour (CGT), received 30 August 2011, which was sent to the Government for its comments thereon. In its communication, the CGT expresses surprise at the Government's failure to reply in 2010 to the issues raised in the Committee's previous observation, and raises concerns about the increasing rigidity of the legislative and normative framework covering migration and the general situation of migrant workers in France, including Roma migrants originating from certain European Union member States. CGT considers that the application of *Article 3* (steps against misleading propaganda), *Article 6* (equality of treatment) and *7(2)* (free services provided by public employment agencies) of the Convention is unsatisfactory, and calls on the Government to comply with all the provisions of the Convention.

The Committee notes that the Government's report, received on 5 December 2011, arrived too late to be examined by the Committee at this session. The Committee will therefore examine the Government's report, including its response to the issues raised in the 2010 observation and direct request, as well as any comments the Government may have on the observations submitted by the CGT, at its next session.

## Israel

### **Migration for Employment Convention (Revised), 1949 (No. 97)** (ratification: 1953)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the resulting conclusions of the Conference Committee. It also notes the information in the Government's report, including legislation and statistics. The Committee further notes the communication, received 25 July 2011, from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the Government's reply thereto.

The Committee notes from the data provided by the Government that, in 2009, 54,000 temporary migrant workers were lawfully employed in care giving, 25,000 in agriculture, 5,000 in construction, 500 in manufacturing and 500 as ethnic chefs. The majority of the temporary migrant workers in the care giving sector are women, while in the other sectors the great majority of the foreign workers employed are men. The IUF indicates that migrant workers mainly originate from China, India, Nepal, Philippines, Sri Lanka and Thailand. ***The Committee requests the Government to continue to provide updated statistical information on the actual number of temporary migrant workers present in Israel, disaggregated by sex, country of origin and age, and the sectors in which they work.***

***Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 98th Session, June 2009).***

*Article 6 of the Convention. Equal treatment.* The Committee previously noted that following a decision of the High Court of Justice in the case of *Kav LaOved Workers Hotline and others v. Government of Israel* (2006), the Government had taken measures with a view to increasing the protection of migrant workers employed in the care giving and agricultural sectors, and simplifying the process of changing employers. The Committee notes that the Conference Committee welcomed some of the measures taken by the Government but considered that challenges possibly remained in fully applying the Convention in certain sectors. It requested further information on the impact of the measures in reducing migrant workers' dependence on individual employers, as this is an important aspect in ensuring that equal treatment is applied to migrant workers in practice. The Committee notes from the information provided by the Government that under the new employment system, foreign workers are free to change employers and agencies, and that workers deciding to leave their employer no longer have to register with the Minister of Interior, but rather with an employment agency (in the construction industry) or with a licensed recruitment agency (in homecare and agriculture). In the agricultural sector, the Government indicates that, along with issuing additional employment permits, emphasis is placed on concluding bilateral agreements to ensure fair and transparent recruitment of foreign agricultural workers. With respect to caregivers, the Government states that both employers and temporary foreign caregivers are required to register with one of the licensed recruitment agencies, which are obliged to send periodically a representative to the home of the employer to oversee the employment relationship and resolve misunderstandings. The Committee also notes, however, that on 16 May 2011, the Government passed the Entry into Israel Law (Amendment No. 21), 5771-2011, authorizing the Minister of the Interior to determine the foreign workers' field of occupation in his or her visa and residence permit, and to adopt regulations limiting the number of times a foreign worker in the nursing profession may transfer to a new employer and limiting employment of such workers to specific geographical areas. The Committee notes that the

implementation in practice of the Entry into Israel Law (Amendment No. 21), 5771-2011 could result in reinstating the “restrictive employment relationship” of migrant workers with their employers previously criticized in the decision of the High Court of Justice (2006). ***The Committee therefore asks the Government to provide full details on the implementation in practice of the Entry into Israel Law (Amendment No. 21), 5771-2011, including information on the number of transfers of foreign workers in the nursing profession presently allowed, how many transfers have been requested and how many refused, and the reasons for such refusal. The Committee also asks the Government to continue monitoring the impact of the new employment system on migrant workers employed in agriculture, construction, manufacturing and as ethnic chefs, and to provide information in this regard, as well as copies of bilateral agreements concluded for the agricultural sector.***

*Equal treatment of caregivers (remuneration, hours of work, overtime arrangements).* The Committee notes the decision of the High Court of Justice in *Yolanda Gloten v. the National Labour Court* (HCJ 1678/07) of 29 November 2009 (hereafter the *Gloten* Judgement). In this case, the High Court decided not to consider an appeal against the ruling of the National Labour Court that no overtime pay could be granted with respect to a case of a foreign worker providing care on a live-in basis since the exceptions regarding the scope of application set out in sections 30(A)(5) and (6) of the Hours of Work and Rest Law 1951 applied. The Committee notes that the High Court of Justice concluded that the current legal framework did not offer a proper mechanism suitable for the unique situation of caregivers, and that a narrow and partial interpretation of the law concerning overtime pay might lead to harmful consequences. The High Court, therefore, rejected the appeal due to the difficulty of applying the Law only partially, and because the Court did not consider that the round-the-clock live-in employment of caregivers corresponded to the general framework of protective labour law. The Committee notes that the IUF expresses concern at the impact of the *Gloten* Judgement on the situation of the large number of migrant women providing care on a round-the-clock and live-in basis and refers in this regard to several examples of regional labour court judgements rejecting lawsuits by migrant caregivers for overtime pay under the Hours of Work and Rest Law, citing the *Gloten* Judgement. The IUF also draws attention to the Court’s reasoning according to which in circumstances where the application of the labour law is expected to “harm” migrant workers (based on the assumptions that increasing wages due to overtime worked may reduce their employment opportunities), the possibility of diverging from the provisions of protective labour law should be considered. According to the IUF, the *Gloten* judgement facilitates the application of a discriminatory and inferior legal regime to the work of women migrants.

The Committee notes the Government’s reply indicating that the exceptions set out in sections 30(A)(5) and (6) of the Hours of Work and Rest Law, on which the High Court of Justice is relying, apply to all caregivers, whether local or foreign workers. The Committee notes that sections 30(A)(5) and (6) provide in general terms that the Law shall not apply “to persons employed in positions requiring a special degree of trust”, and to “employees, the conditions and circumstances of whose employment render it impossible for the employer to control working hours and hours of rest”. The Government also states that an application for an additional hearing in this matter is presently before the High Court of Justice and that it is awaiting its outcome. The Committee notes the High Court’s acknowledgement of the need for an appropriate and clear legislative framework guaranteeing adequate pay and favourable working conditions, which at the time of the decision was apparently being developed by the Ministry of Industry, Trade and Labor (MoITAL). The Committee recalls that the Convention requires ratifying states to undertake to apply to migrant workers lawfully in the country, without discrimination based on nationality, race, sex and religion, treatment not less favourable than nationals, with respect to the matters set out in *Article 6(1)(a)(i)*, in law and in practice. The Committee notes that foreign caregivers, 80 per cent of whom are women, constitute the large majority of migrant workers. While no information has been provided on the actual situation of local caregivers, the Committee notes that only a small number of local citizens are willing to work as caregivers, as acknowledged in the *Gloten* Judgement, suggesting that the present policy applying to caregivers, may, in practice, affect disproportionately female foreign caregivers. ***The Committee therefore asks the Government to provide information on the outcome of the additional hearing before the High Court of Justice. Understanding that the Foreign Workers’ Committee of the Knesset has recommended an extensive reform of the care giving sector, the Committee asks the Government to provide detailed information on any developments in this regard and hopes that such a reform will ensure that foreign caregivers are treated not less favourably than Israeli caregivers with respect to remuneration, hours of work, overtime arrangements, and other matters set out in Article 6(1)(a)(i) of the Convention. The Committee further asks the Government to indicate all measures taken or envisaged to ensure that, in law and in practice, women migrant workers are treated on an equal footing with their male counterparts, foreign or otherwise, in terms of working and living conditions, work-related tax and access to the justice system.***

*Equal treatment with respect to social security.* Having noted restrictions concerning the health insurance system for migrant workers established under the Foreign Workers Law and the Foreign Workers Order (Prohibition of Unlawful Employment and Assurance of Fair Conditions) (Health Service Basket for Workers) 5761-2001, the Committee had requested the Government to clarify the reasons for establishing a separate health insurance system for migrant workers and for the exclusions or limitations provided under sections 3 and 4 of the Order. The Committee notes that during the Conference Committee’s discussion, concerns were expressed regarding insufficient lack of coverage regarding sickness, unemployment and old-age and care expenses relating to maternity, and that challenges remained with respect to social security. The Committee notes the Government’s reply indicating that the reasons for setting up a separate private health insurance system is due to the relative short stay (usually a period up to five years) of temporary migrant workers coming to work in Israel. The Government affirms that the system contains the same basket of medical services included in the

national medical insurance scheme, and indicates that the Inter-ministerial Committee on Social Rights and Obligations with respect to Foreign Workers is considering favourably the inclusion of the rights that have hitherto been excluded in the foreign workers' health basket. The Committee further notes the information provided by the Government regarding the enforcement of the health insurance obligation by the Population, Immigration and Borders Authority (PIBA) and the Ministry of Industry, Trade and Labour (MoITAL), and the procedures to be followed by employers and recruitment agencies to prove or confirm that valid medical insurance has been arranged for foreign workers. *Noting that no information has been provided on how it is being ensured that all workers admitted to Israel under the Foreign Workers Law fully enjoy the right to treatment not less favourable than Israeli nationals regarding social security in respect of maternity, sickness, unemployment and old age, the Committee asks the Government to provide full details in this regard in its next report. It also requests the Government to indicate the outcome of the discussions of the Inter-ministerial Committee on Social Rights and Obligations with respect to Foreign Workers.*

*Enforcement and access to legal proceedings.* The Committee recalls the importance of dissuasive sanctions and effective enforcement of relevant laws in ensuring equal treatment between foreign workers and nationals. The Committee notes that in the course of 2008 and 2009 the PIBA in the Ministry of the Interior became the new competent authority regarding issues involving migrant workers, thus replacing the Foreign Workers' Unit in MoITAL. It notes from the Government's report that according to enforcement statistics for 2009, 930 investigative files were opened against employers suspected of violations of the Foreign Workers Law and 1,662 administrative fines were imposed on employers for such violations; 196 fines were imposed on employers for violations of the Minimum Wage Law and 171 judgements rendered. The Committee also notes that in March 2010, the Foreign Workers Law was amended to strengthen the institution of the Commissioner for the Rights of Foreign Employees in the sphere of labour laws (section 1V(a)). The Commissioner has the authority to intervene in legal proceedings, to handle complaints of migrant workers against employers, actual employers, employment agencies and labour contractors, and to file civil lawsuits with the labour court or other qualified courts. However, the Committee notes that the Commissioner will not be able to exercise any of these powers with respect to complaints lodged by foreign domestic caregivers against their employers, except in cases of human trafficking, conditions of enslavement or forced labour, and cases of sexual abuse, violence or sexual harassment (section 1(31)(3)). The Committee considers, particularly in light of the recent amendments to the Entry into Israel Law and the *Gloten* Judgement, that excluding the largest group of foreign workers, primarily also women, from the protection of the Commissioner for the Rights of Foreign Workers while leaving monitoring of the employment relationship between these workers and their employers to licensed recruitment agencies, raises concerns as to whether foreign caregivers are able, on an equal footing with nationals, to enjoy and claim effectively their rights in respect of the matters referred to in Article 6(1)(a)–(c) in practice, as provided for by Article 6(1)(d) of the Convention. *The Committee asks the Government to indicate the reasons for excluding foreign caregivers from the mandate of the Commissioner for the Rights of Foreign Workers, and to provide full information on how foreign caregivers lawfully in the country are able to enjoy equal treatment, in law and in practice, with Israeli nationals with respect to the matters set out in Article 6(1)(a)–(d) of the Convention. Please include in this regard information on the number and nature of complaints submitted by foreign and national caregivers with the different authorities, and their outcome. The Committee also asks the Government to continue to provide enforcement statistics on the number and nature of violations of the relevant laws and regulations identified and addressed by the various responsible authorities, including indications as to the sanctions imposed and the main sectors of employment, including construction, agriculture and manufacturing. Noting further the Government's intention to study and internalize, in cooperation with the social partners, the best practices for the treatment of foreign workers in line with the provisions of the Convention, the Committee asks the Government to indicate any progress made in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

## Italy

### ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*** *(ratification: 1981)*

The Committee notes the communication from the Italian Union of Labour (UIL), submitted on behalf of the UIL, the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL), and the Government's reply thereto. The Committee also notes the observations by the Italian Confederation of Workers' Trade Unions (CISL) received 23 September 2010. The Committee recalls that some of the issues addressed by UIL had already been raised during the discussion of the Conference Committee on the Application of Standards in June 2009, and addressed in the Committee's observation of 2009.

*Part I. Articles 2, 3, and 6 of the Convention. Addressing migration in abusive conditions, and the employment of workers having migrated in illegal conditions.* The Committee notes the Government's statement that, due to the repercussions of the global economic crisis on the Italian economy, the Programmatic Document 2009–11, which included measures to address the exploitation of immigrants, was not adopted and that instead a moratorium was imposed on the entry of non-seasonal, non-European Union (EU) workers in 2009–10. The Committee welcomes the detailed information on the initiatives to address human trafficking into labour and sexual exploitation and refers in this regard to its comments

on the Forced Labour Convention, 1930 (No. 29). The Committee further notes the Government's indication that the legislative framework will be enhanced through the transposition of European Directive 2009/52/EC of 18 June 2009 providing for standards on sanctions and measures against employers of illegally staying third-country nationals (the Sanctions Directive). **Considering that such legislative steps are important in the context of the implementation of measures required under Articles 2, 3 and 6 of the Convention, the Committee asks the Government to provide information on any developments regarding the adoption of legislation transposing European Directive 2009/52/EC, including a copy of the relevant texts. The Committee asks the Government to continue to provide information on measures to detect and suppress human trafficking and to prosecute those responsible for human trafficking from wherever the country they operate.**

*Articles 1 and 9. Minimum standards of protection.* The Committee recalls the particular vulnerability of migrant workers in an irregular situation to exploitation and violations of their basic human rights. With regard to previously reported human rights violations and exploitative conditions of undocumented workers coming from Africa, Asia and Eastern Europe, the Committee notes the detailed information, including statistics, on the action taken in 2008 and 2009 under the strategic programme of inspections carried out by the Ministry of Labour and Social Policies and under the "Extraordinary inspection plan for agriculture and construction in the regions of Calabria, Campania, Apulia and Sicily", in January 2010. It notes the particular attention paid to the illegal employment of foreign immigrants, especially in the construction and agriculture sectors, marked by a high incidence of labour exploitation of primarily clandestine non-EU workers. Targeted inspections were also carried out between 1 July and 31 December 2009 (Operation Rainbow) for the purpose of checking manufacturing and commercial business activities. The Committee also notes the data on reported offences and the persons denounced regarding organizing and facilitating clandestine migration, and the illegal employment of foreign workers in 2008 and 2009, indicating, however, few reported offences and perpetrators with respect to employment of seasonal foreign workers in an irregular situation, which could suggest difficulties in effectively monitoring conditions of migrants in an irregular situation in seasonal employment, including in agriculture.

The Committee previously expressed concern that section 10bis of Legislative Decree No. 286/1998, introducing the offence of illegal entry or residence, would further marginalize and stigmatize migrant workers in an irregular situation, and increase their vulnerability to exploitation and violation of their basic human rights. It had also noted that section 10bis combined with section 331(19) of the Code of Criminal Proceedings (obliging public officials to report criminal offences) may prevent these migrant workers, in practice, from filing complaints with regard to violations of their rights. The Committee notes the Government's reply that migrant workers in an irregular situation will in all cases, irrespective of any charge of clandestine immigration or expulsion order against them, have the possibility to apply, through a representative, to the judicial authority with a view to obtaining recognition of any rights due to them or to file a criminal complaint concerning conduct which impairs their basic rights. The Committee notes that, since the entry into force of the legislation until 15 April 2010, of the 37,192 foreigners found to be in an irregular situation, 12,775 were expelled and 24,417 foreigners were not repatriated; of those, 22,027 foreigners, were not repatriated due to non-compliance with the expulsion order. The Committee also notes that inspections carried out under the abovementioned programmes, involved local state police stations in procedures for identifying illegally employed nationals of non-EU countries and subsequent repatriation operations. The Committee also notes from the communication by the CISL regarding Convention No. 29, that migrant workers with an irregular status who are victims of labour exploitation tend to either hide from the authorities fearing deportation or being expelled from the country. The Committee also refers to its comments on the Labour Inspection Convention, 1947 (No. 81), noting that labour inspections have been mainly focusing on controlling illegal employment and the legal status of migrant workers under immigration law, rather than conditions of work.

The Committee notes that in 2009 and 2010 (until 31 March) 810 and 146 permits were issued "on humanitarian grounds for reasons of social protection" under section 18 of legislative Decree (Consolidated Statute) No. 286/1998 (in 2010, a large number of permits were issued to women from Nigeria (397), China (38), and some eastern European countries; and to men from Egypt (71) and Morocco (68)). However, no data are provided on the number of migrant workers found in an irregular situation who have sought redress from the courts with respect to violations of their basic human rights or rights arising out of past employment, including unpaid wages. It is therefore difficult to assess whether due process is guaranteed, in practice, to migrant workers who are accused of the crime of illegal immigration and who are subject to an expulsion order, with respect to claims regarding rights provided for in *Articles 1 and 9* of the Convention.

While acknowledging the difficulties encountered to manage the significant immigration flows and recognizing the Government's efforts to address migration in abusive conditions, including illegal employment, as required by the Convention, the Committee nonetheless emphasizes that, while such measures are justified, it is also essential to ensure that migrant workers enjoy a basic level of protection even if they have immigrated under irregular conditions or are employed illegally and their status cannot be regularized. The Committee notes that no detailed analysis has yet been undertaken of the impact of legislative initiatives to combat irregular migration, including section 10bis, on the human rights of migrant workers in an irregular situation and their equality of treatment in respect of rights arising out of employment, despite explicit requests by the Conference Committee and this Committee. The Committee also notes the Government's statement that the Constitutional Court has not yet pronounced itself on the referral proceedings pending before it concerning the unconstitutionality of section 10bis. The Committee draws the Government's attention to the important role given by the Convention to the social partners, and in particular *Article 7* requiring that representative

organizations of workers and employers shall be consulted in regard to laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses against which the Convention is directed.

***Emphasizing that access to justice is a basic human right which must be guaranteed to all migrant workers, in law and in practice, the Committee requests the Government to indicate all measures taken to ensure that effective mechanisms are in place to facilitate complaints by migrant workers in an irregular situation and to inform them of their rights and relevant complaints procedures. The Committee also asks the Government to provide information on the number of migrant workers in an irregular situation, particularly those in the agriculture and construction sectors, that have sought redress regarding violations of their basic human rights or regarding rights due with respect to remuneration and social security benefits, and the outcome of the cases concerned. The Committee asks the Government to continue to provide information on the activities, including detailed statistics on targeted inspections in agriculture and construction, as well as in other sectors, to detect illegal employment of migrants as well as the employment of migrants in abusive conditions of work, and the results achieved. Please indicate how representatives of organizations of workers and employers have been and are being consulted in regard to matters provided for in Part I of the Convention.***

*Part II. Articles 10 and 12(c) and (e). National policy on equality of opportunity and treatment of migrant workers lawfully in the country.* The Committee previously requested the Government to indicate the specific results of the programmes and initiatives to promote equality of opportunity and treatment of migrant workers lawfully in the country with nationals, with a view to eliminating discrimination against them. The Committee notes the approval on 10 June 2010 of the Plan on Integration in Safety – Identity and Dialogue, which, according to the Government, identifies the main lines of action and mechanisms to be adopted with a view to promoting an effective process of immigrant integration combining safety and acceptance. The Plan covers five main areas including education and learning, employment, housing and local government, access to essential services (health and social welfare services) and under-aged and second generation immigration. The Committee notes in this regard the comments by the CISL drawing attention to the discrepancy between the Plan on Integration in Safety – Identity and Dialogue and the existing laws and policies making distinctions between migrant workers and nationals regarding civil, political and social rights, and questioning the Plan’s purpose and effectiveness, and lack of budgetary guarantees for its implementation. The Committee further notes that the Department of Civil Liberties and Immigration of the Ministry of Interior has developed a strategy for the use of resources from the European Integration Fund involving a multi-annual programme for the period 2007–13. The Government also provides extensive information on initiatives by the National Office Against Racial Discrimination (UNAR), such as the establishment of territorial anti-discrimination networks and the Memoranda of Understanding in 2009 and 2010, signed with various municipalities and regional authorities in this context, and interventions to support female immigrants at risk of social marginalization. Finally, the Committee notes the institutional awareness, communication and information campaigns on social integration of immigrants developed by the Ministry of Employment and Social Policies in 2008 and 2009, which, after evaluation, appeared to have been useful to almost 90 per cent of the participants. ***With a view to assessing progress made over time, the Committee requests the Government to continue to provide information on action taken to implement the national policy on equality of opportunity and treatment for migrant workers lawfully in the country, and the results achieved. Please also provide information on the activities carried out under the Plan on Integration in Safety – Identity and Dialogue, and how its effective implementation will be ensured, including in cooperation with the social partners.***

## Slovenia

### ***Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1992)***

The Committee notes the observations by the Association of Free Trade Unions of Slovenia (AFTUS) annexed to the Government’s report.

*Article (6)(1)(a)(i) of the Convention. Equality of treatment with respect to conditions of work.* The Committee recalls that under the Employment and Work of Aliens Act (and subsequent amendments until Act 52/07), a foreigner with an employment permit could only take up employment with the employer to which the permit for employment was issued; a personal employment permit with three-year validity, which enables free access to the labour market, could be obtained by an alien with vocational education who was continuously employed for the last two years prior to the application at the same employer. The Committee had noted in this regard AFTUS’s concern that allowing foreign workers with an employment permit to work only for the employer who obtained their work permit increased the employer’s opportunity to exploit migrant workers with respect to working time, payment, rest periods and annual leave. The Committee had requested the Government to indicate how the concern of the dependency of migrant workers with an employment permit on one individual employer was addressed and to examine the conditions of work of migrant workers in those sectors in which they are primarily employed. The Committee notes the Government’s indications that due to observance of increased dependency of migrant workers on individual employers, the Act on Employment and Work of Aliens was amended with a view to allowing greater flexibility to obtain a personal employment permit with three-year validity (giving free access to the labour market). The Committee notes that the amended Employment and Work of

Aliens Act No. 26/2011 henceforth allows a foreign worker with vocational training or having acquired a national professional qualification in Slovenia who, in the past 24 months has been employed for at least 20 months, to apply for a personal employment permit (section 22(4)). *Noting, however, that the law continues to provide that a foreigner with an employment permit can only take up employment with the employer to which the permit for employment was issued (section 10(4)), the Committee asks the Government to clarify how these amendments help reduce, in practice, the worker's dependency on an individual employer and the risk of non-respect of statutory provisions regarding conditions of work. Noting that the information provided on labour inspection services in 2009 covers violations of the Employment and Work of Aliens Law and the Law on the Prevention of Illegal Work and Employment Act, and not conditions of work, the Committee asks the Government to indicate the specific measures taken to ensure full application to migrant workers of the labour law provisions concerning remuneration, hours of work, overtime arrangements, rest periods and annual leave, as well as information on the number and nature of violations found particularly in sectors or occupations employing workers with an employment permit, and an indication of the sanctions imposed.*

*Article 6(1)(a)(iii). Equal treatment with respect to accommodation.* The Committee previously noted concerns raised by AFTUS regarding substandard housing conditions of migrant workers and the need to strengthen supervision in this regard, to impose dissuasive penalties on potential violators and to establish minimum standards of living for migrant workers at the national level. The Committee notes with *interest* that pursuant to section 13(1) and (2) of the Employment and Work of Aliens Law No. 26/2011 employers who employ foreigners and provide for their accommodation are obliged to meet minimum accommodation and hygiene standards, the terms of which will be set by ministerial regulations. The Committee notes that the rules on setting minimum standards for accommodation of aliens, who are employed or work in the Republic of Slovenia were published in the *Official Gazette* of the Republic of Slovenia No. 71/2011 and will enter into force as of January 2012. Supervision will be conducted by the labour inspectorate. *The Committee asks the Government to provide information on the activities of the labour inspectorate to enforce the rules on setting minimum standards for accommodation of aliens, including any violations detected and sanctions imposed, as well as any other measures taken to ensure that migrant workers are not treated less favourably with respect to accommodation.*

*Article 6(1)(b). Equal treatment with respect to social security.* The Committee notes that AFTUS draws attention to section 5 (unemployment benefits) of the Agreement of Social Security between Slovenia and Bosnia and Herzegovina, the implementation of which prevents the majority of the workers from Bosnia and Herzegovina from exercising the right to unemployment benefits as such benefits are subject to permanent residence. The Committee understands that with a view to addressing this issue the Social Security Agreement has been amended, signed by both parties in 2010 and ratified by Slovenia. *Noting that the amended Social Security Agreement will enter into force as soon as it is ratified by the Government of Bosnia and Herzegovina, the Committee hopes that the provisions of the modified Agreement will ensure equality of treatment with respect to unemployment benefits in conformity with Article 6(1)(b) of the Convention, and asks the Government to provide information on any developments in this regard.*

The Committee is raising other points in a request addressed directly to the Government.

### ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*** ***(ratification: 1992)***

The Committee notes the observations by the Association of Free Trade Unions of Slovenia (AFTUS) annexed to the Government's report.

*Articles 10, 12(e) and 14(a). Free choice of employment.* The Committee previously noted concerns expressed by AFTUS that under the work permit system established by the Employment and Work of Aliens Act (Acts Nos 66/00, 101/05 and 52/07) foreign workers issued with an employment permit did not have the free choice of employment until they met the conditions for obtaining a personal work permit. The Committee notes that the Employment and Work of Aliens Act was further amended in 2009 and 2011 (Acts 46/2009 and 26/2011) and that under the new legislation citizens from the European Union (EU), the European Economic Area (EEA) and Switzerland, as well as foreigners with a permanent residence permit have free access to the labour market. Third-country nationals with a "personal work permit" have free access to the labour market during the three-year validity period while a foreigner with an "employment permit", issued for a maximum of one year, continues to be tied to the employer to whom the permit is issued (section 10(2) and (3)). The employment permit can be renewed or reissued for a period not exceeding one year (section 25(1)). The Committee further notes that pursuant to section 22(3) a foreign worker with vocational training or who has acquired a national professional qualification in Slovenia who, in the past 24 months has been employed for at least 20 months, can apply for a personal employment permit (section 22(4)). The Government indicates in this regard that the foreigner who does not meet the condition of having at least vocational education may be integrated into the procedure of acquiring a national vocational qualification. Section 30(1) allows for some flexibility for foreigners with higher education for whom an employment permit or permit for work has been issued, to be employed by two or more employers. *Recalling that Article 14(a) of the Convention allows the State to make the free choice of employment subject to temporary restrictions during a prescribed period not exceeding two years, and that Article 10 provides for the adoption of a national policy on equality of opportunity and treatment including with respect to access to vocational education, the Committee asks the Government to indicate the measures taken or envisaged to inform foreign workers with*

*employment permits or permits for work of the possibility of acquiring a national vocational qualification, and provide information on the number of workers that have participated in such training. The Government is also requested to provide information on the number of migrant workers without vocational training or a national vocational qualification who are working under employment permits for a period exceeding two years.*

*National equality policy and integration of migrant workers in society.* The Committee previously noted the need for systematic measures aimed at the integration of migrant workers and their families in society. The Committee notes the Government's indication that the Decree on Aliens Integration No. 65/2008 provides for integration programmes intended for third-country nationals residing in Slovenia with a permanent residency permit and their family members, and for third-country nationals who have been residing in Slovenia on the basis of a temporary residence permit for at least two years and whose permit is valid for at least one year, and for their family members. The Committee also notes that a draft Decree amending and supplementing the Decree on Aliens Integration of 23 July 2010 would allow for inclusion in integration programmes of all third-country citizens residing in Slovenia on the basis of a residence permit issued for at least one year and third-country citizens who are family members of Slovenian citizens or EEA citizens residing in Slovenia on the basis of a residency permit, regardless of its duration. The Committee notes that the programmes cover Slovenian language courses and courses on Slovenian history, culture and constitutional arrangements, and that between November 2009 and the end of May 2010, 600 third-country nationals attended. The Government also indicates that programmes have included workshops going beyond intercultural differences and address reasons for and consequences of discrimination and xenophobia. The Committee notes the observations by AFTUS that an effective integration policy of migrants should be based on the earliest possible integration into suitable programmes of integration and social inclusion and that free participation into language programmes and learning about Slovenia culture, history and constitution should be provided to all foreigners, including those with a temporary residence permit for a period less than a year. The Committee further notes that an Alien Integration Council was created in 2008 with a view to a coordinated and effective implementation of the measures for integration of foreigners, but that according to AFTUS the Council does not fulfil its purpose. *The Committee asks the Government to provide information on the status of the adoption of the draft Decree amending and supplementing the Decree on Aliens Integration of 23 July 2010, and to indicate whether any consideration is being given to the concerns raised by AFTUS regarding the free participation of all foreigners, including those with a residency permit of less than a year in programmes of integration and social inclusion. Please also provide information on the activities of the Alien Integration Council.*

The Committee is raising other points in a request addressed directly to the Government.

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 97** (Armenia, China: Hong Kong Special Administrative Region, Guyana, Israel, Nigeria, Slovenia, United Kingdom: British Virgin Islands); **Convention No. 143** (Armenia, Guinea, Italy, Slovenia, Uganda).

## Seafarers

### Algeria

#### **Food and Catering (Ships' Crews) Convention, 1946 (No. 68)** (ratification: 1962)

*Article 6 of the Convention. System of inspection.* The Committee recalls that it has been commenting for over 20 years on the subject of the preparation of the implementing texts envisaged by section 435 of the Maritime Code of 1976 to establish the system of inspection of food and catering on board, in accordance with this Article of the Convention. It notes with *regret* that the Government has still not taken the necessary measures and that it has confined itself to indicating in its last three reports that the Inter-ministerial Order of 15 December 1984 respecting the food provided to seafarers will be revised and completed to take into account the requirements of this Article. **The Committee therefore urges the Government to take the necessary measures without further ado for the adoption of legislation giving full effect to this Article of the Convention.**

*Article 10. Annual report.* The Committee recalls that for many years it has been requesting the Government to provide extracts from inspection reports relating specifically to food and catering on board ships, as well as a copy of the annual inspection report published by the competent authority, as required by this Article of the Convention. **In the absence of any relevant information in the Government's report, the Committee once again requests the Government to provide full particulars in its next report on: (i) the number of inspectors assigned to carrying out the required inspections relating to food and catering on board ships; and (ii) the number of inspections carried out per year and the results obtained.**

The Committee also takes this occasion to recall that most of the provisions of Convention No. 68 have been incorporated into the Maritime Labour Convention, 2006 (MLC, 2006), in Regulation 3.2, Standard A3.2 and Guideline B3.2.1, and that compliance with Convention No. 68 would therefore facilitate the implementation of the corresponding provisions of the MLC, 2006. **The Committee invites the Government to consider favourably the ratification of the MLC, 2006, in the very near future and requests it to keep the Office informed of any decision taken in this respect.**

#### **Accommodation of Crews Convention (Revised), 1949 (No. 92)** (ratification: 1962)

*Articles 6 to 17 of the Convention. Crew accommodation.* The Committee notes with *regret* that the Government is still not in a position to indicate any progress in relation to the adoption of texts regulating the application of section 446 of the Maritime Code of 1976, as amended, in terms of which the minister is required to determine the detailed conditions concerning, among other matters, the arrangements and equipment for the accommodation of crews. The Committee has been drawing the Government's attention since 1981 to the fact that, unless texts are adopted to implement section 446, the Convention cannot be properly applied. The Government has indicated on several occasions that draft executive decrees were under preparation although, up to now, no definitive text has been communicated to the Office. The Government has also recently indicated that it does not consider the adoption of such a decree to be timely in view of the examination, with a view to its ratification, of the Maritime Labour Convention, 2006 (MLC, 2006). The Committee recalls once again that the principal provisions of the Convention have been reproduced and further developed in Regulation 3.1 and the corresponding Code of the MLC, 2006, and that compliance with Convention No. 92 would therefore facilitate the implementation of the respective provisions of the MLC, 2006. **The Committee hopes that the Government will make every effort to adopt the necessary measures without further ado to give full effect to the provisions of the Convention.**

### Barbados

#### **Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1967)**

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 2 of the Convention. Seafarers' identity documents.* Since 1999, the Committee has been commenting on the Government's failure to apply the Convention and has been requesting it to: (i) reinstate the identity document for seafarers who are Barbadian nationals; (ii) enact new regulations or amend existing ones so that foreign seafarers may enter Barbados with a valid identity document issued pursuant to this Convention; and (iii) provide copies of the relevant legislative and/or regulatory texts ensuring the application of the Convention. In its latest report, the Government indicates that there are no active seafarers employed, no seafarer or shipowner representative organizations and no formal employment agencies. The Government adds that it has not denounced the Convention and that identity documents would be issued in the future if there is demand for them. While noting the explanations regarding the current situation with respect to Barbadian seafarers, the Committee also notes that the Government has not given any indication as to whether foreign seafarers holding identity documents issued pursuant to the Convention are accorded the facilities provided for in that instrument. **Under the circumstances, the Committee concludes that the basic requirements of the Convention are still not implemented in either law or practice. The Committee therefore urges**

*the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected and to inform the Office of all measures taken in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Costa Rica

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1979)**

*Article 2 of the Convention. Statistics and investigations of occupational accidents.* The Committee recalls that for many years it has been noting in its observations that the national legislation contains no specific provisions on the prevention of accidents to seafarers as prescribed by the Convention. Despite repeated reminders, the Committee notes that no measures have as yet been adopted to give effect to a number of provisions of the Convention. It notes the information supplied by the Government in its last report to the effect that the collection of statistics of all occupational accidents is the job of the National Insurance Institute (INS), not of the labour inspection services or the Ministry of Labour. The Committee notes that section 292 of the Labour Code does entrust the INS with maintaining a system of statistics of occupational risks allowing comparisons with other national or foreign institutions. In this connection, the Committee takes note of the communication from the INS, enclosed with the Government's report, showing that the number of accidents in fishing and related activities stood at 339 in 2006 and 254 in 2007. It notes that the Government also enclosed statistics collected by the INS in previous reports and that, at the time, the Committee pointed out that according to *Article 2(3)* of the Convention, the statistics must cover the number, nature, causes and consequences of occupational accidents, indicating the department on board ship – for instance deck, engine or catering – and the area – for instance at sea or in port – where the accident occurred. ***The Committee accordingly asks the Government to provide with its next report statistics drawn up in accordance with the abovementioned rules, concerning occupational accidents on board vessels.*** It recalls in this connection that Standard A4.3(5) and Guideline B4.3.5 of the Maritime Labour Convention, 2006 (MLC, 2006), which revises Convention No. 134 and 36 other international maritime labour conventions, likewise require detailed statistics to be kept of occupational accidents and diseases.

The Committee furthermore recalls that *Article 2* of the Convention requires investigations into the causes and circumstances of occupational accidents resulting in loss of life or serious personal injury, and such other accidents as may be specified in national laws or regulations. It notes that section 214(c) of the Labour Code requires employers to cooperate with the INS to facilitate any inquiries it may conduct in the event of an occupational accident. ***The Committee asks the Government to provide more detailed information on the compulsory nature of investigations where the occupational accident has resulted in loss of life or serious personal injury, together with any other relevant information on the organization of such investigations in practice.*** It recalls in this connection that Standard A4.3(5) of the MLC, 2006, requires an investigation to be held in the event of occupational accident and that Guideline B4.3.6 contains detailed provisions on the subjects that might be investigated.

*Article 3. Research.* ***The Committee asks the Government to provide information on research currently under way on general trends in occupational accidents on board ship and such hazards as are brought out by statistics.***

*Articles 4 and 5. Provisions on the prevention of occupational accidents.* The Committee notes the adoption of Act No. 8436 of 10 February 2005 on fisheries and aquaculture, section 162 of which provides that the Costa Rican Fisheries and Aquaculture Institute (INCOPECA), the Ministry of Health and the Costa Rican Social Insurance Fund (CCSS) shall determine in regulations the measures needed to ensure the occupational safety and health of crew members. It also notes that the Act introduces a section 198bis in the Labour Code under which the Council on Safety at Work (CST) is responsible for establishing lists of safety and protection equipment in the fisheries sector. It notes that INCOPECA must ascertain that the observance of national and international safety standards has been certified by the Ministry of Public Works and Transport before processing any applications for the issuance or renewal of fishing permits. ***The Committee requests the Government to indicate whether the regulations provided for in section 162 of Act No. 8436 have been adopted, and if so to provide a copy. The Government is also requested to provide information on the procedure for certifying observance of safety rules referred to in new section 198bis of the Labour Code. The Committee furthermore hopes that the Government will in the near future adopt provisions on the prevention of accidents on board vessels assigned to the merchant marine which are not covered by Act No. 8436.*** In this connection, it draws the Government's attention to the provisions of Regulation 4.3, Standard A4.3 and Guideline B4.3 of the MLC, 2006, which set forth detailed rules on the measures to be prescribed for the prevention of accidents on board ship.

*Article 6(1) to (3). Inspections.* The Committee notes the publication in 2008 of an updated handbook of labour inspection procedures. It notes that, according to the handbook, the provisions of the Convention are included among the standards whose application must be monitored by the labour inspection services. ***The Committee requests the Government to provide information on the activities conducted by the labour inspection services to enforce the provisions of the Convention and to provide copies of any official reports on the subject. The Government is likewise requested to indicate how it is ensured that inspectors are trained so as to be familiar with maritime employment and its practices, as required by Article 6(3) of the Convention.***

*Article 7. Occupational safety and health committees.* The Committee notes that Decree No. 18379-TSS of 19 July 1988, adopted pursuant to section 288 of the Labour Code, regulates the organization and operation of the occupational health committees to be established in workplaces employing ten or more workers. **Noting that in an earlier report the Government stated that, in practice two crew members, together with the ship's master, are responsible for accident prevention, the Committee requests the Government to indicate whether any provisions in laws or regulations lay down a requirement to establish such committees on ships covered by the Convention.** Furthermore, noting that Decree No. 18379-TSS does not apply where the place of work employs fewer than ten workers, it recalls that, according to *Article 7* of the Convention, either a suitable committee or a suitable person or suitable persons is to be appointed to be responsible, under the master, for accident prevention. **The Committee requests the Government to indicate whether any provisions require the appointment of suitable crew members to be responsible for the prevention of accidents on board where the crew has fewer than ten members.** It recalls in this connection that Standard A4.3(2)(d) of the MLC, 2006, requires the establishment of a ship's safety committee on ships where there are five or more seafarers.

*Article 8. Programmes for the prevention of occupational accidents.* The Committee notes that according to section 281 of the Labour Code, the CST – a technical body reporting to the Ministry of Labour – is required to produce a national occupational health plan for the short, medium and long term. **It requests the Government to provide information on any programmes for the prevention of occupational accidents prepared by the CST and to send copies of any reports or other relevant publications on the subject.**

*Article 9. Training.* The Committee notes the information supplied by the Government on the efforts undertaken by the INS and the CST for training on occupational safety in the fishing sector. It notes, in particular, that in 2003 and 2005 two workshops were organized with the participation of the ILO Subregional Office at San José. It also notes that the INS intended to organize in 2009 a course for stakeholders in the fishing sector of the Puntarenas region on occupational risk management systems. **The Committee requests the Government to continue to provide information on initiatives of this kind that have been implemented and on the measures taken to include instruction in accident prevention and occupational health in the programmes for seafarers organized by vocational training centres. The Government is also requested to indicate the measures taken to draw seafarers' attention to particular hazards, for instance by means of official notices containing relevant instructions.**

Furthermore, from information provided by the Government on the occasion of the Hemispheric Conference on the MLC, 2006, organized by the ILO in September 2009, the Committee understands that the merchant fleet of Costa Rica is virtually non-existent and that the fishing fleet consists largely of foreign-registered vessels. **It requests the Government to provide up-to-date information on the number and types of ships flying the flag of Costa Rica, whether merchant or fishing vessels.**

## Egypt

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1982)**

*Article 11 of the Convention. Equality of treatment for all seafarers.* The Committee recalls that since the ratification of the Convention by Egypt in 1982, it has been commenting on section 2(b) of Social Insurance Act No. 79 of 1975, which makes the equality of treatment of seafarers dependent upon reciprocity, contrary to this provision of the Convention. The Committee also recalls that the Merchant Shipping Code (Act No. 8 of 1990), sections 126–128 of which give effect to basic requirements of the Convention, does not appear to establish any similar distinction based on nationality, residence or race. Despite the Government's numerous reassurances that the Social Insurance Act would be amended, the Committee notes with *regret* that the Government is still not in a position to indicate any concrete progress on this matter. **The Committee again expresses the hope that the Government will not fail to take – as a matter of priority – the necessary measures to amend its legislation in order to ensure that the provisions of the Convention are applied to foreigners even in the absence of a reciprocal agreement and whatever the length of their contract of employment.**

The Committee is raising other points in a request addressed directly to the Government.

### **Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1982)**

*Articles 6 to 17 of the Convention. Crew accommodation requirements.* The Committee has been commenting for a number of years on the need to adopt laws or regulations implementing the specific requirements of Parts II, III and IV of the Convention. In its last report, the Government merely indicates that it is currently considering the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), and that consequently relevant legislation on crew accommodation will be drafted. While noting the Government's intention to ratify the MLC, 2006, the Committee is bound to observe that at present the national legislation does not give effect to any of the technical accommodation standards set out in *Articles 6 to 17* of the Convention, such as those on minimum floor area of sleeping rooms, size of berths, lighting, ventilation, heating, mess rooms, sanitary facilities and hospital accommodation. The Committee also recalls that a legislative gap analysis, which was prepared in 2010 with the support of the Office with a view to assisting the Government with its

preparations for the ratification of the MLC, 2006, similarly concluded that in a possible amendment to the Maritime Law No. 8 of 1990, provision should be made for practically every aspect of crew accommodation contained in Title 3 of the MLC, 2006. The Committee further observes that most of the provisions of Convention No. 92 have been consolidated in Regulation 3.1, Standard A3.1 and Guideline B3.1 of the MLC, 2006, and therefore ensuring compliance with Convention No. 92 will facilitate the implementation of the corresponding requirements of the MLC, 2006. ***The Committee hopes that the Government will take all necessary steps without further delay in order to bring its maritime legislation into conformity with the requirements of this Convention and that in doing so it will also seek to ensure compliance with the accommodation standards of Title 3 of the MLC, 2006. The Committee also requests the Government to keep the Office informed of any further progress made in the process of ratification and effective implementation of the MLC, 2006.***

### **Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1982)**

*Article 2(1) of the Convention. Investigation of maritime occupational accidents.* The Committee has been drawing for many years the Government's attention to the fact that most of the legal texts that the Government refers to as implementing the Convention do not lay down the specific measures to be taken for the prevention of accidents that are peculiar to maritime employment, and that they are consequently not sufficient to give effect to all the provisions of this Convention. In this connection, the Committee notes that in its last report, the Government indicates that the Higher Consultative Council on Occupational Health and Safety and Security of the Work Environment is only competent to design policies on occupational health and safety at the workplace but it is not responsible for investigating occupational accidents. ***Recalling that under Article 2(1) of the Convention, the competent authority is required to take measures to ensure that occupational accidents are adequately reported and investigated and comprehensive statistics kept and analysed, the Committee hopes that the Government will consider appropriate action in order to give full effect to this requirement of the Convention.*** The Committee recalls, in this regard, that the same requirement is incorporated in Standard A4.3(1)(d) and (5)(c) of the Maritime Labour Convention, 2006 (MLC, 2006).

*Article 2(3). Collection of detailed statistics.* Further to its previous comment, the Committee notes the Government's indication that detailed statistics showing the number, nature, causes and effects of on-board occupational accidents will be provided as soon as the Government receives them from the authorities concerned. ***Recalling that five years have elapsed since that information was requested, the Committee hopes that the Government will make every effort to collect and transmit all relevant statistical data, as prescribed by this Article of the Convention.*** The Committee recalls, in this regard, that the same requirement is incorporated in Standard A4.3(5)(b) and Guideline B4.3.5 of the MLC, 2006.

*Article 4(3). Adoption of laws and regulations on health and safety protection and accident prevention.* The Committee notes the Government's reference to Order No. 211 of 2003 on safety limits, conditions and requirements for the prevention of physical, mechanical, biological and chemical hazards and those with negative effects and ensuring security of the work environment. The Committee observes, however, that this instrument sets out certain safety and health standards of a general nature, and accordingly does not cover most of the subjects listed in *Article 4(3)* of the Convention, such as structural features of the ship, special measures on and below deck, anchors, chains and lines, dangerous cargo and ballast or personal protective equipment for seafarers. ***The Committee again asks the Government to take the necessary steps to give effect to this provision of the Convention.*** The Committee recalls, in this regard, that the obligation for each ratifying member State to adopt specific laws and regulations setting standards for health and safety protection and accident prevention on board ships that fly its flag is now reflected in Regulation 4.3(3), Standard A4.3(1), (2)(a) and (3) and Guideline B4.3.1(2) of the MLC, 2006.

*Article 7. Accident prevention committees.* The Committee notes the Government's indication that Order No. 985 of 2003 only refers to the High Consultative Council on Occupational Health and Safety and Security of the Work Environment but does not address the question of establishing committees on accident prevention on board vessels. The Government further explains that the Labour Code does not contain any relevant provisions as this is the responsibility of the General Maritime Safety Authority of the Ministry of Transport. ***Recalling that the Government has not been in a position to specify whether and how this provision of the Convention is given effect in national law and practice, the Committee once more asks the Government to indicate the legal provisions, if any, for the appointment of suitable crew members, or of suitable committees, responsible under the authority of the master for accident prevention on board Egyptian-registered vessels.*** The Committee recalls, in this regard, that a similar requirement for the establishment of safety committees on board all vessels with five or more seafarers is incorporated in Standard A4.3(2)(d) of the MLC, 2006.

## 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:

*Article 2 of the Convention. Prevention of occupational accidents.* For many years, the Committee has been asking the Government to indicate the specific instruments that govern the prevention of occupational accidents of seafarers. The Government has so far indicated that appropriate regulatory texts were in preparation and would be reviewed with the technical assistance of the ILO to ensure their compliance with the provisions of the Convention. In its last report, the Government refers only to the provisions of the Labour Code and Merchant Shipping Code, noting that they provide for the adoption of regulations on occupational safety and health. The Government further indicates that the authorities responsible for framing and supervising maritime regulations were also to draft a whole series of texts in this area. The Committee emphasizes that Guinea ratified this Convention more than 30 years ago. It also points out that the provisions of the national legislation are general in nature and do not always ensure that full effect is given to the requirements of the Convention. **Consequently, the Committee once again asks the Government to adopt legislative texts giving full effect to the Convention and requests it to provide copies of them as soon as these texts have been enacted.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Iraq

### **Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)** (ratification: 1966)

*Articles 2 and 3 of the Convention. Unemployment indemnity in the event of shipwreck.* The Committee notes the Government's succinct report indicating that the points that the Committee has been raising for many years will be dealt with in the context of the new maritime legislation which is currently being drafted. The Committee understands that the Minister of Transportation has approved in May 2010 the final draft of the Maritime Authority Act for the purpose of organizing and developing the maritime sector as well as keeping pace with international standards with regard to safety, environmental protection, and seafarers' conditions of employment. The Committee also understands that initiatives are under way with a view to rebuilding the Iraqi merchant fleet. **The Committee requests the Government to specify how the Committee's comments in connection with the payment of unemployment indemnity in the event of shipwreck have been reflected in the new maritime legislation. It also requests the Government to transmit a copy of the new maritime legislation once it has been adopted.**

Moreover, the Committee recalls that the main provisions of the Convention are now reflected in Regulation 2.6 and the corresponding Code of the Maritime Labour Convention, 2006 (MLC, 2006), which requires the payment of compensation in the event of the ship's loss or foundering not only for the resulting unemployment but also for injury or loss. The Committee considers, therefore, that compliance with Convention No. 8 will facilitate the implementation of the respective provisions of the MLC, 2006. **The Committee requests the Government to keep the Office informed of any further developments regarding the process of ratification and effective implementation of the MLC, 2006.**

## Lebanon

### **Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)** (ratification: 1993)

*Article 2 of the Convention. Unemployment indemnity in the event of the ship's loss or foundering.* The Committee recalls that, practically since the time of ratification of the Convention, it has been drawing the Government's attention to the need to adopt implementing legislation. The Committee notes the Government's statements that the application of the Convention is generally not satisfactory, and that there are no specific provisions in the Code of Maritime Commerce defining the term "loss or foundering of a vessel" or dealing with unemployment indemnity of seafarers in case of shipwreck. The Committee further notes the Government's indication that these issues will be addressed through joint meetings with relevant official departments, and shipowners' and seafarers' organizations. The Committee also notes that, according to the Ministry of Public Works and Transport, seafarers are paid, in practice, an indemnity of two months' wages when income is lost due to the sinking of a ship. **Noting that, despite its comments over the past 15 years, the national legislation still does not give effect to the requirements of the Convention, the Committee asks the Government to take all appropriate measures without further delay in order to incorporate the provisions of the Convention into the Code of Maritime Commerce.**

Moreover, the Committee reiterates its observation, which it has been repeating for several years, that section 161 of the Code of Maritime Commerce authorizes courts to reduce or withdraw a seafarer's wages if it is proved that the shipwreck is due to the fault or negligence of the seafarer, or if the seafarer did not do everything within the seafarer's power to save the vessel, passengers and goods or to salvage the wreck. **The Committee once again notes that these**

*restrictions are not authorized or contemplated by the Convention, and therefore requests the Government to amend the Code of Maritime Commerce accordingly.*

Finally, the Committee recalls that most of the provisions of the Convention have been incorporated in Regulation 2.6, Standard A2.6 and Guideline B2.6 of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance with the Convention would facilitate compliance with the corresponding requirements of the MLC, 2006. ***The Committee requests the Government to keep the Office informed of any further developments regarding the process of ratification and effective implementation of the MLC, 2006.***

### **Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1993)**

*Articles 2 to 4 of the Convention. Pension scheme for seafarers.* The Committee has been drawing the Government's attention to the need to adopt legislation implementing the requirements of the Convention. More concretely, the Committee has requested the Government to take the necessary measures in order to introduce into either the Merchant Shipping Code or the Social Security Act provisions establishing a pension scheme for seafarers on retirement from sea service. The Government's earlier indications were that it was in the process of preparing draft texts regulating the seafarers' pension scheme, in consultation with the Association of Lebanese Shipowners and the Federation of Maritime Transport Unions. However, in its last report, received in November 2010, the Government states that nothing has been done with regard to the implementation of the Convention or the adoption of executive decrees and measures concerning Lebanese workers employed on board Lebanese-registered vessels. ***Noting therefore that the Convention in its entirety is still not applied in practice, and that no progress has been made for more than 15 years, the Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

*[The Government is requested to reply in detail to the present comments in 2012.]*

### **Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1993)**

*Articles 3 and 4 of the Convention. Implementing legislation.* The Committee has been requesting the Government, since soon after the ratification of the Convention, to specify the legislative or administrative provisions giving effect to the detailed technical requirements of the Convention. The Committee notes with ***regret*** the Government's statement that, to date, there is no legislation or administrative regulations applying the provisions of the Convention. The Government also states that the shipowners and the Union of Seafarers have not been informed of any applicable laws or regulations as the administration has not issued any instructions giving effect to the Convention. Moreover, the Government indicates that there is no general appreciation of the manner in which the Convention is applied in practice since no inspection has been carried out on Lebanese ships with respect to accommodation requirements. Under the present circumstances, the Committee concludes that the Convention is not applied in either law or practice. ***Recalling that Article 4 of the Convention requires that the competent authority undertakes to maintain in force laws or regulations which ensure its application, the Committee asks the Government to take, without further delay, all appropriate measures in order to bring the national legislation into line with the provisions of the Convention. Moreover, recalling that under Article 3 of the Convention a ratifying member State undertakes to comply with the provisions of Parts II and III of the Accommodation of Crews Convention (Revised), 1949 (No. 92), the Committee asks the Government to take the necessary measures to give effect to the requirements of Articles 4 (submission of plans of crew accommodation before ship construction or alteration), 5 (inspection following registration, substantial alteration or reconstruction, or complaint), 6 (fire prevention), 7 (ventilation), 8 (heating) and 13 (fresh water supplies) of that Convention.***

Finally, the Committee recalls that most of the provisions of Conventions Nos 92 and 133 on crew accommodation have been incorporated without significant changes in Title 3 of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance with these Conventions would facilitate the implementation of the corresponding requirements of the MLC, 2006. ***The Committee would be grateful if the Government would keep the Office informed of any further developments regarding the process of ratification and effective implementation of the MLC, 2006.***

## **Liberia**

### **Minimum Age (Sea) Convention (Revised), 1936 (No. 58) (ratification: 1960)**

*Article 2 of the Convention. Minimum age for access to maritime employment.* The Committee has for the last 15 years been drawing the Government's attention to section 326 of the Maritime Law which sets 15 years as the minimum age for admission to maritime employment but does not expressly limit possible exceptions to persons of not less than 14 years of age, as required by *Article 2(2)* of the Convention. In its last report, the Government indicates that as part of the ongoing process of implementing the requirements of the ratified Maritime Labour Convention, 2006 (MLC, 2006), it is considering amendments to the Maritime Law and the Liberian Maritime Regulations. The Government specifies, for instance, that under draft Regulation 10.326 (RLM-108), no person below the age of 16 may be employed on a Liberian-registered vessel, a ship's cook must be at least 18 years old, and night work is prohibited for seafarers under the age of 18 – all of which are consistent with Standards A1.1(1), (2) and A3.2(8) of the MLC, 2006. The Government also refers to a draft amendment of section 326 (RLM-107) which purports to allow persons under the age of 15 to be

employed on board vessels upon which only members of the same family are employed, school ships and training ships. The Committee is obliged to recall, in this respect, that contrary to *Article 2(2)* of this Convention, Regulation 1.1(2) and Standard A1.1(1) of the MLC, 2006, explicitly prohibit the employment, engagement or work on board a ship of any person under the age of 16. ***The Committee accordingly asks the Government to take all appropriate steps in order to ensure that any amendment of section 326 of the Maritime Law is fully consistent with the provisions of the MLC, 2006, which revises Convention No. 58, as well as 36 other international maritime labour conventions. The Committee requests the Government to keep the Office informed of any progress on this matter and to transmit copies of the revised Maritime Law and Regulations once they have been adopted.***

## Luxembourg

### **Food and Catering (Ships' Crews) Convention, 1946 (No. 68)** (ratification: 1991)

The Committee notes with *interest* that on 20 September 2011 Luxembourg ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force for Luxembourg of the MLC, 2006, will result in the denunciation of, inter alia, the present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the conformity of national legislation with the relevant requirements of the present Convention. In this regard, 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(a) and (b) of the Convention. Inspection. The Committee once again requests the Government to adopt the legislative texts that will give effect to the provisions of the Convention or to indicate the collective agreements that address the following points: preparation and application of regulations concerning food and water supplies; catering; construction; location; ventilation; heating; lighting; water systems and equipment of galleys; storerooms and refrigerated chambers; or for the storage, handling and preparation of food.*

*Article 7. Inspection at sea. The Committee once again requests the Government to adopt and indicate the texts giving effect to the obligation to provide for inspection at sea.*

*Article 9(1). Powers of inspectors. The Committee notes that the legislation in force makes no provision for inspectors to be given authority to make recommendations with a view to the improvement of the standard of catering. The Committee once again requests the Government to indicate the measures taken to bring the legislation into conformity with the Convention in this regard.*

*Article 12. Information. The Government is once again requested to provide information on the measures taken to give effect to this Article.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## New Zealand

### **Continuity of Employment (Seafarers) Convention, 1976 (No. 145)** (ratification: 1980)

*Article 2 of the Convention. National policy to promote continuous employment for seafarers. The Committee has been requesting the Government to provide concrete information on specific measures which might be part of a national policy for the promotion of continuous or regular employment for qualified seafarers, as prescribed by this Article of the Convention. The Government in its previous reports has stated that continuous or regular employment is an issue for individual or collective bargaining. However, to date, the Government has not provided copies of any collective agreement for the maritime sector containing clauses designed to achieve the objectives of the Convention. With specific reference to "employment protection provisions" introduced by the Employment Relations Act, as amended in 2004, with a view to protecting employees in case of restructuring, the Government states that it is unable to determine the number of seafarers covered by such provisions due to technical reasons. The Committee once again draws the Government's attention to its obligation under Article 2 of the Convention to put in place, with due regard to the special characteristics and needs of the maritime industry, a national policy to encourage continuous or regular employment for seafarers, and accordingly requests it to provide more detailed explanations about the scope and content of such policy.*

*Article 3. Registers of seafarers. The Committee recalls its previous comment in which it noted that, while the establishment of a register of seafarers is not explicitly required under the Convention, it is identified as one of the possible means to achieve a national policy encouraging continuous or regular employment for qualified seafarers. The Committee notes, in this regard, the new comments made by the New Zealand Council of Trade Unions (NZCTU), according to which: (a) maritime unions provide an ad hoc registration service for seafarers seeking work where they can, but this does not capture all eligible seafarers, nor do all employers contact the unions; (b) seafarers tend not to register with the Government for the unemployment benefit so they may not be listed on a government beneficiary register for unemployed jobseekers; and (c) government career and job vacancy services have no specific category for registering seafarers.*

In its reply, the Government refers to Work and Income, i.e. the agency of the Ministry of Social Development that provides employment services and social security benefits for those looking for work. The Government adds that Work and Income supports a wide range of employment-related training programmes that assist jobseekers to meet the entry-level requirements of relevant occupations. The Government further indicates that Work and Income entered in November 2008 into a relationship agreement with the New Zealand Shipping Federation on the basis of which it has conducted recruitment campaigns for specific shipping companies.

For its part, the NZCTU considers that Work and Income does not provide a full range of employment services and that it does not have active engagement with shipowners seeking seafarer workers. The NZCTU also maintains that the Government through the Accredited Employers system of the Immigration Service (NZIS) facilitates the hiring of seafarers from overseas instead of supporting the hiring of unemployed or underemployed New Zealand seafarers, thus acting contrary to the spirit of the Convention. ***The Committee requests the Government to further clarify how it is ensured that the specificity of maritime employment is duly taken into account in designing and delivering employment services.***

Finally, the Committee wishes to recall that Convention No. 145, together with 36 other international maritime labour Conventions, is revised by the Maritime Labour Convention, 2006 (MLC, 2006), which, in Regulation 2.8, Standard A2.8 and Guideline B2.8, shifts the emphasis from continuity of employment to encouragement of employment opportunities and promotion of career and skill development. ***Therefore, the Committee requests the Government to keep the Office informed of any developments regarding the process of ratification and effective implementation of the MLC, 2006.***

## Nicaragua

### ***Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)*** ***(ratification: 1934)***

*Article 1(1) of the Convention. Scope of application – Definition of the term “seafarer”.* The Committee has been drawing the Government’s attention for a number of years to the need to take measures to ensure the application of the Convention to masters and officers, who are currently excluded from the definition of “maritime workers” under section 161 of the Labour Code. In its last report, the Government again states that masters and officers having an employment relationship with an employer qualify as workers. The Committee observes, however, that section 163 of the Labour Code to which reference is made in the Government’s report, expressly refers to “maritime workers” – a term that is defined in section 161 to mean all persons employed on board a ship with the exception of masters and officers. The Committee is therefore bound to conclude that, in its current reading, Chapter III of Title VIII Special Labour Conditions of the Labour Code (sections 161 to 166) implements only partially the basic requirement of the Convention. ***The Committee expresses once more the hope that the Government, in accordance with the assurances given in an earlier report, will consider the possibility of amending section 161 of the Labour Code with a view to bringing it into full conformity with the Convention, or envisage other measures, for instance a suitable amendment to the Maritime Transport Act (Act No. 399 of 2001) and its Regulations (Decree No. 4877 of 2006), in order to ensure that masters and officers are entitled to unemployment indemnity in the event of shipwreck, as prescribed by the Convention.***

*Article 2(2). Payment of the unemployment indemnity.* In the absence of the Government’s reply, the Committee is obliged to reiterate that section 166 of the Labour Code gives only partial effect to *Article 2(2)* of the Convention since it provides for the payment of an indemnity in general terms without specifying neither the nature of the indemnity nor the conditions under which it is granted. The Committee recalls that the Convention requires that the unemployment indemnity due to the seafarer in every case of the loss or foundering of the vessel be paid for the days during which the seafarer remains in fact unemployed, for a period of at least two months. ***The Committee therefore again asks the Government to take all the necessary measures to ensure that the rate and duration of the unemployment indemnity payable to seafarers in case of shipwreck are specified in accordance with the requirements of this Article of the Convention.***

Finally, the Committee recalls that most of the provisions of the Convention have been incorporated in Regulation 2.6, Standard A2.6 and Guideline B2.6 of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance with the Convention would facilitate compliance with the corresponding requirements of the MLC, 2006. ***The Committee requests the Government to keep the Office informed of any further developments regarding the process of ratification and effective implementation of the MLC, 2006.***

## Nigeria

### ***Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)*** ***(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 2 of the Convention. Investigation into occupational accidents.* In its previous comments, the Committee requested the Government to supply copies of relevant extracts of reports of inquiry into occupational accidents, as well as samples of statistics compiled in conformity with the provisions of this Article, drawing the attention of the Government to the obligation of the competent authority to ensure that, in accordance with *Article 2(1) and (2)* of the Convention, all occupational accidents are adequately reported, that comprehensive statistics shall not be limited to fatalities or to accidents involving the ship, and that statistics of accidents are kept and analysed. Taking into account the Government's indication that accidents on board ships had been reported only when the ship sustained structural damage or when there had been loss of life or serious injury, the Committee earlier expressed the hope that records of minor accidents kept by private and government shipping companies would be integrated into reporting procedures and statistics. The Committee notes that no such information has been provided by the Government. ***The Committee asks the Government to indicate measures taken to give effect to this Article and to supply copies or relevant extracts of investigation reports of occupational accidents, as well as statistics compiled in accordance with the provisions of the Convention.***

*Article 3. Research.* In its previous comments, the Committee, taking into consideration the Government's indication that the necessary measures would be undertaken for research to be conducted into the causes and prevention of accidents aboard Nigerian ships, expressed the hope that such research would be carried out and that the Government would provide detailed information on progress made in this respect. ***The Committee once again asks the Government to supply information on any research undertaken into general trends and hazards revealed by statistics, in order to provide a sound basis for the prevention of accidents which are due to particular hazards specific to maritime work.***

*Articles 4 and 5. Occupational accident prevention.* In its previous comments, the Committee requested the Government to supply information concerning provisions adopted or contemplated in order to prevent occupational accidents and covering the specific field of stage and mooring ropes (*Article 4(3)(h)*) as well as the various matters listed in *Article 4(3)(a), (b), (c), (d) and (i)*. The Committee notes the Government's indication in its latest report that the Merchant Shipping (Life-saving Appliances) Rules 1967 provide for occupational accident prevention standards and deal extensively with *Article 4* of the Convention. ***The Committee requests the Government to supply detailed information on any provisions related to the prevention of occupational accidents of seafarers and the specific obligations of shipowners and seafarers in this respect, as required under Articles 4 and 5 of the Convention.***

*Article 7. Accident prevention committees.* The Committee asked the Government to supply a copy of a statutory instrument establishing the responsibility of national surveyors and engineers, who are crew members, to conduct inspections on board ships, and the duties of a safety or accident committee on board, chaired by the Master, with the Chief Engineer, the Chief Officer, the Second Engineer and the Radio Officer as members. ***The Committee again requests the Government to supply a copy of any legal text which may have been adopted to give effect to this Article.***

*Articles 8 and 9. Programmes and instructions in accident prevention.* In previous comments, the Committee asked the Government to provide details concerning the tripartite establishment and implementation of programmes for the prevention of occupational accidents (*Article 8*) and the inclusion of instruction in accident prevention and health protection in employment in the curricula of vocational training institutions for all categories and grades of seafarers (*Article 9(1)*). ***The Committee again requests the Government to provide information on: (i) programmes which have been undertaken for the prevention of occupational accidents, indicating the manner in which the cooperation and participation of shipowners, seafarers, and their organizations are assured; and (ii) measures ensuring the inclusion, as part of the instruction in professional duties of all categories and grades of seafarers, of instruction in the prevention of accidents and in the protection of health in employment.***

Moreover, the Committee understands that a new Merchant Shipping Act 2007 has been adopted. ***The Committee requests the Government to indicate whether this Merchant Shipping Act repeals any relevant provisions of the Merchant Shipping (Life-saving Appliances) Rules 1967, and to identify any new provisions which give effect to the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***

## Panama

### ***Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1971)***

The Committee notes that Panama has ratified the Maritime Labour Convention, 2006 (MLC, 2006), whose entry into force will entail the automatic denunciation of Convention No. 55. However, pending the entry into force of the MLC, 2006, the Committee will continue to examine the conformity of national legislation with the requirements of the present Convention. The Committee recalls that the main provisions of the Convention have been incorporated in Regulation 4.2 and the corresponding Code of the MLC, 2006, and that therefore compliance with the Convention will facilitate the implementation of the relevant requirements of the MLC, 2006.

*Article 5 of the Convention. Payment of wages.* The Committee has been drawing the Government's attention for a number of years to section 89 of Legislative Decree No. 8 of 26 February 1998 concerning work at sea and on navigable waterways which provides for the payment of wages to seafarers remaining on board only in the event of sickness, but not in the event of injury, as prescribed by this Article of the Convention. ***Recalling that the same requirement has been incorporated in Standard A4.2(3) of the MLC, 2006, the Committee requests the Government to take the necessary measures in order to give full effect to this provision of the Convention.*** The Committee has also been commenting on two other inconsistencies of the same section of Legislative Decree No. 8, namely the limitation of the shipowner's liability to pay wages (i) until the seafarer's contract of employment expires, and (ii) in the case of passenger ships engaged in international voyages, up to a period not exceeding 30 days. The Government had previously indicated that it was in the process of adopting regulations implementing Legislative Decree No. 8 and that the above provisions would be amended accordingly. ***Noting that no progress has been made on this matter, and recalling that Standard A4.2(4) of the MLC, 2006, lays down the shipowner's obligation to pay wages for a period of at least 16 weeks in respect of a sick or injured seafarer no longer on board (irrespective of the expiry of the seafarer's contract of employment or the type of***

*vessel on which he or she is engaged), the Committee asks the Government to take appropriate action in order to bring its legislation into conformity with the Convention.*

*Article 7(1). Funeral expenses.* The Committee has been requesting the Government to modify section 90 of Legislative Decree No. 8 which in its current reading limits the shipowner's obligation to pay burial expenses only in the case of death occurring on shore provided that at the time of death the person concerned was still receiving medical care at the shipowner's expense. Despite the Government's assurances that the regulations implementing Legislative Decree No. 8 would address this point, no concrete progress has yet been made. ***Recalling that Standard A4.2(1)(d) of the MLC, 2006 establishes the obligation of the shipowner to defray burial expenses in the case of death occurring ashore during the period of engagement, but also on board irrespective of the cause, the Committee requests the Government to take appropriate action in order to align the national legislation with the requirements of the Convention on this point.***

### **Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1971)**

The Committee notes that Panama has ratified the Maritime Labour Convention, 2006 (MLC, 2006), whose entry into force will entail the automatic denunciation of Convention No. 56. In the meantime, however, the Committee will continue to examine the application of Convention No. 56 by Panama.

*Article 1 of the Convention. Compulsory sickness insurance scheme for seafarers.* The Committee notes the Government's indication that resolution No. 1348-83 J.D. of 1983, which was the subject of previous comments, has been repealed further to the promulgation of Act No. 51 of 27 December 2005 reforming the Organic Act establishing the Social Security Fund (CSS). ***It requests the Government to send a copy of the law or regulation repealing this resolution.*** Furthermore, the Committee notes that, under the terms of section 77 of Act No. 51, all workers employed in Panama, whether nationals or foreigners, must be affiliated to the CSS. It notes resolution No. 39489 of 23 March 2007, implementing Act No. 51, section 87 of which states that seafarers employed on board vessels assigned to domestic service are obliged to be affiliated to the CSS and section 88 of which establishes the possibility for seafarers employed on board vessels assigned to international service to be affiliated to the Fund under a voluntary social security scheme. With reference to its previous observation, the Committee recalls that, under the terms of *Article 1(1)* of the Convention, every person employed on board any vessel, other than a ship of war, registered in the territory of Panama and engaged in maritime navigation or sea-fishing, must be insured under a compulsory sickness insurance scheme. Therefore, the distinction made by the legislation of Panama between vessels assigned to domestic service and those assigned to international service is not permitted under this provision of the Convention. ***The Committee accordingly hopes that the Government will take the necessary steps as soon as possible to adopt legislative provisions requiring compulsory affiliation to the CSS for all seafarers employed on board vessels flying the Panamanian flag, regardless of whether they are assigned to domestic or international service, the only exceptions being those provided for by Article 1(2) of the Convention.***

*Articles 2(4) and 3(3). Withholding of sickness benefit payments.* The Committee notes the information supplied by the Government in reply to its previous comment, including further details concerning the employer's obligations with regard to the payment of social security benefits in cases where the employer has failed to affiliate one of his or her employees to the CSS or pay the corresponding contributions. It recalls that benefits in kind (medical care) and daily allowances must be provided by the competent social security institution to persons covered by the Convention, and that failure by the employer to pay social security contributions is not one of the exceptions for which the payment of benefits may be withheld, as listed in *Articles 2(4) and 3(3)* of the Convention. ***Noting the Government's indication that it is currently not possible to reach a consensus among the social partners with a view to revising the labour and social security legislation in force, the Committee hopes that efforts will be made in the near future to bring the legislation into conformity with the Convention on this point.*** It also underlines the importance of the monitoring measures aimed at ensuring the regular payment of social security contributions by shipowners, which is recalled in Guideline B4.5(7) of the MLC, 2006.

## **Peru**

### **Sickness Insurance (Sea) Convention, 1936 (No. 56) (ratification: 1962)**

*Articles 1 and 2 of the Convention. Cash benefits under compulsory sickness insurance scheme.* Further to its previous observation, the Committee notes the adoption of Resolution SBS No. 14707-2010 of 15 November 2010 concerning the dissolution of the Fishers' Social Benefits and Social Security Fund (CBSSP). The Government had previously indicated that cash benefits to fishers affiliated to the CBSSP were paid directly by the employers, which nonetheless implied the absence of a sickness insurance scheme administered by a self-governing institution, as required under this Convention. ***Following the dissolution of the CBSSP, the Committee requests the Government to indicate how it ensures in practice the payment, under all circumstances, of cash benefits for a minimum period of the first 26 weeks of incapacity and also to detail any measures taken or planned for reorganizing and operating an insurance institution responsible for providing the benefits prescribed by the Convention.***

In addition, the Committee notes the observations of the General Confederation of Workers of Peru (CGTP), which were transmitted to the Government on 28 September 2010, concerning the absence of legislative provisions guaranteeing

the payment of cash benefits for at least the first 26 weeks of incapacity and also the Government's failure to engage in nationwide consultations with a view to addressing the problems of social security in the fishing sector. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the CGTP.***

### **Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1962)**

*Representation made under article 24 of the Constitution.* The Committee notes that at its 310th Session (March 2011), the Governing Body set up a committee to examine the representation made under article 24 of the ILO Constitution by the Autonomous Confederation of Peruvian Workers (CATP) alleging non-observance by Peru of the Seafarers' Pensions Convention, 1946 (No. 71). In accordance with its usual practice, the Committee has decided to suspend its examination of the application of this Convention, in particular *Article 3(2)* of the Convention concerning the collective financing of benefits, pending the adoption by the Governing Body of the conclusions and recommendations of the above committee.

*Article 3(1) of the Convention. Minimum level of pensions.* The Committee recalls its previous observation in which it requested the Government to explain how it ensured the application of *Article 3(1)(a)(ii)* of the Convention in view of the fact that under the private pension system (SPP) it is not possible to determine the amount of benefits in advance. In its report submitted in 2009, the Government made reference to a system of a minimum pension, introduced by Act No. 27617 of 2001, which permits SPP affiliates to receive a minimum pension provided that they are born on 31 December 1945 at the latest and have contributed to the pension fund for at least 20 years. However, this possibility being limited to a certain number of beneficiaries, the Committee is obliged to reiterate that the current private pension system is not in conformity with this Article of the Convention which requires the State to guarantee the minimum level of pensions established by the Convention to workers having completed the prescribed period of sea service. ***The Committee once again asks the Government to take appropriate measures in order to give full effect to the requirements of Article 3(1) of the Convention. In this connection, the Committee also asks the Government to refer to its comments made under the Social Security (Minimum Standards) Convention, 1952 (No. 102).***

*Part VI of the report form. Observations of workers' organizations.* With regard to the observations submitted in October 2006 by the Federation of Fishing Workers of Peru (FETRAPEP) concerning the difficulties fishers encounter in receiving old-age benefits because of the suspension of their contracts during the *veda* period every year (closed season for extraction and processing of marine species), the Committee notes the Government's reference to Ministerial Resolution No. 308-2009-PCM of 9 July 2009 establishing a multi-sectoral working group responsible for analyzing possible solutions to the claims put forward by different organizations of pensioners and retired workers. The Government indicates that the problems raised by FETRAPEP will be addressed within the framework of that working group. ***The Committee requests the Government to keep the Office informed of the outcome of the working group discussions and any practical solution implemented or envisaged with regard to the issues raised by FETRAPEP.***

Moreover, the Committee notes the comments of the General Confederation of Workers of Peru (CGTP), received on 2 September 2009 and transmitted to the Government on 16 November 2009, concerning the administration of pension funds by the SPP. According to CGTP, as much as 42 per cent of pension funds are invested in the stock exchange while more than 8 billion Peruvian nuevos soles (PEN) (approximately US\$2.9 billion) have already been lost due to the world financial crisis. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the CGTP.***

## **Poland**

### **Continuity of Employment (Seafarers) Convention, 1976 (No. 145) (ratification: 1979)**

*Articles 2 and 3 of the Convention. National policy to encourage continuous employment for seafarers.* The Committee notes that the Government has drafted a new Maritime Labour Act which will give effect to the requirements of the Maritime Labour Convention, 2006 (MLC, 2006), and which was to come into force in January 2011. The Committee also notes the comments made by the Polish Shipowners' Association (PSA) and the National Maritime Section of the Independent and Self-Governing Trade Union "Solidarność" (NSZZ) relating to the application of the Convention. Both organizations deplore a general lack of incentives to promote continuity of employment for qualified seafarers. The NSZZ considers that one of the main priorities of the Government's maritime policy is to increase the number of qualified seafarers without any guarantees of employment. In addition, the NSZZ denounces the Government's silence on practices such as the employment of persons under foreign laws on board Polish-flagged vessels and the lack of information concerning the conditions of employment and insurance coverage applicable to them. Moreover, the NSZZ alludes to practices whereby unemployed seafarers are fraudulently presented as taking unpaid leave and therefore not entitled to unemployment benefits. ***The Committee requests the Government to provide detailed information on the content and aims of the national policy designed to promote continuous or regular employment for qualified seafarers and to transmit any comments it may wish to make in response to the observations of the NSZZ. It also requests the Government to keep the Office informed of any development regarding the finalization of the new Maritime Labour Act and to transmit a copy once it has been adopted.***

*Article 7 and Part V of the report form. Means of implementation of the Convention – Application in practice.* The Committee notes the statistical information provided by the PSA, according to which there are currently 14 vessels flying the Polish flag and employing 500 seafarers, while a total of 35,000 seafarers of Polish nationality are employed on board foreign-flagged vessels. **Given the promotional character of the Convention, the Committee requests the Government to provide up-to-date information on concrete labour policy measures through which the Convention is applied in practice, including, for instance: (i) any initiatives, action plans or other incentives drawn up in consultation with shipowners' and seafarers' organizations and designed to help seafarers strengthen their competencies and promote employment in the maritime sector, as well as the results obtained; (ii) full particulars on specific programmes or activities for the vocational guidance of seafarers, including ongoing training schemes, and the results obtained; (iii) comparative statistics on the evolution of the total number of seafarers in recent years and of the unemployment rate in the maritime sector; (iv) facts and figures concerning seafarers' employment trends, especially in light of the generally reported shortage of officers with high qualifications and experience; (v) copies of applicable collective agreements; (vi) sample copies of different types of seafarers' employment contracts that may be currently in use, both for nationals and foreign seafarers; (vii) details on unemployment benefits for seafarers and the maintenance of registers by recruitment agencies or employment services.**

Finally, the Committee wishes to recall that Convention No. 145, together with 36 other international maritime labour Conventions, is revised by the MLC, 2006, which, in Regulation 2.8, Standard A2.8 and Guideline B2.8, shifts the emphasis from continuity of employment to encouragement of employment opportunities and promotion of career and skill development. **Recalling the 2007 European Union Council decision authorizing Member States to ratify the MLC, 2006, the Committee requests the Government to keep the Office informed of any developments regarding the process of ratification and effective implementation of the MLC, 2006.**

## Russian Federation

### **Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1969)**

*Articles 6 to 15 of the Convention. Crew accommodation requirements.* The Committee recalls that, in its report submitted in 2002, the Government had indicated that the maritime legislation in force did not contain specific provisions giving effect to several Articles of the Convention. In subsequent reports, the Government had stated that the Sanitary Rules for seagoing vessels approved by the USSR Chief Medical Officer No. 2641-82 of 25 December 1982 were under consideration for revision with a view to addressing the points raised by the Committee. In its last report, the Government limits itself to reiterating that the Russian Health Ministry is now drafting new health regulations for marine vessels. The Committee is bound to observe that, with the exception of a simple reference to the shipowner's obligation to provide appropriate accommodation (cabins, mess rooms, sanitary rooms, medical stations and recreation rooms) in section 60 of the Merchant Shipping Code, the maritime legislation in force fails to implement a considerable number of substantive requirements of the Convention. **The Committee regrets that to date no concrete progress has been made with respect to the revision of the Sanitary Rules for seagoing vessels and accordingly asks the Government to take all necessary action in order to ensure the application of the following Articles of the Convention: Article 6(2), (4), (7), (9) and (10) concerning materials used in sleeping rooms; Article 9(1)–(5) on lighting; Article 10(1), (3)–(6) and (8)–(28) concerning size, equipment and occupancy of sleeping rooms; Article 11(2)–(7), (9) and (10) on mess room accommodation; Article 13(1)–(3), (9), (11)(d) and (e) on sanitary accommodation; Article 14(1), (2) and (4)–(7) on hospital accommodation; and Article 15 on special protective equipment. The Committee also requests the Government to refer to its comments made under the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).**

Moreover, the Committee recalls that most of the provisions of Convention No. 92 have been consolidated in Regulation 3.1, Standard A3.1 and Guideline B3.1 of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance with Convention No. 92 will facilitate the implementation of the corresponding requirements of the MLC, 2006. **While noting the Government's statement that preparations are currently under way for the ratification of the MLC, 2006, the Committee requests the Government to keep the Office informed of any further developments in this respect.**

*[The Government is asked to reply in detail to the present comments in 2013.]*

### **Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1990)**

*Articles 5 to 11 of the Convention. Crew accommodation requirements.* The Committee recalls that for the past ten years the Government has been practically repeating that it is preparing technical regulations which would give full effect to numerous provisions of Part II of the Convention. However, to date, there has been no concrete progress as the Government once again indicates that the revision process of the Sanitary Rules for seagoing vessels has not yet been completed. **The Committee therefore asks the Government to take the necessary measures without further delay in order to ensure legislative conformity with the Convention in respect of the following points: floor area and maximum**

*occupancy of sleeping rooms (Article 5(1)–(7), (9) and (10)); size and equipment of mess rooms (Article 6(1)–(4)); recreation facilities (Article 7(1)–(4)); and lighting standards (Article 11(4) and (5)). The Committee asks the Government to transmit a copy of the revised Sanitary Rules once they have been issued. The Committee also requests the Government to refer to its comments made under the Accommodation of Crews Convention (Revised), 1949 (No. 92).*

Moreover, the Committee recalls that most of the provisions of Convention No. 133 have been consolidated in Regulation 3.1, Standard A3.1 and Guideline B3.1 of the Maritime Labour Convention, 2006 (MLC, 2006), and therefore ensuring compliance with Convention No. 133 will facilitate the implementation of the corresponding requirements of the MLC, 2006. *While noting the Government's statement that preparations are currently under way for the ratification of the MLC, 2006, the Committee requests the Government to keep the Office informed of any further developments in this respect.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## Seychelles

### **Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)** (ratification: 1978)

*Articles 1 and 2 of the Convention. Unemployment indemnity in the event of shipwreck.* The Committee recalls that for several years the Government has not provided information on any progress made with regard to the announced revision of the Merchant Shipping Act 1992 and of the Merchant Shipping Regulations 1995 with a view to bringing them into line with the requirements of the Convention. The Committee has been drawing the Government's attention to the need to amend section 10 of the Merchant Shipping Regulations, which excludes a seafarer from any entitlement to receive wages in the event of shipwreck if it is proved that the seafarer has not exerted himself to the utmost to save the ship, cargo and stores. In addition, the Committee has been requesting the Government to take measures in order to ensure the application of the Convention to persons employed on vessels excluded from the coverage of the Merchant Shipping Act and also to ensure that masters are entitled – as all other seafarers – to unemployment indemnity in the event of shipwreck. *While noting that the Government has undertaken with the assistance of the Office a legislative gap analysis to assess the conformity of the national legislation with the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), the Committee asks the Government to take the necessary action without further delay and to transmit a copy of the revised Merchant Shipping Act and its Regulations as soon as they are adopted.*

In addition, the Committee recalls that the main provisions of the Convention are now reflected in Regulation 2.6 and the corresponding Code of the MLC, 2006, which requires the payment of compensation in the event of the ship's loss or foundering not only for the resulting unemployment but also for injury or loss. The Committee considers, therefore, that compliance with the Convention will facilitate the implementation of the respective provisions of the MLC, 2006. *The Committee would be grateful if the Government would keep the Office informed of any developments regarding the process of the ratification and effective implementation of the MLC, 2006.*

## Sri Lanka

### **Seafarers' Identity Documents Convention, 1958 (No. 108)** (ratification: 1995)

*Articles 3, 4 and 6 of the Convention. Seafarers' identity documents.* For several years, the Committee has been drawing the Government's attention to the fact that the continuous discharge certificate book, provided for in section 127(1)(r) of the Merchant Shipping Act of 1971, fails to give effect to substantive requirements of the Convention. In its last report, the Government refers to a Tripartite Steering Committee set up in 2008 on the occasion of a national workshop held with the assistance of the ILO in order to review the gaps identified between the national legislation and the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), and the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), and ascertain the feasibility of ratification of those instruments. The Government also indicates that the Tripartite Steering Committee intends to take fully into account the Committee's comments although to date no final decisions have been taken on the revision of the continuous discharge certificate book. While recognizing that countries ratifying Convention No. 185 may need a few years to put in place the facilities and systems necessary for the issuance of seafarers' identity documents, especially in view of the highly technical character of certain requirements and recommended procedures, the Committee considers that the provisions of Convention No. 108 call for much less cumbersome measures for their implementation. *Referring to its previous comments, therefore, the Committee asks the Government to take prompt action in order to bring its law and practice into line with the Convention, in particular as regards: (i) the requirement that the seafarer's identity document should remain in his or her possession at all times (Article 3); (ii) the statement that should be included in the seafarer's identity document to the effect that this is a document issued pursuant to ILO Convention No. 108 (Article 4(2)); and (iii) the right of a seafarer with a valid identity document to enter a territory for temporary shore leave or for joining a ship (Article 6). The Committee also asks the Government to indicate any progress made towards the ratification of Convention No. 185 based on the work of the Tripartite Steering Committee.*

## United States

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)** (ratification: 1938)

*Article 1(1) of the Convention, read in conjunction with Articles 2, 9 and 11. Scope of application and equality of treatment for all seafarers.* The Committee has been commenting for many years on the need to amend section 688(b) of the Jones Act in line with the requirements of *Article 11* of the Convention, which provides that national laws or regulations relating to sickness or injury benefits have to be so interpreted and enforced so as to ensure equality of treatment to all seafarers irrespective of nationality, domicile or race. The Committee notes the Government's renewed statement that the mere creation of different classes (i.e. foreign nationals as opposed to United States citizens or resident aliens) does not violate the Convention and that foreign seafarers not domiciled in the United States may have remedies available in their home countries or host nations. The Committee further notes the Government's interpretation of section 688(b) of the Jones Act, according to which foreign citizens cannot maintain an action under that Act if they are employed by an enterprise engaged in exploration, development or production of offshore mineral or energy resources, in the territorial waters of a foreign nation and have a remedy available to them under the laws of the country where the injury occurred or their place of citizenship.

Noting that there has been no progress since the Committee first raised this point more than 20 years ago, the Committee is obliged to recall that, while the application of the Convention could possibly be limited with regard to drilling activities – as drilling platforms are not ordinarily engaged in maritime navigation – the Convention remains fully applicable with regard to such other activities as transporting supplies, equipment or personnel. Due to the specificity of maritime employment and the uncertainties of the seafarers' access to legal remedies due to their constant movement, *Article 2* imposes the primary liability for the payment of sickness and injury benefits on the shipowner. In case of the shipowner's failure to pay, section 688(a) of the Jones Act allows any seafarer who is a United States citizen or resident alien to sue for damages arising from personal injury suffered in the course of employment. Section 688(b) imposes on seafarers who are neither United States citizens nor resident aliens, an additional precondition, bearing also the burden of proof, that their home countries or the host countries in the territorial waters of which their ships navigate have no available remedy. In the Committee's view, having to prove that the social insurance institutions of the seafarer's home or host country could not provide remedy, constitutes an additional threshold for foreign non-resident seafarers and is therefore inconsistent with *Article 11* of the Convention.

The Committee wishes to refer, in this regard, to the preparatory work that eventually led to the adoption of *Article 11*, which shows that the drafters' intention was to include an explicit affirmation of the principle of equality of treatment in view of the fact that, in practice, non-resident seafarers were not able to receive the same benefits as national or foreign resident seafarers employed on the same ships (see ILC, 1936, 22nd Session, *Record of Proceedings*, page 257). Despite objections to the effect that, where an exception was not made in respect of foreign workers, equality of treatment was presumed and it was therefore unnecessary to insert a special provision, *Article 11* was put to a vote and adopted. In addition, the Committee draws the Government's attention to the fact that an equally comprehensive definition of the term "seafarer" is contained in Article II(1)(f) of the Maritime Labour Convention, 2006 (MLC, 2006), to mean "any person who is employed or engaged or works in any capacity on board a ship". Moreover, it is also clear from *Article 9* that the member State concerned has to secure rapid and inexpensive settlement of disputes concerning the shipowner's liability. It is the member State's responsibility to establish such a system. By requiring non-nationals to pursue their claims in the host or home State, it is not securing the settlement of their disputes, let alone securing that the process is rapid and inexpensive. *The Committee therefore hopes that the Government will take the necessary measures in order to amend section 688(b) of the Jones Act, possibly taking into account the distinction between drilling and other activities, so as to ensure that all foreign non-resident seafarers employed on board any vessel registered in the United States and ordinarily engaged in maritime navigation, benefit without any prior condition from the protection accorded by the Convention.*

Finally, the Committee takes this opportunity to recall that the Convention, as well as 36 other international maritime labour Conventions, are revised by the MLC, 2006. The main provisions of the Convention are now reflected in Regulation 4.2 and the corresponding Code of the MLC, 2006. The Committee considers, therefore, that compliance with the Convention will facilitate the implementation of the respective provisions of the MLC, 2006. *Noting that the Government has initiated the review and consultation process with a view to the future ratification of the MLC, 2006, the Committee requests the Government to keep the Office informed of any further developments with respect to the possible ratification of the MLC, 2006.*

*[The Government is asked to reply in detail to the present comments in 2013.]*

## American Samoa

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)**

*The Committee requests the Government to refer to the comments made concerning the application of the Convention by the United States.*

## Guam

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)**

*The Committee requests the Government to refer to the comments made concerning the application of the Convention by the United States.*

## Puerto Rico

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)**

*The Committee requests the Government to refer to the comments made concerning the application of the Convention by the United States.*

## United States Virgin Islands

### **Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)**

*The Committee requests the Government to refer to the comments made concerning the application of the Convention by the United States.*

## Uruguay

### **Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1977)**

*Article 3 of the Convention. Crew accommodation requirements – Implementing legislation.* The Committee has been drawing the Government's attention since soon after the time of ratification of the Convention to the absence of laws or regulations implementing the specific technical standards set out in Parts II and III of the Accommodation of Crews Convention (Revised), 1949 (No. 92) and Part I of this Convention. The Committee notes with *regret* that despite the numerous comments, the Government has to date not been in a position to provide any explanations as to whether and how this Convention is applied in law and practice. In its last report, the Government states that there are no ships engaged in maritime navigation to which the Convention would apply whereas in earlier reports it had referred to passenger ferries of over 1,000 tons which make short journeys between Uruguay and Argentina. *The Committee requests the Government to provide the necessary clarifications on the size and composition of its merchant fleet in the light of the information contained in the "World Fleet Statistics" of December 2009, which indicates that Uruguay has 129 vessels with a total tonnage of 109,279 tons. Furthermore, to the extent that seagoing ships of 1,000 or more tons are registered in Uruguay, the Committee asks the Government to indicate the measures it intends to take to ensure compliance with the detailed requirements of the Convention.*

Finally, the Committee recalls that most of the provisions of Conventions Nos 92 and 133 concerning crew accommodation have been incorporated without significant changes in Regulation 3.1 and Standard A3.1 of the Maritime Labour Convention, 2006 (MLC, 2006), which apply only to vessels constructed on or after the date when the MLC, 2006, comes into force for the country concerned whereas for existing vessels the standards relating to ship construction and equipment that are set out in Conventions Nos 92 and 133 should continue to apply. *The Committee would be grateful if the Government would keep the Office informed of any further developments regarding the process of ratification and effective implementation of the MLC, 2006.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 7** (Denmark: Greenland, Saint Lucia); **Convention No. 8** (Australia, Bulgaria, Croatia, Estonia, Fiji, France, France: French Southern and Antarctic Territories, Ghana, Latvia, Luxembourg, Malta, Mauritius, Montenegro, Netherlands: Aruba, Netherlands: Curaçao, New Zealand, Nigeria, Norway, Panama, Papua New Guinea, Peru, Poland, Portugal, Romania, Saint Lucia, Serbia, Singapore, Slovenia, Solomon Islands, Spain, Sri Lanka, Sweden, The former Yugoslav Republic of Macedonia, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Gibraltar, United Kingdom: Guernsey, United Kingdom: Jersey, United Kingdom: Montserrat, United Kingdom: St Helena, Uruguay); **Convention No. 9** (Djibouti, France: French Southern and Antarctic Territories, Lebanon, Montenegro, Netherlands: Aruba, Slovenia); **Convention No. 16** (Djibouti, Dominica, France, France: French Polynesia, France: French Southern and Antarctic Territories, France: New Caledonia, Guinea, Iraq, Kenya, Malta, Pakistan, Russian Federation, Singapore, Solomon Islands, United Kingdom: Gibraltar, United Kingdom: St Helena, Yemen); **Convention No. 22** (France, France: French Southern and Antarctic Territories, France: New Caledonia, Iraq, Malta, Mauritania, Montenegro, Myanmar, Netherlands: Aruba, Pakistan, Papua New Guinea, Seychelles, Singapore, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: Gibraltar); **Convention No. 23** (Djibouti, France: French Southern and Antarctic Territories, France: New Caledonia, Mauritania, Montenegro, Netherlands: Aruba, Russian Federation, Ukraine, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: Gibraltar, Uruguay);

**Convention No. 53** (Brazil, Bulgaria, Croatia, France, France: French Southern and Antarctic Territories, Ireland, Republic of Korea, Liberia, Malta, Mauritania, Mexico, Montenegro, New Zealand, Norway, Panama, Peru, Philippines, Serbia, Slovenia, Spain, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Turkey); **Convention No. 55** (Belgium, Belize, Bulgaria, Djibouti, Egypt, France, Liberia, Luxembourg, Mexico, Morocco, Peru, Spain, Turkey); **Convention No. 56** (Algeria, Belgium, Bulgaria, Croatia, Djibouti, Luxembourg, Mexico, Montenegro, Serbia, Slovenia, The former Yugoslav Republic of Macedonia); **Convention No. 58** (France: French Southern and Antarctic Territories, Lebanon, Mauritania, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: Gibraltar, United Kingdom: St Helena); **Convention No. 68** (France, France: French Southern and Antarctic Territories, Guinea-Bissau, Turkey, United Kingdom); **Convention No. 69** (France, France: French Polynesia, France: French Southern and Antarctic Territories, France: New Caledonia, Ghana, Guinea-Bissau, Luxembourg, Netherlands: Aruba, Turkey); **Convention No. 71** (Bulgaria, Djibouti, Italy, Netherlands, Norway, Panama); **Convention No. 73** (Azerbaijan, Djibouti, France, France: French Polynesia, France: French Southern and Antarctic Territories, France: New Caledonia, Guinea-Bissau, Lebanon, Luxembourg, Malta, Russian Federation, Seychelles, The former Yugoslav Republic of Macedonia, Turkey); **Convention No. 74** (Angola, China: Macau Special Administrative Region, Croatia, France, France: French Southern and Antarctic Territories, Ghana, Ireland, Italy, Lebanon, Malta, Mauritius, Montenegro, Netherlands, Netherlands: Aruba, Netherlands: Curaçao, New Zealand, Panama, Poland, Portugal, Serbia, Slovenia, Spain, The former Yugoslav Republic of Macedonia, United Kingdom, United Kingdom: Jersey, United States, United States: Guam, United States: Puerto Rico, United States: United States Virgin Islands); **Convention No. 91** (Croatia, Guinea-Bissau, Slovenia); **Convention No. 92** (Azerbaijan, France: French Southern and Antarctic Territories, Ghana, Guinea-Bissau, Iraq, Ireland, Luxembourg, The former Yugoslav Republic of Macedonia, Turkey, Ukraine); **Convention No. 108** (Guinea-Bissau, Islamic Republic of Iran, Iraq, Malta, Solomon Islands, Turkey, United Kingdom: Anguilla, United Kingdom: Bermuda, United Kingdom: Gibraltar); **Convention No. 133** (Azerbaijan, Côte d'Ivoire, France: French Southern and Antarctic Territories, Guinea, Luxembourg, Nigeria, Turkey, Ukraine, United Kingdom: Bermuda, United Kingdom: Gibraltar); **Convention No. 134** (France, France: French Southern and Antarctic Territories, Kenya, Mexico, Norway, Russian Federation, Spain, Tajikistan, United Republic of Tanzania, Turkey, Uruguay); **Convention No. 145** (Brazil, Costa Rica, Egypt, Finland, France, France: French Polynesia, Hungary, Iraq, Italy, Morocco, Netherlands, Netherlands: Aruba, Norway, Portugal, Spain, Sweden); **Convention No. 146** (France, France: French Southern and Antarctic Territories, Iraq, Netherlands: Aruba, Nicaragua, Portugal, Turkey); **Convention No. 147** (Azerbaijan, Barbados, Croatia, France: French Southern and Antarctic Territories, Lebanon, Luxembourg, Malta, Morocco, Netherlands: Aruba, Russian Federation, Trinidad and Tobago, United Kingdom: Bermuda, United Kingdom: Gibraltar, United States: Northern Mariana Islands); **Convention No. 163** (Czech Republic, France, Guatemala, Mexico, Russian Federation, Slovakia, Switzerland); **Convention No. 164** (France, Mexico, Slovakia, Spain, Turkey); **Convention No. 165** (Philippines, Spain); **Convention No. 166** (France, Guyana, Luxembourg, Turkey); **Convention No. 178** (Fiji, France, Luxembourg, Nigeria, United Kingdom: Isle of Man); **Convention No. 179** (Croatia, Ireland, Nigeria); **Convention No. 180** (France, Ireland, Luxembourg, Malta, Slovenia, Spain); **Convention No. 185** (Madagascar).

The Committee noted the information supplied by the following State in answer to a direct request with regard to **Convention No. 68** (Egypt).

## Fishers

### Liberia

#### **Minimum Age (Fishermen) Convention, 1959 (No. 112) (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. Scope of application.* The Committee notes with *regret* that, over 50 years after its ratification, the Convention has still not been given effect in its entirety. It recalls that, under the terms of *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters. Only fishing in ports or in river estuaries, and individuals fishing for sport or recreation, are excluded from the scope of the Convention. However, the Committee observes that section 326 of the Maritime Act of Liberia, which establishes the minimum age for work on board vessels (including fishing vessels) at 15 years, only applies to vessels registered under the Act. Section 51 of the Maritime Act limits the registration procedure to certain types of vessels. This procedure is open to any vessel under 20 tonnes, the owner of which is a national of Liberia and which only makes voyages between Liberian ports or between Liberia and other West African countries, as well as any vessel of over 1,600 tonnes engaged in international trade, the constructor or owner of which is a national of Liberia. Furthermore, by virtue of section 290 of the Maritime Act, Chapter 10 of the Act, which covers seafarers and includes, among its provisions, the rules respecting minimum age, only applies to persons engaged on board vessels of at least 75 tonnes. The Committee wishes once again to draw the Government's attention to the fact that the scope of the provisions of the national legislation respecting the minimum age required for work on board fishing vessels is much narrower than that of the Convention. **The Committee urges the Government to adopt the necessary measures without further ado to bring its legislation into conformity with the Convention on this point.**

Finally, the Committee understands that the tripartite representatives of Liberia participated in a subregional workshop organized in Accra (Ghana) in October 2009 which was intended to promote the ratification of the Work in Fishing Convention, 2007 (No. 188). **It requests the Government to keep the Office informed of any measures taken, in the context of the follow-up to this workshop, with a view to the ratification of Convention No. 188.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

#### **Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Nature of medical examination and particulars to be included in the medical certificate.* For many years the Committee has asked the Government to indicate whether certain provisions applicable to merchant vessels, i.e. the Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(2), also apply to fishing vessels. **The Committee once again expresses the hope that the Government will provide full explanations regarding the applicability of the Liberian maritime laws and regulations to the medical examination of fishers. The Government is requested to indicate whether consultations with the fishing-boat owners' and fishers' organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate, as required by Article 3(1) of the Convention, and to provide particulars on how the age of the person to be examined and the nature of the duties to be performed are taken into account in prescribing the nature of the examination as required by Article 3(2).**

**In addition, while noting the Subregional Seminar on the promotion of the Work in Fishing Convention, 2007 (No. 188), which was held in Accra in 2009 with the participation of tripartite representatives from Liberia, the Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

#### **Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 3 to 9 of the Convention. Fishers' articles of agreement.* 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.**

**In addition, while noting the Subregional Seminar on the promotion of the Work in Fishing Convention, 2007 (No. 188), which was held in Accra in 2009 with the participation of tripartite representatives from Liberia, the Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Sierra Leone

### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1967)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Articles 3 to 15 of the Convention. Certificates of competency.* The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. The Government stated in its report communicated in 2004 that progress was being made in this respect and that a national workshop on the formulation of fishing policies was organized. The Government also indicated that copies of the new legislation and the texts defining the new policies would be communicated to the ILO as soon as they were adopted. **The Committee asks the Government to provide detailed information on the outcome of the national workshop on the formulation of fishing policies and on any concrete progress made in respect of the adoption of national laws implementing the Convention.** The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. **Finally, the Committee requests the Government to supply up-to-date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet and the approximate number of fishers gainfully employed in the sector.**

The Committee also draws the Government's attention to the new Work in Fishing Convention, 2007 (No. 188), which revises and updates most ILO instruments on fishing. **The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Spain

### **Fishermen's Articles of Agreement Convention, 1959 (No. 114)** (ratification: 1961)

*Articles 3 to 11 of the Convention. Fishers' articles of agreement.* The Committee notes that the Government, without replying to its previous comment concerning gaps in Act No. 8/1980 of 10 March 1980 issuing general regulations for workers, confirms that the regulations applying to fishers' articles of agreement are identical to those in force for other workers. The Committee understands that, in a 1996 socio-economic analysis of the fishing sector (Report 7/1996 of 27 November 1996), the Economic and Social Council noted the absence in the Spanish legal system of fishing-specific regulations concerning employment contracts. It also understands that a number of Spanish academics have pointed out the gaps in the Spanish social legislation – particularly with respect to fishers' articles of agreement, following the repeal of ordinances on work in fishing. The Committee can only express its concern at the absence, in Act No. 8/1980, of provisions giving effect to the main requirements of the Convention, such as the written form of the articles of agreement (*Article 3*), the particulars that must be contained in this agreement (*Article 6*) and the possibility for the fisher to obtain information on board about the conditions of employment (*Article 8*). **Consequently, the Committee requests the Government to provide a detailed report describing the way in which the implementation of the various provisions of the Convention are ensured and, if applicable, the measures it envisages taking in order to guarantee their full application. The Government is also requested to submit a copy of collective agreements applicable to the fishing sector that might contain provisions relating to the articles of agreement.**

Finally, the Committee draws the Government's attention to the Work in Fishing Convention, 2007 (No. 188), which revises in an integrated manner most of the existing ILO fishing instruments and sets out a new comprehensive standard on fishers' working and living conditions. In particular, Articles 16 to 20 and Annex II of Convention No. 188 draw upon and expand on the provisions of Convention No. 114. **The Committee accordingly invites the Government to consider favourably the ratification of Convention No. 188 and requests it to keep the Office informed of any decision taken in this regard.**

*[The Government is asked to reply in detail to the present comments in 2012.]*

## Trinidad and Tobago

### **Fishermen's Competency Certificates Convention, 1966 (No. 125)** (ratification: 1972)

*Articles 4 to 15 of the Convention. Fishermen's certificates of competency.* The Committee recalls that for a considerable number of years it has been commenting on the absence of laws and regulations giving effect to the requirements of the Convention. In its last report, the Government indicates that draft Safety of Fishing Vessel Regulations have been prepared under section 87(1) of the Shipping Act No. 24 of 1987. These regulations, which were expected to be enacted in 2011, will establish, among other matters, standards for the manning of fishing vessels with trained and certified officers. **The Committee hopes that upon completion, the new legislation will fully comply with the specific requirements of the Convention regarding fishers' minimum age, professional experience and examinations so**

*that national legislation and practice be brought at last in line with the certification standards set out in the Convention. The Committee would appreciate receiving a copy of the Safety of Fishing Vessel Regulations once they have been issued.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 112** (Australia, Australia: Norfolk Island, Ecuador, Guatemala, Mauritania, Mexico, Peru, Suriname); **Convention No. 113** (Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Cuba, Ecuador, France, Guatemala, Guinea, Montenegro, Netherlands, Netherlands: Aruba, Panama, Peru, Poland, Russian Federation, Serbia, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Tunisia, Ukraine, Uruguay); **Convention No. 114** (Belgium, Bosnia and Herzegovina, Costa Rica, Cyprus, Ecuador, Guatemala, Guinea, Mauritania, Netherlands: Aruba, Panama, Peru, Serbia, Slovenia, The former Yugoslav Republic of Macedonia, Tunisia, United Kingdom: Guernsey); **Convention No. 125** (France, France: French Polynesia); **Convention No. 126** (Denmark, Denmark: Greenland, France, Greece, Serbia, Slovenia, Tajikistan, The former Yugoslav Republic of Macedonia, United Kingdom).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 113** (Germany, Norway); **Convention No. 114** (Germany, Italy, Netherlands, United Kingdom, Uruguay); **Convention No. 126** (Germany, Greece, Netherlands); **Convention No. 136** (Greece).

## Dockworkers

### Algeria

#### **Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1962)**

The Committee notes with *regret* that the Government's report of 2011 contains no new information and is virtually identical with the one which was sent in 2008. It must therefore repeat its previous observation which read as follows:

*Articles 12, 13 and 15 of the Convention. Application of the Convention.* The Committee notes that the Government report does not contain any reply to the Committee's comments despite its repeated requests over a number of years and that the Government still does not appear to have taken the necessary steps to adopt the legislative text concerning ports and dockers pursuant to Act No. 88-07 as planned. However, the Committee notes the Government's efforts to improve the situation relating to occupational safety and health by ratifying the Occupational Safety and Health Convention, 1981 (No. 155). It notes that this Convention applies to all branches of economic activity, including dock enterprises and dockworkers, and that it therefore constitutes a general context for the application of Convention No. 32. However, the Government continues to be bound by its obligation to adopt specific legislative provisions giving full effect to the provisions of Convention No. 32. **The Committee requests the Government once again to take the necessary steps in the very near future to give full effect, in law and in practice, to the provisions of the present Convention, particularly Articles 12, 13 and 15, and to send copies of all relevant legislative texts once they have been adopted.**

*Part V of the report form. Application in practice. Article 17(2). Labour inspection.* The Committee notes the lack of information concerning the application in practice of the Convention. **With specific reference to the provisions of Article 17(2) of the Convention, the Committee requests the Government to send its general observations on the manner in which the Convention is applied, including, for example, extracts of the reports of the inspection services, up-to-date statistical information on the number of inspection visits carried out, the number of infringements reported and also the number, nature and causes of accidents recorded, etc.**

The Committee takes this opportunity to remind the Government that the ILO Governing Body invited the States parties to Convention No. 32 to envisage ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which revises Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99–101). Ratification of Convention No. 152 would entail *ipso jure* the immediate denunciation of Convention No. 32. The Committee would also like to draw the Government's attention to the code of practice recently adopted by the ILO entitled Safety and health in ports (Geneva, 2005), which is available, inter alia, on the ILO website: [www.ilo.org/public/english/protection/safework/cops/english/index.htm](http://www.ilo.org/public/english/protection/safework/cops/english/index.htm). **The Government is requested to keep the Office informed of all progress made in this field.**

**The Committee wishes to invite the Government to request ILO assistance with the view to the effective application of the Convention. The Committee hopes that such technical assistance can be carried out and asks the Government to provide information on any steps taken in this respect with the relevant ILO bodies.**

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

*[The Government is asked to reply in detail to the present comments in 2012.]*

### Congo

#### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information provided by the Government according to which a national advisory technical committee on occupational safety and health has been set up pursuant to Decree No. 2000-29 of 17 March 2000 which gives effect to *Article 7 of the Convention*. It also notes, however, that the information requested concerning *Articles 2, 4, 5, 6 and 11–36* are to be provided by the Government subsequently. As regards the further information the Committee has requested the Government to provide, the Committee notes that the Government has either not replied to questions raised by the Committee in its previous comments or it has provided information that is applicable to enterprises in general. The Government appears to imply that dockworkers should be treated in the same manner as other workers and ports be treated like any other enterprise. **With reference to Articles 4–7, the Committee wishes to recall that the Government is required to take measures to give effect to the specific provisions in the Convention. The Committee must therefore once again repeat its previous observation which read as follows:**

The Committee draws the Government's attention to the absence of specific health and safety provisions for dock work. The Committee noted previously that a draft Order on safety and health in dock work had been prepared by the technical departments of the Ministry of Labour and Social Security. In its report for the period ending 30 June 1993, the Government repeated this information and added that the draft had been submitted for adoption. The Committee hopes that the provisions of this text will ensure the application of the following provisions of the Convention: *Article 4* (objectives and areas to be covered by measures to be established by national laws and regulations, in accordance with *Part III* of the Convention); *Article 5* (responsibility of employers, owners, masters or other persons as appropriate, for compliance with safety and health measures; duty of employers to collaborate whenever two or more of them undertake activities simultaneously at one workplace); *Article 7* (consultation of and collaboration between employers and workers). **It asks the Government to provide a copy of the above Order as soon as it has been adopted.**

In its previous reports, the Government referred to Orders No. 9033/MTERFPPS/DGT/DSSHT on the organization and functioning of the socio-medical centres of enterprises in the People's Republic of the Congo and

No. 9034/MTERFPPS/DGT/DSSHT laying down the procedures for the establishment of socio-medical centres which are common to several enterprises in the People's Republic of the Congo. *Since these texts have not been received, the Committee would be grateful if the Government would provide a copy of them.*

*Article 6.* The Committee notes from the Government's report for the period ending 30 June 1993 that briefings are to be organized to inform workers about safety provisions in the place of work at which heads of establishment can alert them about the dangers arising from the use of machinery and the precautions to be taken. *The Committee asks the Government to provide a copy of the provisions concerning the organization of these briefings and the measures taken to give effect to paragraph 1(c) of this Article.*

*Article 8.* The Committee notes the Government's statement in its report for the period ending 30 June 1993 that all safety measures are provided for in Chapter II of Order No. 9036 of 10 December 1986. The Committee notes that the above part of the Order provides for general protective measures whereas the Convention requires the adoption of measures specific to dock work. *It asks the Government to indicate which provisions require the adoption of effective measures (fencing, flagging or other suitable means including, when necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.*

*Article 14.* The Committee notes from the Government's report for the period ending 30 June 1993 that the application of this Article is ensured by labour inspectors by means of inspections in enterprises. *The Committee asks the Government to indicate which provisions ensure that electrical equipment and installations are so constructed, installed, operated and maintained as to prevent danger, and which standards for electrical equipment and installations have been recognized by the competent authorities.*

*Article 17.* The Committee notes that section 41 of Order No. 9036, cited by the Government in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention, includes specific measures only for the use of lifting gear in particular weather conditions (wind). *The Committee asks the Government to indicate the measures taken to ensure that the means of access to a ship's hold or cargo deck are in conformity with the provisions of this Article.*

*Article 21.* The Committee notes the provisions of sections 47–49 of Order No. 9036 which the Government cites in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention. It notes that the above sections provide for protective measures for some machinery or parts of machines which can be dangerous. *It asks the Government to indicate the measures taken or envisaged to ensure that all lifting appliances, every item of loose gear and every sling or lifting device forming an integral part of a load comply with the provisions of the Convention.*

*Articles 22, 23, 24 and 25.* Further to its previous comments, the Committee notes that, in its report for the period ending 30 June 1993, the Government refers to the certification of machinery, including lifting appliances, which is conducted by technical inspectors and advisory bodies, as a general measure to ensure that lifting appliances are sound and in proper working order. However, these Articles of the Convention provide for a set of measures to ensure that appliances and loose gear can be used by workers without any danger or risk: testing of all lifting appliances and loose gear (every five years in ships); thorough examination (at least once every 12 months); regular inspection before use. *The Committee asks the Government to indicate the provisions requiring the above measures to be taken in respect of all lifting appliances – on shore and on board – and of all loose gear.*

*Article 30.* The Committee notes that section 43 of Order No. 9036 referred to by the Government, does not relate to the attaching of loads to lifting appliances. *It asks the Government to indicate which provisions relate to this matter.*

*Article 34.* *The Committee asks the Government to provide a copy of the instructions concerning the wearing of personal protective equipment referred to by the Government in its report for the period ending 30 June 1993.*

*Article 35.* Further to its previous comments, the Committee notes that section 147 of the Labour Code regulates the evacuation of injured persons who are able to be moved and who are not able to be treated by the facilities made available by the employer. It notes that the Government also refers in its reports to Orders Nos 9033 and 9034 mentioned in paragraph 2 above. *The Committee asks the Government to indicate the measures taken either under the above texts, or otherwise, to ensure that adequate facilities, including trained personnel, are available for the provision of first aid.*

*Article 37(1).* The Committee recalls that, under this provision of the Convention, committees which include employers' and workers' representatives must be formed at every port where there is a significant number of workers. *Recalling the Government's statement that the health and safety committees provided for by the law have not been formed, the Committee asks the Government to indicate the measures taken to ensure the establishment of such committees in ports with a significant number of workers.*

*Article 38(1).* The Government indicates in its report that, in the absence of health and safety committees, instruction and training are entrusted to a specialist in the matter within the enterprise. *The Committee asks the Government to provide information on the activities of these specialists.*

*Article 39.* The Committee notes that section 61 of Act No. 004/86 of 25 February 1986 establishing the Social Security Code gives effect in part to this Article of the Convention. *It asks the Government to indicate the provisions which ensure that this Article is applied to occupational diseases.*

*Article 41(1)(a).* Further to its previous comments, the Committee notes that the Government refers to Order No. 9036 of 10 December 1986 as being the text which lays down general obligations for the persons and bodies concerned with dock work (ports being treated as any industrial enterprise) and that no specific measures have been taken in respect of dock work. *The Committee asks the Government to indicate the measures taken or envisaged to set out the specific obligations taken for the persons and bodies concerned with dock work.*

*In the absence of any information on the application of the above provisions, the Committee asks the Government to indicate the specific measures which give effect to the following provisions of the Convention:*

- *Article 9(1) and (2).* Safety measures with regard to lighting and marking of dangerous obstacles.
- *Article 10(1) and (2).* Maintenance of surfaces for traffic or stacking of goods and safe manner of stacking goods.
- *Article 11(1) and (2).* Width of passageways and separate passageways for pedestrians.
- *Article 16(1) and (2).* Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.
- *Article 18(1)–(5).* Regulations concerning hatch covers.

- *Article 19(1) and (2).* Protection around openings and decks, closing of hatchways when not in use.
- *Article 20(1)–(4).* Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.
- *Article 26(1)–(3).* Members' mutual recognition of arrangements for testing and examination.
- *Article 27(1)–(3).* Marking lifting appliances with safe working loads.
- *Article 28.* Rigging plans.
- *Article 29.* Strength and construction of pallets for supporting loads.
- *Article 31(1) and (2).* Operation and layout of freight container terminals and organization of work in such terminals.
- *Article 38(2).* Minimum age limit for workers operating lifting appliances.

*Hoping that the Government will make every effort to take the necessary measures in the very near future, the Committee invites the Government to solicit technical assistance of the ILO to resolve any problems related to the application of this Convention.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guinea

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 6(1)(a) and (b) of the Convention. Measures to ensure the safety of portworkers.* The Committee notes that the Government indicates that sections 170 and 172 of the Labour Code, establishing that workers have a general obligation to use health and safety equipment correctly and that those responsible for workplaces have an obligation to organize appropriate practical training with regard to safety and hygiene issues for the benefit of workers, ensure the application of *Article 6(1)(a) and (b)* of the Convention. *The Committee requests the Government to provide detailed information on the measures taken to ensure that these general provisions are applied to portworkers.*

*Article 7. Consultation with employers and workers.* The Committee notes the information provided by the Government with regard to sections 288 and 290 of the Labour Code, which provide for the establishment of a consultative committee which is to be responsible, amongst other things, for issuing opinions and formulating proposals and resolutions on labour legislation and regulations and social laws. *The Committee requests the Government to provide information on the application, in practice, of the measures taken to ensure the collaboration between workers and employers provided for in Article 7 of the Convention.*

*Article 12. Fighting fire.* The Committee notes that sections 71, 72 and 76 of the Merchant Marine Code briefly touch upon the question of fire protection systems and equipment, but only in the context of inspections of vessels engaged in international voyages. *The Committee requests the Government to take the measures necessary to ensure that appropriate and sufficient firefighting measures are made available for use wherever dock work is carried out.*

*Article 32(1). Dangerous cargoes.* The Committee notes that section 174 of the Labour Code states, in general, that vendors or distributors of dangerous substances, as well as those responsible for workplaces where such substances are used, are required to mark and label them. *The Committee requests the Government to indicate the measures taken to ensure the application, in practice, of this provision, which is general in scope, in the dock sector.*

The Committee notes that the information provided by the Government in its report of May 2005 on the application of *Articles 16, 18, 19(1), 29, 30, 35 and 37*, are general in nature and do not permit the Committee to ascertain whether they are being applied in the dock sector. *The Committee requests the Government to provide further information on the measures taken to ensure the application of Articles 16, 18, 19(1), 29, 30, 35 and 37, of the Convention and to attach copies of the relevant national laws and regulations.*

The Committee notes that the Government's report does not contain replies to its request for further information contained in the previous direct request regarding the application of *Articles 19(2) and 33*, of the Convention. *The Committee requests the Government to provide the information requested, as well as information on the measures taken with regard to the application of these Articles.*

The Committee notes that, in its report, the Government does not provide any clarification with regard to the measures taken to give effect to *Article 6(1)(c)*, and *Articles 2, 8, 9, 10, 11, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32(2–5), and 34* of the Convention. *The Committee requests the Government to take measures to ensure the application of these Articles and to keep the Committee informed of any action taken in this regard.*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Guyana

### **Dock Work Convention, 1973 (No. 137) (ratification: 1983)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

The Committee noted the Government's report for the period ending September 2002, according to which there has been no change in the application of the Convention. *It requests the Government to give a general appreciation on the manner in which the Convention is applied in practice, including for instance extracts from the reports of the authorities entrusted with*

*the application of the laws and regulations, and the available information on the numbers of dockworkers on the registers of workers in docks maintained in accordance with Article 3 of the Convention and of any variations in their numbers (Part V of the report form).*

## Peru

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1988)**

*Legislation.* The Committee notes the detailed report provided by the Government and the attached legislation, and particularly Directorial Resolution Agreement No. 010-2007-APN/DIR, the national standard on occupational safety and health in ports and the guidance on obtaining the Safety Certificate in a port installation. The Committee notes that this Resolution establishes the requirement for port administrations and dockworkers to obtain the Certificate of Port Safety and its annual renewal, with the objective of ensuring that the activities undertaken in ports and port installations are carried out within the safety parameters established by national and international standards. The Committee notes with **interest** that the Resolution sets out and defines principles that are inherent to the modern approach to occupational safety and health, such as the promotion of a culture of the prevention of occupational hazards, the components of the continuous improvement methodology, the principles of consultation, participation and information, among others. It also notes with **interest** that section 46 of the Resolution referred to above establishes the requirement to conduct a risk assessment once a year as a minimum and that section 62 of the same Resolution requires the port administration to adopt measures allowing workers to interrupt their work in the case of imminent danger and, where necessary, to immediately leave the place in which their work is performed. Nevertheless, it notes that the Directorial Resolution, in relation to certain technical regulations, refers to the rules of each port, which have to cover such matters if certification is to be obtained. **The Committee requests the Government to provide information on the manner in which it is ensured that the rules of port installations are in conformity with the Convention, prior to the granting of the Certificate of Port Safety.**

*Article 7(1) of the Convention.* *Adoption of legislative measures in consultation with the organizations of employers and workers concerned.* The Committee notes that the Government has not provided information on the consultations envisaged in this Article of the Convention. **The Committee requests the Government to provide information on the consultation mechanisms with the organizations of employers and workers concerned. Furthermore, noting the intense process of the drafting of legislation in this field, such as, for example, a new law on dock work, the Committee requests the Government to provide information on the consultations held in this respect with the organizations of employers and workers concerned.**

The Committee is raising other points in a request addressed directly to the Government.

## Russian Federation

### **Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 2004)**

The Committee notes that the information contained in the Government's report contains only a very brief affirmation that the terms of the Convention continue to be applied based on relevant legislative documents and standards. Neither this nor the government's previous reports in 2007 and 2009 constitute the detailed report based on the report form for this Convention that the Government is required to submit following its ratification of this Convention in 2004. With reference to its previous comments, the Committee also notes that no further information is provided this year as regards the technical standard the Government indicated in 2009 was being developed in order to ensure safety in maritime transport and in related infrastructure. The Committee reiterates its hope that the draft technical standard will be adopted soon and that it will give full effect to the Convention. **The Committee requests the Government to submit a copy of the draft technical standard giving effect to the Convention as soon as it has been adopted and reiterates its request to the Government to supply a detailed report on the application of the Convention in conformity with the report form indicating in detail how effect is given to the provisions of the Convention.**

*[The Government is asked to report in detail in 2012.]*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (The former Yugoslav Republic of Macedonia); **Convention No. 32** (Nigeria, Tajikistan, The former Yugoslav Republic of Macedonia); **Convention No. 152** (Peru).

## Indigenous and tribal peoples

### Argentina

#### **Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2000)**

The Committee notes the observations of the General Confederation of Labour (CGT), of 29 October 2010, on pending issues, and particularly on the need to establish appropriate consultation machinery, and the observations of the Confederation of Workers of Argentina (CTA), of 31 August 2011, which refer to pending matters, and particularly the use of violence for the removal of indigenous communities from the lands which they traditionally occupy. **The Committee requests the Government to provide its comments on these matters.**

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO).* In previous comments, the Committee noted the report adopted in November 2008 by the Governing Body (GB.303/19/7) on the representation made under article 24 of the ILO Constitution by the Educational Workers' Union of Río Negro (UNTER), in which the Governing Body examined matters relating to consultation at the national level, as well as the issues of consultation, participation and the performance of traditional activities by indigenous peoples in the province of Río Negro and requested the Government to:

- (a) continue making efforts to strengthen the Council for Indigenous Participation (CPI) and ensure that, when elections of indigenous representatives are held in all the provinces, all the indigenous communities and all institutions considered by the communities themselves to be representative are invited to participate;
- (b) carry out consultations with regard to the Bills referred to in paragraphs 12 and 64 of the report and to establish mechanisms to ensure that consultations with indigenous peoples take place whenever legislative or administrative measures that may directly affect them are being considered. The consultations should be carried out sufficiently early so as to be effective and meaningful;
- (c) ensure that, in implementing Act No. 26160, all communities and truly representative institutions of the indigenous peoples likely to be directly affected are consulted and able to participate;
- (d) ensure that, in accordance with the principle of concurrent powers of national and provincial authorities, effective consultation and participation mechanisms are established in the Province of Río Negro involving all the truly representative organizations of the indigenous peoples, as set out in paragraphs 75, 76 and 80 of the report of the Governing Body, in particular in the process of implementing national Act No. 26160;
- (e) in implementing Act No. 26160, to make substantial efforts, in consultation with and with the participation of the indigenous peoples of the Province of Río Negro to clarify: (1) the difficulties in the procedures for regularizing land, with a view to developing a rapid and accessible procedure that meets the requirements of *Article 14(3) of the Convention*; (2) the question of the levy for land use referred to in paragraph 92 of the report of the Governing Body; (3) any problems in obtaining legal personality; and (4) the issue of dispersed communities and their land rights; and
- (f) make efforts to ensure that measures are adopted in the Province of Río Negro, including interim measures, with the participation of the indigenous peoples involved, to ensure that indigenous stockbreeders have easy access to marks and signs certificates and carry on their activities in conditions of equality, and to strengthen that activity in accordance with the terms of *Article 23* of the Convention.

The Committee notes that, according to the CTA and the CGT, effect has not been given to the recommendations made by the tripartite committee.

The Committee notes that, with regard to the strengthening of consultation and participation machinery, the Government indicates that, with a view to strengthening the CPI and the participation of all indigenous communities and institutions considered representative by those communities, the communities included in the National Register of Indigenous Communities (RENACI) and in provincial registers were convened. According to the Government, communities which are not registered can also participate with the consent of the majority of the other communities. With a view to ensuring the transparency of the process, the National Institute for Indigenous Affairs (INAI) participates in community assemblies, and the processes of indigenous peoples for the election of their representatives are respected. Moreover, the representatives are provided with a sum of money so that they can travel in their communities and national meetings are organized in which the representatives of all indigenous peoples participate with a view to reaching agreements and setting priorities. Workshops and seminars have also been held.

With regard to the legislative bills that are under examination and consultation with indigenous peoples on that subject, the Committee notes that the Government referred, in the context of the representation, to a series of bills under examination, namely: the Bill amending the Mining Code with regard to the participation of indigenous communities; the Bill declaring the indigenous community property and emergency issue; the Bill establishing the intellectual property rights of indigenous peoples; the Bill to regulate relations between the authorities of the national and federal judicial systems and the authorities of indigenous peoples; the Bill establishing a mechanism for the consultation of indigenous peoples; the Bill establishing penal mediation as an alternative to resolving disputes arising from the penal system; the Indigenous Communities Property Regime: Emergency and Regulation, repealing sections 2, 4, 7, 11 and 12 of Act

No. 23302; and the Indigenous Communities Regime. In this respect, the Committee notes that, according to the Government, the Bills have not been examined, with the exception of those resulting in the approval of Act No. 26160, of 2006, declaring indigenous community property an emergency issue and therefore suspending temporarily the implementation of judicial decisions, procedural or administrative acts regarding the eviction or removal from lands traditionally occupied by indigenous communities registered in RENACI. The Act is also mandating INAI to carry out the technical and legal identification of the status of the land occupied by indigenous communities as to its ownership or possession. Decree Regulations No. 1122/07 and INAI Resolution No. 587/07 on the National Programme for the Identification of the Lands of Indigenous Communities were also enacted. The Government indicated that the approval of these pieces of legislation followed processes in which the representatives of CPI participated. With regard to the implementation of Act No. 26160, the Committee notes the Government's indication that indigenous communities participated in the drafting and implementation of the National Programme for the Identification of the Lands of Indigenous Communities referred to above.

With reference to the establishment of effective consultation and participation machinery in the province of Río Negro with all the truly representative organizations of indigenous peoples, the Government indicates that the Mapuche and Mapuche-Tehuelche peoples are organized through the Coordinating Committee of the Mapuche People's Parliament, which assesses and proposes candidates for the positions of advisers and presidents of the Council for the Development of Indigenous Communities (CODECI). The CODECI is a co-management body of the provincial State and the Mapuche people, which participates in the Río Negro Provincial Programme, particularly in the implementation of the Programme for the Identification of the Lands of Indigenous Communities (RETECI).

With regard to the identification of lands, in consultation with the indigenous peoples of the Province of Río Negro, and the difficulties involved in the certification of land, the Committee notes the indication by the Government that an agreement was concluded between the INAI and the CODECI and a budget allocated with a view to the implementation of the Provincial Land Identification Programme, with the identification of 126 communities. The Programme includes technical assistants of indigenous origin. The Government also refers to the various activities undertaken in the province with indigenous participation in 2009.

In relation to the measures adopted so that indigenous stockbreeders can have easy access to marks and signs certificates and exercise their activity under conditions of equality, the Committee notes the Government's indication that the INAI signed an agreement with the Province of Río Negro (Agreement No. 156/01) under the terms of which indigenous communities are registered as legal entities with the Directorate of Legal Personality and the Council for the Development of Indigenous Communities in the province. With reference to marks and signs, the Government indicates that the absence of regularization of land tenure of certain members of indigenous communities makes it difficult to grant them ownership of marks and signs, resulting in difficulties in the circulation of livestock for sale.

***Taking into account the information supplied, the Committee requests the Government to:***

- (i) continue taking the necessary measures to ensure that indigenous peoples are consulted in an appropriate manner whenever it is planned to adopt administrative or legislative measures that may affect them directly;***
- (ii) indicate whether the various Bills referred to above are still under examination or have been shelved and indicate any developments regarding those still under examination;***
- (iii) provide information on the impact in practice of the implementation of Act No. 26160 and the National Programme for the Identification of the Lands of Indigenous Communities, and particularly on the number of communities having benefited, and the land regularized;***
- (iv) continue providing information on the progress achieved in the process of land identification undertaken with the participation of the indigenous communities concerned and the difficulties encountered in that process, including the issues of levies for land use and dispersed communities and their land rights;***
- (v) indicate the number of indigenous communities registered, the number of pending registrations and any cases in which registration has been denied and the reasons for such denial; and***
- (vi) take the necessary steps for the adoption of measures, including transitional measures, in the Province of Río Negro, with the participation of the peoples concerned, so that indigenous stockbreeders can have access easily to marks and signs certificates and carry on their activities under conditions of equality, and to strengthen that activity in accordance with Article 23 of the Convention.***

***Eviction of communities.*** The Committee notes the observations of the CTA dated 31 August 2010 and 31 August 2011 and of the Association of Health Professionals of Salta (APSADES) dated 12 June 2009 concerning the eviction, sometimes with the use of violence, of indigenous communities, without taking into account Act No. 26160, which had suspended such evictions. The Committee notes that the CTA refers to evictions principally in Tucumán, Neuquén, Formosa and Chaco. In particular, it denounces the violent eviction of the Chuschagasta community in Tucumán on 12 October 2009, resulting in the death of a member of the council of elders and injuries to various other representatives, the eviction of the India Quilmes community, the eviction of the Paichil Antriao community (in respect of which the Inter-American Commission on Human Rights (IACHR) requested precautionary measures on 6 April 2011 (MC 269/08) and the violent eviction of the Toba-Qom de Navogoh La Primavera community in the Province of Formosa on

23 November 2010, during which two members of the community died. The Committee observes that the Government replied to these issues only in general terms in its report.

The Committee also notes that APSADES forwards a report issued by the National Aboriginal Pastoral Team (ENDEPA), which also refers to the eviction of communities from the lands they occupy and delays in certifying land tenure. ENDEPA also refers to a series of specific cases of violations of the rights of indigenous peoples, and particularly: the implementation of contaminating mining exploitation activities without consulting the indigenous peoples who are directly affected in the Province of Chaco; the assignment of ancestral lands as the property of a university in the Province of Misiones; mining exploitation in the Province of Jujuy and the Province of Chubut without prior consultation with the indigenous communities affected; and allegations of discrimination against members of indigenous communities. ENDEPA adds that, following the complaints made concerning all these allegations, the INAI initiated administrative procedure No. INAI-50395-2008. In this regard, the Committee notes that the Government confines itself in its reply to summarizing the allegations of ENDEPA, without giving a precise reply. ***Emphasizing the gravity of the allegations, the Committee requests the Government to:***

- (i) ***take the necessary measures to conduct investigations into the allegations of the violent eviction of the communities referred to and the death of members of the Chuschagasta indigenous community in Tucumán and the Toba-Qom de Navogh indigenous community in Formosa;***
- (ii) ***provide information on the progress made in the procedures relating to file No. INAI-50395-2008, referred to by ENDEPA, concerning the complaints related to the abovementioned acts and the eviction of the Paichil Antriao community; and***
- (iii) ***take measures, in consultation with the indigenous peoples affected, with a view to finding an appropriate solution to each of the disputes referred to, in accordance with Act No. 26160, which provides for the suspension of evictions.***

***Articles 2 and 33. Coordinated and systematic policy.*** In its previous comments, the Committee requested the Government to provide detailed information on the procedures for the election of indigenous representatives to the Coordination Council envisaged in Act No. 23302/85, and to indicate whether such procedures ensure that the indigenous peoples are able to elect their representatives without any interference. In this respect, the Committee notes the Government's indication that INAI Resolution No. 41/08 determines the procedures for the designation of indigenous representatives to the Coordination Council through regional community assemblies in which the highest community authorities and the representatives of each people participate. These representatives are elected by each community in accordance with their own procedures. The INAI provides support for these procedures, and the representatives' designations have to be ratified by means of a decree issued by the national executive power. With regard to the designation of members of the CPI, the Committee notes that, according to the CTA, they are elected by the provinces, instead of being elected by the communities, their functions are limited and they lack real participation in the decisions of the INAI. In this respect, the Committee notes the Government's indication that the CPI is composed of 100 representatives of over 30 peoples. The Committee notes that, according to the Government, the composition of CPI is due to be renewed in 2011 with the election of two representatives for each community of the same people in each province, to serve a three-year mandate. ***The Committee requests the Government to continue providing information on the activities of the Coordination Council, and particularly on the election of the representatives of indigenous peoples and the intervals between the meetings of the Council and its agenda. The Committee asks the Government to indicate the limits to the exercise of its powers when issuing the Decree of ratification of the election of the members of CPI. The Committee requests the Government to attach copies of the reports of the meetings of the Council. The Committee also asks the Government to indicate how indigenous participation councils take part in the decision-making process of INAI. Furthermore, observing that the Government has not provided the requested information on the distribution of responsibilities and the coordination mechanisms established between the Coordination Council and the Advisory Council (envisaged in Act No. 23302/85), on the one hand, and the CPI (envisaged in Act No. 26160) on the other, the Committee reiterates its request to the Government in this regard.***

***Articles 6 and 7. Consultation and participation.*** The Committee notes that, with regard to the Plan of Action on Participation and Consultation drawn up in a seminar/workshop held in May 2007, the Government indicates that the Directorate for the Affirmation of Indigenous Rights has been established, and that the appointment to the post will be made upon the proposal of indigenous organizations (National Decree No. 702/201). The Government adds that progress is being made in regulating the right to participation and consultation, for which purpose the INAI will establish a legislative assessment and drafting commission together with indigenous organizations and the CPI. ***The Committee requests the Government to provide information on any progress made in regulating the right to participation and consultation, and requests the Government to take the necessary measures to ensure that such regulations are in conformity with the Convention.***

***Observations made by the Educational Workers' Union of Río Negro (UNTER), dated 28 July 2008.*** The Committee notes that, in its observations, the UNTER refers to the following matters: the granting of hydrocarbon exploration and exploitation permits in the Province of Río Negro (the hydrocarbon-bearing fields of Neuqueu, Colorado del Ñirihuau and Cañadón Asfalto-Meseta de Somuncurá); the establishment of protected natural areas in the Province of Río Negro without having held consultations with the Mapuche peoples inhabiting the area; and the failure to recognize

the rights of the Mapuche communities and eviction from the lands they traditionally occupy (the Quintupuray and Lof Mariano Epulef communities). **The Committee regrets that the Government has not provided its comments on this subject, and requests it to do so without further delay.**

*Article 14. Lands.* The Committee previously requested the Government to provide information on the progress achieved and the difficulties encountered in the process of regularization of the lands traditionally occupied by indigenous peoples, in accordance with Act No. 26160 declaring the ownership and possession of traditionally occupied lands an emergency issue. In this respect, the Committee notes the Government's indication that: (1) the National Programme for the Identification of the Lands of Indigenous Communities (RETECI) has concluded seven specific agreements in various provinces, with a view to carrying out the technical and legal identification of the respective lands. In April 2010, the identification process was completed in the provinces of Córdoba, Entre Ríos, Tierra del Fuego, La Pampa and San Juan, and is awaiting implementation in the provinces of Mendoza, Neuquén, Misiones, San Luis, Formosa, Corrientes and La Rioja. The Government indicates that the implementation of the Programme has given rise to renewed disputes between the communities, on the one hand, and non-indigenous families, economic and local interests, on the other, which has resulted in reticence by provincial bodies in giving effect to it; (2) 13,460,000 hectares are to be identified, of which 4 million hectares have been registered or identified as indigenous lands prior to Act No. 26160, while 2,955,838 hectares have been identified as indigenous lands since the adoption of the Act; (3) Act No. 26554 extended both the time limits envisaged in Act No. 26160 for land identification and the period of suspension of evictions until November 2013, and increased the amount of the special fund to support the demarcation of lands by US\$30 million; (4) the Programme for the Regularization and Adjudication of the Lands of the Aboriginal Population of Jujuy (PRATPAJ) has regularized approximately 1,312,645 hectares. Referring to the provincial report, the Government provides detailed information on the manner in which those lands were distributed in the communities in the departments of Cochinoqa, Yavi, Susques, Tilcara, Humahuaca and Tumbaya, as well as information on pending procedures; and (5) Presidential Decree No. 700/2010 was issued ordering the establishment of a Legislative Analysis and Drafting Commission composed of representatives of the provincial governments, indigenous peoples and the CPI. The above Commission has prepared a preliminary draft Bill for the recognition of indigenous community possession and property. **The Committee requests the Government to continue providing information on:**

- (i) **the land regularization processes that have been carried out and are pending, the surface area covered and the beneficiary communities, as well as the difficulties encountered; and**
- (ii) **the progress made in the preparation and adoption of legislation to recognize indigenous community possession and ownership.**

The Committee is raising other matters in a request addressed directly to the Government.

## Plurinational State of Bolivia

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1991)

The Committee notes the observations of the International Trade Union Confederation (ITUC), of 9 September 2011, and the observations of the Bolivian Central of Workers (COB), of 12 October 2011, which were forwarded to the Government on 27 September and 14 October 2011, respectively. **The Committee will examine these observations together with any information the Government wishes to provide in that regard at its next session.**

## Brazil

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 2002)

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 the Constitution of the ILO).* The Committee notes the report of the tripartite committee (GB.304/14/7) set up to examine the representation made by the Union of Engineers of the Federal District (SENGE/DF), referring to Bill No. 62 of 2005 on the administration of public forests (PLC/62 2005) and alleging that the indigenous peoples were not consulted on the impact the adoption of the Bill would have on their rights. The Committee notes that in paragraph 62 of the abovementioned report, the tripartite committee recommended to the Governing Body that it approve the report and:

- (a) request the Government to adopt the measures needed to complement the consultation process concerning the impact of timber concessions envisaged in the Act concerning the administration of public forests on the indigenous people likely to be affected, taking into account the terms of Article 6 of the Convention and the Committee's conclusions set out in paragraphs 42–44 of the Report;
- (b) request the Government to adopt in particular the relevant regulatory and practical measures to implement the consultation process laid down in Article 15(2) of the Convention, including the procedural requirements stipulated in Article 6, before licences are granted for the timber exploration and/or exploitation envisaged in the Act concerning the administration of public forests;

- (c) request the Government to ensure that the consultation process required under Article 15 of the Convention is implemented in relation to the lands referred to in paragraph 52 of the Report, whatever their legal status may be, provided that they comply with the criteria of Article 13(2) of the Convention (lands which the peoples concerned occupy or otherwise use);
- (d) invite the Government, under the terms of Article 7(1) of the Convention, to guarantee the participation of the indigenous peoples in the formulation, implementation and evaluation of plans and programmes related to the logging activities referred to, including the determination of the land to be excluded under the terms of section 11(IV) of the Act concerning the administration of public forests;
- (e) request the Government, in accordance with Article 7(3) of the Convention, to ensure that studies are carried out, in cooperation with the peoples concerned, with a view to assessing the social, spiritual and environmental impact on the peoples concerning of the logging activities envisaged in the Act;
- (f) request the Government to ensure that the indigenous peoples affected by logging activities participate, whenever possible, in the benefits of such activities and receive fair compensation for any loss or damage they may sustain as a result of such activities;
- (g) request the Government to ensure that logging activities do not affect the rights of ownership and possession laid down in Article 14 of the Convention;
- (h) request the Government to adopt special measures to safeguard the persons, institutions, property, labour, cultures and environment of the peoples affected by logging activities;
- (i) recommend that the Government request ILO technical assistance and cooperation, if it considers it appropriate, in order to implement, in cooperation with the social partners, the recommendations set out in the present report, and to promote dialogue among the parties;
- (j) entrust the Committee of Experts on the Application of Conventions and Recommendations with following up the questions raised in this report with respect to the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169); and
- (k) make this report publicly available and close the procedure initiated by the representation of the complainant alleging non-observance by Brazil of the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Called on to follow up on the representation, the Committee observes that the Government has sent no information in this regard. ***The Committee therefore asks the Government to send detailed information on all the questions raised by the tripartite committee in its report of March 2009 (GB.304/14/7).***

*Article 1 of the Convention. Self-identification.* The Committee welcomes the Government's acknowledgement that the Convention applies in full to the Quilombola communities and in its report sends extensive and detailed information on programmes and policies intended to safeguard the cultural, social and economic integrity of these peoples. ***The Committee requests the Government to continue to provide information on these matters, including an evaluation of the practical impact of the programmes and policies, particularly their effects on the development of the Quilombola communities, specifying the number of Quilombola communities and its members covered.***

*Articles 6, 7, 15 and 16. Consultation and participation. Legislation.* In its previous comments, the Committee reminded the Government of the obligation to consult the peoples covered by the Convention whenever consideration is being given to legislative or administrative measures which may affect them directly, and asked it to examine the existing mechanisms for consultation and participation, in cooperation with the indigenous peoples. The Committee notes in this connection that, according to the Government, a tripartite dialogue has been initiated on the establishment of a mechanism for consultation. The Government indicates that although various state bodies already use consultation mechanisms, there is no uniformity in the scope of the consultations or the form they take. Since all sectors have recognized the need for such a mechanism, a seminar was planned for the purpose of drafting, with the participation of the indigenous peoples, a proposal for a law or decree on consultation. ***The Committee requests the Government to take the necessary steps to ensure proper consultation and participation of the indigenous peoples in developing the consultation mechanism and to send information on all progress made in this regard. It also asks the Government to indicate how indigenous peoples are currently consulted whenever consideration is being given to specific legislative or administrative measures which may affect them directly.***

*Quilombola communities of Alcantara.* The Committee has for a number of years been referring to the situation faced by the Quilombola communities of the municipality of Alcantara (State of Maranhao) owing to the establishment of the Alcantara Launch Centre (CLA) and the Alcantara Space Centre (CEA) on land traditionally occupied by Quilombola communities, without them being consulted and without their participation (in 1980, 52,000 hectares were expropriated and in 1992 that figure increased to 62,000 hectares). According to the communities, there has never been an environmental impact study. The Committee noted that in the context of a Technical Study on Identification and Demarcation, in which the relevant Government institutions took part, it was established that 78,105.34 hectares would be considered as territory of the Quilombola communities, which would benefit 3,500 families. As the Committee understood matters, the land traditionally occupied by the communities would be reduced as a result. The Committee accordingly concluded that there was a dispute because part of the land claimed by the Quilombola overlapped with land assigned for the CLA and the CEA, to which the Quilombola are denied access on grounds of national security. The Committee notes that according to observations submitted on 6 November 2009 by the Union of Rural Workers of Alcantara (STTR) and the Union of Family Agriculture Workers of Alcantara (SINTRAF), the land demarcated did not include the 8,700 hectares on which the CLA is established. The abovementioned organizations also refer to the impact studies carried out to date with the participation of the indigenous peoples, but which have not been approved as yet by the competent authorities and which have not determined the damages to be awarded to the Quilombola communities. The Committee

notes in this connection the Government's statement that: (1) the land regularization process was remanded, in 2009, by the Procurator (AGU) to Federal Arbitration and Conciliation Chambers (CCAF) to settle the matter of overlapping interests between the regularization of Quilombola lands and the extension of the space launch area; (2) several Government entities have participated in these proceedings; (3) according to the Procurator, use of the land for launching could imply the relocation of 1,000 Quilombola families; (4) the Conciliation Chamber held seven meetings prior to October 2010 and suggested, following the finalization of the definitive proposal, holding a ministerial meeting and consulting the Alcantara Quilombola communities on the matter before referring its conclusions to the President of the Republic. The Government further indicates proceedings on the same matter are also pending at the Inter-American Commission on Human Rights (IACHR) and refers the Committee to the Government's submissions to that Commission.

The Committee observes that the information supplied by the Government, although referring to negotiations held between different state bodies (some of them responsible for indigenous affairs), affords no evidence that consultations were held at any stage with the representative organizations of the Quilombola communities about the establishment of the CLA and the CEA, neither on the identification or demarcation of lands, nor about the cooperation agreement concluded with Ukraine in 2002 and 2004 which involves an extension of the area in question, or about settlement of the dispute once it was realized that interests overlapped. There is also no evidence that participation of indigenous peoples was ensured in the decisions that led to the establishment of the CLA and the CEA or in the impact studies carried out in that connection. The Committee must recall that the Government has a duty under *Article 6(1)(a) and (2)* of the Convention to consult the peoples covered by the Convention through their representative institutions whenever consideration is being given to legislative or administrative measures which may affect them directly, so that agreement can be reached or their consent obtained regarding the measures proposed. The Government must also, pursuant to *Article 7(3)*, ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The Committee is bound to emphasize that the results of these studies are to be considered as fundamental criteria for the implementation of such activities. The Committee also refers the Government to *Article 16* of the Convention should the need arise to transfer indigenous peoples from the lands they occupy. **The Committee requests the Government to send information on the following:**

- (i) *all the consultations carried out to date in the context of the dispute regarding the lands traditionally occupied by the Quilombola communities of Alcantara and which were assigned for the establishment of the Alcantara Launch Centre (CLA) and Alcantara Space Centre (CEA), particularly the consultations held to follow up to the procedure undertaken by the Federal Conciliation and Arbitration Chamber.*
- (ii) *the manner in which participation by the Quilombola communities was ensured in the Technical Study on Identification and Demarcation of lands, and the progress made in identifying and demarcating lands traditionally occupied by Quilombola communities so as to guarantee the ownership and possession rights of these communities over their traditional lands and safeguard their right to use lands that are not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities; and provisional measures taken pursuant to Article 4 of the Convention to safeguard the persons, institutions, property, labour, cultures and environment of the communities concerned for as long as the recognition and demarcation of their lands is pending.*
- (iii) *the studies conducted, in cooperation with the peoples concerned, to evaluate the social, spiritual, cultural and environmental impact that the establishment and expansion of the CLA and the CEA may have on the communities affected, and the manner in which the Government guarantees the cultural, social and economic integrity of the Quilombola communities affected in reconciling the conflicting interests of the various parties involved in the matter at hand;*
- (iv) *the results of any actions pending in this matter before any national judicial authority; and*
- (v) *the decisions that imply relocation of the communities and the measures taken pursuant to Article 16 of the Convention.*

*Belo Monte hydroelectric plant.* The Committee notes the extensive information supplied by the Government on the Belo Monte hydroelectric plant construction project and the studies and participation processes carried out on the project's implementation. The Committee notes in particular that: (1) construction of the plant is part of the Government's commitment to reduce CO<sup>2</sup> emissions while maintaining energy production by means of renewable resources; (2) the licence was awarded after the environmental assessment by the competent bodies for implementation in the Xingu river basin; (3) the project is not located on indigenous lands, (as shown by the environmental assessment studies, and after the area to be flooded was reduced from 1,225 km<sup>2</sup> to 516 km<sup>2</sup> (-60 per cent), of which 228 km<sup>2</sup> constitute the current river bed); (4) it does not involve flooding of indigenous lands or relocation of indigenous peoples; (5) the entire process was monitored by the National Foundation for Indigenous Affairs (FUNAI), as well as other governmental bodies and the interested indigenous communities; (6) the Presidential Decree of 19 November 2009 established an Inter-Governmental Working Group (GTI) consisting of 19 federal bodies and entities in addition to 27 bodies of the state of Pará, municipalities and members of civil society, and the group drew up a Sustainable Regional Development Plan for the Xingu river basin. A bipartite committee was given responsibility for the monitoring of the implementation of the plan. The Committee is composed of 15 governmental representatives, and 15 representatives of civil society, two of whom are

representatives of indigenous peoples. The enterprise responsible for the construction is, according to the Government committed to the economic development of the Xingu river basin, thus investing 500 million reais in the plan.

As to effective participation by the indigenous peoples in the process, the Committee notes the Government's statement that: (1) on 25 May 2005 the environmental impact studies were made available for public consultation, and in 2009, hearings were held in several of the towns affected, and in 2008 and 2009, 20 workshops were organized in which local communities including indigenous peoples participated to allow them to clear up any doubts, and receive information on the project's content and effects and on mitigation measures; (2) the Brazilian Environmental Institute (IBAMA) conducted workshops with indigenous peoples between 19 August and 2 September 2009 to acquaint them with the conclusions of the environmental impact study in which 5,000 people participated, 200 of whom were "indigenous representatives"; (3) on the basis of FUNAI technical studies, Opinion No. 21/CNAM/CGPIMA was issued, analysing the licensing procedure and the impact studies, and imposing certain measures of support for the reinforcement of institutions and the development of communities affected by the project. Lastly, the Committee notes the Government's statement that a case pertaining to the project is pending before the Inter-American Commission on Human Rights. The Committee notes that in the course of these proceedings the Inter-American Commission issued precautionary measures on 1 April 2011 (MC-382-10). The Committee notes that the Inter-American Commission asked the Government to suspend the licensing process for the project and prevent the implementation of any works until certain minimum conditions are met, including that of fulfilling the obligation to undertake consultations in accordance with the American Convention on Human Rights. The Committee also notes that by a decision of 28 September 2011, a Federal Judge of Pará issued a provisional order prohibiting the builder from making any alterations to the river bed, whether dams or any other works that would interfere with the natural course of the river and adversely affect the fish fauna as a result. While noting the information supplied, the Committee points out that according to *Article 15* of the Convention, the Government has an obligation to consult the indigenous peoples before undertaking or permitting any programmes for the exploitation of resources pertaining to their lands. It further observes that the hydroelectric project could have consequences such as alteration of the navigability of rivers, flora and fauna and climate, that affect the peoples living on the lands where the project will be located, and which go further than the flooding of lands or the displacement of the peoples concerned. The Committee also recalls that, according to *Article 6*, governments shall consult the peoples concerned in particular through their representative institutions, rather than individuals, and that such consultations are to be undertaken in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. In its general observation of 2010, the Committee considered that consultation procedures and mechanisms should allow the full expression of the viewpoints of the persons concerned, in a timely manner and based on their full understanding of the issues involved, so that they may be able to affect the outcome and a consensus can be achieved, and be undertaken in a manner that is acceptable to all parties. In the same general observation, the Committee went on to say that ad hoc consultation on certain measures may not be sufficient to meet the Convention's requirements and that the communities affected should participate even in the preparation of environmental impact studies. On the strength of the documents and information supplied by the Government, the Committee takes the view that the procedures carried out so far, while extensive, fall short of the requirements set in *Articles 6* and *15* of the Convention as described above, and that there is no evidence that they enabled the indigenous peoples to take part effectively in determining their priorities, in accordance with *Article 7* of the Convention. **The Committee asks the Government as follows:**

- (i) **to take the necessary steps to carry out consultations with the indigenous peoples affected, in accordance with Articles 6 and 15 of the Convention, on the construction of the Belo Monte hydroelectric plant before the harmful effects of the plant may have become irreversible;**
- (ii) **in consultation with the indigenous peoples, to take measures to determine whether the priorities of these peoples have been respected and whether their interests will be adversely affected and to what extent, with a view to adopting appropriate mitigation and compensation measures;**
- (iii) **to provide information on the results of the proceedings pending before the Federal Judge of Pará.**

*Transposition of the San Francisco river.* The Committee notes the information supplied by the Government about the San Francisco River Integration Project, under which the San Francisco river is to be joined to the basins of the north-east region, and about FUNAI's participation in the process so that the indigenous peoples can be informed and have their say about the project and so that mitigation and compensation measures may be applied. The Committee notes that both IBAMA and FUNAI issued guidelines for the drafting of an environmental impact study in which they took account of the Truká, Tumbalalá, Pipipan and Kambiwá indigenous lands. The study identified problems and put forward proposals regarding health, education, infrastructure, economic activities and indigenous organization among other subjects. **Observing, however, that the Government provides no information on the consultations with indigenous peoples carried out in accordance with Articles 6 and 15 of the Convention, or on the participation of these peoples in the impact studies and various measures and programmes as provided by Article 7 of the Convention, the Committee requests the Government to send detailed information on these matters.**

*Proposal for a law on the construction of a hydroelectric plant on the Cotingo river in the indigenous territory of Raposa Serra Do Sol.* The Committee notes that, according to the Government, the debate on Legislative Decree No. 2540/06 on the dam project has resumed in Congress and the Bill is currently before the Mines and Energy Committee and will eventually be submitted to the Justice and Constitution Committee. Once approved by the

committees, it will be referred for examination to the plenary of Congress. The Government indicates that the Decree seeks to consolidate the right of indigenous peoples to consultation and participation in the discussions and provides for hearings for the indigenous communities affected, approval by Congress of agreements proposed to these communities, the establishment of measures to protect the physical, socio-economic and cultural integrity of the communities and for environmental impact studies to be carried out. According to the Government, FUNAI has defended before Congress the need for free and informed consultation with the indigenous peoples before there is a vote on the Bill. The Committee notes that according to the note issued by FUNAI, No. 560/COLIC/CGGAM/10, included with the Government's report, the indigenous peoples who occupy the areas affected by the project are opposed to it. The note emphasizes that the project would have irreversible effects on the peoples concerned and FUNAI accordingly advises consulting them. ***The Committee requests the Government to ensure that the indigenous peoples are fully consulted on the project and that their views, priorities and interests are taken into account when decisions are adopted. The Committee hopes that the peoples concerned will be able to cooperate in the impact studies to be carried out, in accordance with Article 7 of the Convention. It asks the Government to send detailed information on all progress in this regard.***

***Mining on the lands of the Cinta Larga indigenous people.*** The Committee notes that the Government states that the measures adopted are aimed at recovery of the traditional indigenous lands by expelling the invading prospectors and miners, in cooperation with the indigenous peoples. FUNAI operates controls in the area with the assistance of the affected peoples themselves and studies are being conducted on their development. ***The Committee requests the Government to continue to provide information in this regard.***

***Article 14. Lands. Situation of the Quilombola communities.*** The Committee notes that, according to the Government, pursuant to Ordinance No. 98/2007, which empowers the Palmares Cultural Foundation to set up an administrative procedure for certifying lands and to organize the land register of self identified indigenous or tribal communities, 1,635 land titles have been certified and awarded since 2003 to Quilombola communities. The National Institute on Settlement and Agrarian Reform (INCRA) has opened a total of 996 land titling processes since 2003. The Government also sends abundant information on the programmes and policies devised for these communities. ***The Committee asks the Government to continue to send information on land certification and titling processes for the Quilombola communities, pursuant to Article 14 of the Convention. It also asks the Government to provide information on the specific measures taken to safeguard the persons, institutions and assets of the peoples concerned pending the titling of the lands.***

***Situation of the Guaraní peoples in Mato Grosso do Sul. Guaraní Kaiowá peoples.*** In its previous comments, the Committee referred to the extremely serious situation facing the Guaraní Kaiowá communities with respect to the lands they traditionally occupy. The Committee notes that in observations dated 1 September 2010, the International Trade Union Confederation (ITUC) stated that procedures for demarcating the lands traditionally occupied by these peoples were slow and that soya and sugar cane cultivation was encroaching on these lands, causing the displacement of the peoples affected. The ITUC also refers to acts of violence – including murder – and threats against members of the Kaiowá community. It also refers to violations of the labour rights of indigenous peoples working on the plantations. The Committee notes in this connection that the Government acknowledges that disputes over lands have led to violations of human rights of the members of this community and indicates that since 2000, there have been 13 court cases pertaining to serious disputes between indigenous people and plantation owners. It also acknowledges their plight as victims of poverty. The Government states that the proceedings for the protection of indigenous lands in Mato Grosso are slow and that FUNAI is in the meantime dealing with emergency situations. It has established six working groups for identifying and demarcating traditional lands. On 24 April 2011, on the basis of Ordinance No. MJ/GMN 499 the Guaraní Kaiowá community were granted permanent possession of Jatayvary land in the municipality of Ponta Porã covering a surface area of 8,800 hectares. The Government indicates that these communities occupy some 30,000 hectares and that FUNAI will undertake the necessary measures to demarcate the indigenous land and obtain approval from the President, in accordance with the law. The Government also provides information on the various demarcation processes conducted so far. The Committee notes in this context the Report of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, which refers to the extreme poverty and marginalization plaguing the Guaraní Kaiowá peoples, the high infant mortality rate and acts of violence, including homicide, perpetrated against their members (A/HRC/12/34/Add.2, 26 August 2009). ***The Committee requests the Government to:***

- (i) take the necessary measures to secure, without delay and in collaboration with the indigenous peoples affected, the demarcation of the lands they traditionally occupy with a view to recognition of their rights to ownership and possession, in accordance with Article 14 of the Convention;***
- (ii) adopt the necessary specific measures to safeguard the persons, institutions and assets of the peoples concerned pending demarcation of the lands, including measures to provide adequate protection of the physical integrity and safety of the members of the communities against threats or acts of violence;***
- (iii) take the necessary steps to investigate the acts of violence reported; and***
- (iv) send information on all these matters.***

*The Committee also asks the Government to provide information on the situation of the Guaraní Mbyá community of Eldorado do Sul referred to in the observations of 19 September 2008 by the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), to which the Committee referred in earlier comments.*

## Colombia

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1991)

The Committee notes the Government's reply of 12 November 2010 pertaining to the observations of the Union of Workers of the National Mining Enterprise "Minercol Ltda." (SINTRAMINERCOL) dated 28 August 2010. The Committee also notes the Government's replies, received at the Office on 7 and 22 October and 2 November 2011, to the observations of 30 August 2010 and 30 August 2011 by the Single Confederation of Workers (CUT) and the Confederation of Workers of Colombia (CTC).

The Committee also notes the communications of 31 August 2011 from SINTRAMINERCOL.

It also takes note of the communication of 31 August 2011 from the National Employers Association of Colombia (ANDI). The Committee likewise notes the observations of 19 October 2011 from the International Organisation of Employers (IOE). ***The Committee requests the Government to send its comments thereon.***

The Committee also notes the report of the High-level Tripartite Mission that visited the country at the invitation of the Government in February 2011 and which refers, inter alia, to issues related to measures to combat violence.

In view of the abundant and detailed recent information supplied by the Government, particularly in the communications received on 22 October and 2 November, the Committee proposes to examine all the issues raised at its next session. At the present session, the Committee will examine only certain issues.

*Articles 2 and 3 of the Convention. Coordinated and systematic policy to protect the rights of indigenous peoples.* In its previous comments the Committee took note of the climate of violence in the country affecting among others the indigenous and Afro-Colombian communities. It notes that the observations submitted by the abovementioned organizations give an account of specific situations of violence, harassment and threats to indigenous peoples. The CUT and the CTC further assert that access to the legal system is difficult for indigenous peoples and that the response of state bodies to the complaints and offences committed against indigenous peoples is inadequate.

The Committee notes the information by the Government concerning the measures that it has been adopting to combat violence and, in particular, violence affecting the indigenous peoples. The Government also provides information on: (1) the preparation of national development plans; (2) the design and implementation of the Democratic Security Policy, in force since 2002; (3) the preparation of the National Action Plan for Human Rights; (4) the creation of the Committee on Regulation and Evaluation of Risks for Ethnic Groups, in which indigenous and Afro-Colombian representatives participate; and (5) the establishment of a programme for the protection of the fundamental rights of displaced indigenous women. The Government also refers to the preparation of a guarantee programme and to safeguard plans for 34 peoples in particular, which, according to the Constitutional Court (Resolution No. 4 of the Constitutional Court, noted by the Committee in its previous comments) are at serious risk of disappearing, both physically and culturally. The Government states that "a set of remedial and urgent actions, measures and instruments have been proposed to respond to the gravity of a situation in which the indigenous peoples of Colombia are facing impairment and massive violations of multiple rights and are in one way or another affected acutely by armed conflict and forced displacement".

The Committee also notes that the Government provides detailed information on the investigations conducted by the Office of the Public Prosecutor with respect to the concrete cases referred to by the CUT and the CTC in their communications and, in particular, that an investigation procedure has been devised for instances of violations of the rights of indigenous peoples, that measures were adopted to combat impunity in such cases which include the possibility of reopening closed cases. The Committee also notes the information provided concerning the appointment of dedicated human rights prosecutors. The Government provides detailed information on the number of cases referred to the human rights unit of the Office of the Public Prosecutor. The Committee notes with ***interest*** that fact-finding commissions to investigate homicides in various communities have been appointed, which have enabled the offenders to be identified and has moved investigation forward; and that care has been provided for 40,256 victims, which include numerous members of the indigenous peoples.

The Committee welcomes the adoption of the Act on victims and the restitution of lands (Act No. 1448 of 10 June 2011), the objective of which is to compensate, restore and indemnify victims of the armed conflict in Colombia. The Committee also notes the Government's indication that a Decree is being drafted to implement the Act, in consultation with indigenous peoples. ***The Committee hopes that the Decree will be in conformity with the Convention. It asks the Government to provide information in this regard.***

While acknowledging the efforts made by the Government to improve the situation of violence in general and in particular against indigenous peoples, including their leaders, the Committee notes with ***concern*** that, according to the observations submitted by the abovementioned organizations and in view of the measures that the Government has had to

take, the situation continues to be serious. *The Committee accordingly requests the Government to continue its efforts in a coordinated and systematic manner, to ensure protection of the physical, social, cultural, economic and political integrity of the indigenous and Afro-Colombian communities and their members. The Committee further requests the Government to continue to take the necessary measures to ensure that the acts of violence reported are investigated.*

*Article 6. Legislation on consultations.* In its observation of 2009 the Committee referred to the legislation in force concerning the right of consultation, which is not in line with the Convention in terms both of its content and of the adoption process. The Committee previously urged the Government to ensure the participation and consultation of indigenous peoples in the preparation of the provisions for regulating the consultation process. The Committee notes the indication in the observations from the ANDI that mechanisms, programmes and activities promoted by the State have been set up to ensure effective protection of the rights of indigenous peoples at national, departmental and municipal levels. ANDI adds that the right of prior consultation established in the National Constitution is a prerogative of the indigenous peoples which cannot affect the general interests of the nation or hamper sustainable social and economic development.

The Committee notes according to the CUT and the CTC, the Presidential Directive No. 001 of 2010 concerning consultation, the procedure was not the subject of consultation with the indigenous peoples. In this respect, the Committee notes the Government's indication that a working group has been set up within the Ministry of the Interior on the subject of prior consultation and is drawing up preliminary draft legislation to regulate the fundamental right to prior consultation, which itself has to be submitted for consultation with the indigenous peoples. The Government also indicates that the Presidential Directive contains instructions for the executive authority concerning the consultation procedure. The Government adds that the existing legal framework establishes the obligation of prior consultation and points out that recent Decree No. 2893 of 2011 provides that the Directorate for Indigenous, Roma and Minority Affairs shall have the function of coordinating and implementing the prior consultation processes relating to the presentation of legislative and administrative initiatives at national level. The Directorate has already adopted measures with a view to undertaking consultations on various items of draft legislation, namely: the Bill on levies; the Bill on the regional environmental council; the Bill on rural development; the Legislative Decree on victims and land restitution; the decree on access to genetic resources and related traditional knowledge; and the Bill on territorial entities and levies. The Government also indicates that the 2010–14 Development Plan provides for institutionalization of the prior consultation mechanism.

The Committee notes in particular that the Government, with the participation of the Vice-President of the country, is undertaking consultation on different issues with the indigenous communities and has requested the Office to participate as an observer in these consultations.

*The Committee requests the Government to provide information in its next report on the following matters:*

- (i) *the progress made on the preliminary draft of the bill concerning the right to consultation which is due to be submitted to the indigenous peoples and the state body which is responsible for that process;*
- (ii) *developments in the processes implemented by the Directorate for Indigenous, Roma and Minority Affairs for the consultation of the indigenous peoples in relation to the various pieces of draft legislation mentioned above; and*
- (iii) *the measures taken with a view to the institutionalization of the mechanism for prior consultation and the participation of the indigenous peoples in that process.*

*Article 15. Consultation regarding exploration and exploitation projects in indigenous territories.* In its previous comments, the Committee noted the existence of a number of disputes between the indigenous communities, the State and private companies linked to projects for the exploration and exploitation of natural resources in which it is alleged that adequate consultation of the indigenous peoples affected by those projects have not been undertaken. The Committee notes with *interest* recent Rulings T-769 of 2009 and T-129 of 2011 in which the Constitutional Court referred to the need to undertake consultations with the indigenous peoples concerning projects which may directly affect their rights and established the requirements to be fulfilled by such consultations. *In this respect, taking account of the decisions of the Constitutional Court, the Committee requests the Government to take the necessary measures to ensure that, when a project for the exploration and exploitation of natural resources in territories traditionally occupied by indigenous peoples is planned, consultations are held with the indigenous peoples concerned as required by the Convention. On this particular issue, the Committee draws the attention of the Government and the social partners to its general observation of 2010.*

*Representativeness.* The Committee notes the references in the observations from the CGT, CUT, CTC and SINTRAMINERCOL to problems of representativeness concerning some of the leaders representing the Afro-Colombian communities. The Committee notes that the Government's report does not contain any specific information on this subject. The Committee recalls that the principle of representativeness is a key component in the obligation of consultation. Even though it may be difficult in many cases to determine who represents a community in particular, the Committee considers that if there is no adequate consultation process with the indigenous or tribal institutions or organizations with are truly representative of the communities affected, the consultations held would not comply with the requirements of the Convention. *The Committee therefore requests the Government to indicate whether there are reasonable and objective criteria established at national level, in consultation with the indigenous peoples concerned,*

for determining the representativeness of the leaders of the indigenous peoples and what measures are taken in the event of any dispute to identify those who actually represent the communities.

*[The Government is asked to reply in detail to the present comments in 2012.]*

## El Salvador

### **Indigenous and Tribal Populations Convention, 1957 (No. 107)** (ratification: 1958)

*Articles 11 to 14 of the Convention. Land rights.* The Committee recalls that in its previous comments it requested the Government to take the necessary measures to recognize and promote the rights of the indigenous populations with regard to lands traditionally occupied by them and to provide information on the state of the proceedings instituted by the indigenous populations of Panchimalco and Izalco. The Committee notes the Government's indication that the Programme for Landless Rural Inhabitants (CST) undertaken by the Salvadorian Institute for Agrarian Reform (ISTA) has benefited approximately 290 members of four indigenous associations. The Government also refers to the "Policy for Indigenous Peoples" and the "Social reform for the identity and rights of indigenous peoples", set out in the Government Plan 2009–14. With regard to the proceedings instituted by the indigenous populations of Panchimalco and Izalco concerning the pollution and sale of their lands, the Committee notes that, with regard to the sale of the lands, the last decision issued on 22 October 2009 referred to a hearing between the Public Prosecutor and the Director of the National Fund for People's Housing (FONAVIPRO) in the context of a process of mediation initiated earlier. With regard to the pollution of the lands, the Committee notes the reference by the Government to a decision of the Office of the Human Rights Ombudsman, which ordered a review of the consultation processes undertaken going back to 2006. In this respect, the Committee notes the concluding observations of the United Nations Human Rights Committee and the United Nations Committee on the Elimination of Racial Discrimination (CERD) in which they express concern that indigenous peoples are still unable to fully enjoy their economic, social and cultural rights, in particular regarding land ownership and access to drinking water (CCPR/C/SLV/CO/6, of 18 November 2010, and CERD/C/SLV/CO/14-15, of 14 September 2010). The Committee recalls that *Article 11* of the Convention establishes the obligation to recognize the right of ownership, collective or individual, of the members of the populations concerned over the lands which they traditionally occupy. ***The Committee, therefore, once again urges the Government to take practical steps for the recognition and promotion of the rights of indigenous populations with regard to lands traditionally occupied by them in order to bring an end to their current situation of vulnerability. The Committee also requests the Government to take steps with a view to giving effect to the measures requested by the Office of the Human Rights Ombudsman in the context of the proceedings instituted by the indigenous populations in Panchimalco and Izalco concerning the pollution and sale of their lands. The Committee finally requests the Government to provide information on the content and impact in practice of the "Policy for Indigenous Peoples", the "Social reform of the identity and rights of indigenous peoples" and the Programme for Landless Rural Inhabitants (CST), and on the Government Plan 2009–14, which refers to indigenous peoples.***

***The Committee once again encourages the Government to consider the possibility of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), in accordance with its general observation of 1992, and requests it to continue to keep it informed of any progress in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

## Guatemala

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1996)

The Committee notes the observations from the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG) and the National Union of Health Workers of Guatemala (SNTSG) dated 30 August 2010. The Committee also notes the observations from the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) of 30 August 2010 and 30 August 2011. The Committee further notes the observations of the International Organisation of Employers (IOE) dated 19 October 2011. ***The Committee requests the Government to send its observations in this regard.***

*Follow-up to the recommendations of the tripartite committee (representation under article 24 of the Constitution of the ILO, GB.299/6/1, June 2007).* The Committee recalls that the representation refers to the lack of prior consultation of the peoples concerned with regard to the licence for exploratory mining for nickel and other minerals (No. LEXR-902) awarded to the Mineras Izabal SA company in December 2004 for starting mining exploration activities in the territory of the Maya Q'eqchi indigenous people. The Committee notes with *regret* that the Government once again has not sent its observations on this matter. ***The Committee urges the Government to send detailed information in its next report on the action taken further to the recommendations of the Tripartite Committee.***

*Articles 6, 7 and 15. Right to consultation.* The Committee has been referring for a number of years to the need to establish institutional mechanisms for consultation and participation. The Committee notes that the MSICG and the SNTSG, on the one hand, and the CACIF, on the other, refer in their comments to the need to establish a consultation procedure. The Committee observes that the national legislation contains provisions which regulate the right of consultation in a fragmented or incomplete manner, namely: the 1995 Agreement on Identity and Rights of Indigenous Peoples (Peace Agreements); article 173 of the Constitution of the Republic; section 26 of the Act concerning urban and rural development councils (Decree No. 11-2002, which provisionally regulates consultation pending the adoption of national legislation) and the Municipal Code (Decree No. 12-2002). The Committee notes that the municipal authorities and indigenous communities, on the basis of the abovementioned provisions, have undertaken a series of consultations at the communal level which were not conducive to effective dialogue among the interested parties and resulted in conclusions that were not recognized by the national public authorities or the enterprises. This situation has resulted in greater unrest. In this regard, the Committee notes with *interest* the ruling of the Constitutional Court of 21 December 2009 (case No. 3878-2007), which examines this issue and establishes that although these consultations are useful for understanding the general views of those consulted with regard to the exploration and exploitation project while also constituting a kind of citizens' participation, they do not give effect to the right of consultation established in the Convention. The Committee notes the Court's affirmation that it is for the State to guarantee the effective application of the right of consultation, which, according to the Court, must take the form of prior consultation and not be restricted to mere information, must consist of a genuine dialogue between the parties with the aim of reaching a joint agreement, and must take place in good faith as part of a procedure that enjoy the confidence of the parties and involving the representative authorities of the indigenous peoples.

*Legislation relating to consultation and participation.* In its previous comments the Committee noted the existence of various legislative drafts relating to consultation which were awaiting examination by the Congress of the Republic. The Committee understands that these bills are currently being examined by Congress. The Committee notes that, further to a request from the Government on 26 July 2010, an ILO technical assistance mission visited the country from 23 to 27 August 2010 in order to provide assistance with drawing up a roadmap so that both the indigenous communities and the authorities have a better understanding of the Convention and to offer guidance on the drafting of a bill and its regulations for the application of the Convention. The Committee notes that, according to the report, the mission had the opportunity to meet numerous government entities, social partners, indigenous organizations and their representatives, and two private companies. The Committee notes with *concern* the high degree of social conflict observed by the mission, and recognized by all sectors, relating to the exploitation of natural resources. The Committee notes that, according to the mission report, all sectors also recognize that the lack of a consultation mechanism and the lack of specific consultation with regard to the abovementioned draft legislation as provided for in the Convention are the main reason for the existing unrest. The Committee also notes that during the technical mission the Government presented a draft of the "Regulations governing the ILO Convention No. 169 consultation process" on which the ILO made comments. This draft was already presented to the public by the President of the Republic on 23 February 2011 and opened for a period of consultation with the indigenous peoples. However, on 24 May 2011 the Constitutional Court granted provisional *amparo* (legal protection of constitutional rights) and temporarily suspended the consultation procedure launched by the President of the Republic with regard to the regulations. The Committee understands that the Constitutional Court has not issued a definitive ruling on this issue. The Committee notes that the CACIF refers to the draft regulations and indicates that these were drawn up with the participation of the indigenous peoples and the employers. The CACIF regretted that some sectors of the indigenous peoples instituted *amparo* proceedings, thereby causing the suspension of the consultation procedure regarding the regulations.

While noting the decision of the Constitutional Court resulting in the suspension of the consultation process, the Committee stresses that despite the time that has elapsed no consultation mechanisms have yet been adopted, as provided for in the Convention. Even though it considers that the right of indigenous peoples to be consulted on each occasion that measures are planned which are likely to affect them directly derives directly from the Convention, regardless of whether or not this right is reflected in any specific national legislation, the Committee considers that this legal vacuum prevents the interested parties from holding a constructive dialogue with regard to projects for the exploration and exploitation of natural resources. The Committee considers that the establishment of effective consultation and participation mechanisms contributes towards preventing and resolving disputes through dialogue and reduces social tensions. The Committee recalls that in order to establish this mechanism and for any specific consultations it is essential that there is a climate of mutual trust. The Committee also emphasizes that the obligation to ensure that indigenous peoples are consulted in conformity with the Convention rests with the Government (see general observation 2010). It also underlines the fact that the provisions of the Convention regarding consultation must be read in conjunction with *Article 7*, which establishes the right of indigenous peoples to decide their own priorities for the process of development and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. *The Committee therefore:*

- (i) *requests the Government to take the necessary measures without delay to establish an adequate mechanism for consultation and participation in conformity with the Convention, taking account of the general observation of 2010;*

- (ii) *requests the Government to ensure that indigenous peoples are consulted and can participate in an appropriate manner, through their representative bodies, in the establishment of this mechanism in such a way as to be able to express their opinions and influence the final outcome;*
- (iii) *requests all the parties concerned to do their utmost to participate in good faith in the abovementioned process, with a view to pursuing a constructive dialogue that enables positive results to be achieved;*
- (iv) *requests the Government to send information on any further developments in this respect, on progress made with regard to the pending draft legislation before the Congress of the Republic and on the final decision of the Constitutional Court concerning the amparo appeal against the consultation procedure on the “Regulations governing the ILO Convention No. 169 consultation process”;*
- (v) *observing that section 26 of the Act concerning urban and rural development councils provides for a provisional mechanism for consultation of the indigenous peoples pending settlement of the issue at the national level, requests the Government to supply information on the application of the aforementioned section in practice;*
- (vi) *requests the Government to take the necessary measures to bring existing legislation, including the Mining Act, into conformity with the Convention.*

*Development of the consultation process in specific cases: San Juan de Sacatepéquez (cement company), municipalities of Sipacapa and San Miguel de Ixtahuacán (Marlin mine).* With regard to the construction of the cement manufacturing company in San Juan de Sacatepéquez, the Committee referred in its previous comments to the permit granted by the municipality of San Juan de Sacatepéquez for the installation of the company despite opposition from most of the local population expressed in the course of public consultation. The Committee notes that the MSICG refers to this matter in its observations. The Committee also notes that the technical assistance mission visited the municipality of San Juan de Sacatepéquez and the cement company and observed that there was an extremely conflictual situation in which dialogue was hampered by the total lack of mutual trust between the parties. The Committee notes the Government’s statements that: (1) the permit for installation of the cement company was granted after the technical studies and the environmental impact study had been carried out; (2) it does not recognize the public consultation conducted in the municipality and refers to the ruling of the Constitutional Court mentioned above; (3) under the National Dialogue System, an extended process of dialogue and information between the company and representatives of the local communities was launched in April 2008. Since that date four round tables for dialogue have been held and numerous meetings have taken place at which various agreements have been reached; (4) owing to the intransigence of one sector of the indigenous communities it has not been possible to build “on the state decision-making processes” and the Government emphasizes that the construction of the cement manufacturing plant has not yet started. The Committee notes that the CACIF observations corroborate the information supplied by the Government and refer to the high quality standards of the company, whose sole focus at present is on social investment in the region, skills training for the population and local reforestation.

As regards the award of a mining exploration and exploitation licence to the Montana Exploradora de Guatemala SA company without consultation of the indigenous peoples concerned, the Committee notes the technical assistance mission’s observation that this is another situation of great conflict which it witnessed. The Committee notes the indication in the observations from the CACIF that the exploitation licence was awarded in 2003 after the submission of the environmental impact study, which was made public and encountered no opposition; that the company began its operations in 2005, generated 9.1 million dollars in levies for 2005–09, paid 31.5 million dollars in taxes and is implementing more than 150 social investment projects relating to educational, sports and healthcare infrastructure. The CACIF adds that the company obtained certification in 2009 from the International Cyanide Management Institute (ICMI) to the effect that the company fulfils the requirements of the International Cyanide Management Code, that it recycles 99 per cent of the water that it uses, undertakes monthly monitoring of water and air quality and noise levels, and has adopted measures for the reforestation and rehabilitation of the land used. The Committee notes the Government’s statement that the exploitation of the Marlin mine does not affect the lakes of Atitlán and Izabal in any way, contrary to claims made, since the lakes are a long distance from the mine, and that the company undertook a thorough process of communication and consultation with the communities in the area affected by the mine. The Government includes detailed information on the process and also the list of information meetings held with the communities concerned. It also adds that the mining operations are inspected closely.

The Committee also notes that the Inter-American Commission on Human Rights (IACHR), in Decision No. MC 260/07 of 20 May 2010, imposed protective measures with regard to this issue and requested the State of Guatemala to suspend mining operations connected with the Marlin I project and other activities connected with the licence awarded to Goldcorp/Montana Exploradora de Guatemala SA and to take effective measures to prevent environmental pollution pending the adoption of a decision by the IACHR concerning the substance of the petition linked to the application for protective measures.

While recognizing the forums for company-community dialogue promoted by the Government in both cases and also the numerous measures and activities implemented by the companies in question for informing the communities about the projects, the Committee considers that these cannot be deemed to constitute the full-scale procedures for consultation of indigenous peoples prescribed by *Article 6* of the Convention. As the Committee has indicated on

numerous occasions, consultation is not just the holding of mere information meetings but necessarily entails genuine dialogue between the parties concerned involving communication and understanding, mutual respect and good faith, and the sincere desire to reach a joint agreement. The Committee underlines the importance of mining projects yielding tangible benefits for all parties concerned and that these parties have a clear perception of such benefits. ***The Committee therefore:***

- (i) ***urges the Government once again, in the context of the existing disputes relating to the planned installation of the cement company in San Juan Sacatepéquez and the mining exploration project in the municipalities of Sipacapa and San Miguel de Ixtahuacán (Marlin mine), to establish mechanisms for dialogue which have the confidence of the parties and, through good faith negotiations and in accordance with Articles 6 and 15 of the Convention, enable appropriate solutions to be found to each of these situations that take account of the interests and priorities of the indigenous peoples. The Committee requests the Government to send detailed information on any further developments in this regard;***
- (ii) ***requests the Government to take the necessary steps to encourage all parties concerned with the two projects to participate in a constructive manner in such a dialogue;***
- (iii) ***urges the Government to ensure that neither of these two projects has a harmful impact on the health, culture and property of the communities living in the areas affected by the implementation or planning of the projects and draws the Government's attention to Article 7(3) and (4) of the Convention;***
- (iv) ***requests the Government to take all the necessary measures to guarantee the integrity of persons and property in the regions affected by the projects and ensure that all the parties concerned refrain from any acts of intimidation or violence against persons who do not share their views on the projects.***

***The Northern Transversal Strip project.*** The Committee notes the observations from the MSICG concerning the lack of consultation of the indigenous peoples concerned with regard to the Northern Transversal Strip (*Franja Transversal del Norte*) project, which entails the construction of a 362 km road network which will affect the departments of Izabal, Alta Verapaz, Quiché and Huehuetenango. ***The Committee requests the Government to send detailed information on this matter.***

***Articles 2 and 33. Coordinated and systematic action.*** In its previous comments, the Committee asked the Government to adopt, in cooperation with the peoples concerned, the necessary measures and to establish the mechanisms provided for in *Articles 2 and 33* with a view to developing coordinated and systematic action for the implementation of the Convention. The Committee notes the Government's reference to the National Council for Urban and Rural Development, the National Council for the Peace Agreements, the High-Level Commission for Human Rights and Indigenous Peoples, the Inter-Institutional State Coordinator for Indigenous Affairs and the Guatemalan Indigenous Development Fund. However, the Committee observes that the Government does not provide any information on the operation of these bodies, on how the participation of indigenous peoples in them is ensured or on how coordination occurs between them in order to guarantee the effective protection of the rights of indigenous and tribal peoples. ***The Committee therefore requests the Government once again to ensure the effective application of Articles 2 and 33 of the Convention by establishing a mechanism, in cooperation with the indigenous and tribal peoples, for developing coordinated and systematic action for the implementation of the Convention.***

***Article 14. Lands.*** In its previous comments the Committee asked the Government to provide information on the transitional measures adopted to protect the land rights of indigenous peoples pending further progress on the regularization of land tenure. The Committee also asked the Government to provide information on the situation in various estates, namely Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guatiquim. The Committee notes that the MSICG refers to other similar conflicts at Finca La Perla and Finca San Luís Malacatán.

The Committee notes the Government's indication that: (1) the Land Information Registry is conducting a survey to identify communal lands and possibly declare them to be irregularly held lands if they are not entered in the Register in the names of the communities concerned; (2) Decree No. 41-2005 defines communal lands and establishes a legal and social process for identifying and declaring them as such and in May 2009 Decision No. 123-2009 was adopted, establishing specific regulations for them; (3) the Secretariat for Agrarian Affairs and other public bodies that deal with land issues have drawn up a draft Act concerning the regularization of land tenure, which is being discussed within the National Dialogue System; (4) a land access system is being promoted by means of credits for purchase and lease; (5) communities which only function as social entities are being encouraged to establish themselves as associations in law in order to qualify for land awards. As regards the situation at Finca Termal Xauch, the Government indicates that the community members reached an agreement with the owner of the estate and in the other two cases the community members expressed their willingness to purchase the lands that they occupy and that FONTIERRA still has to find the owners. ***The Committee requests the Government to provide information on the application in practice of Decree No. 41-2005 and its regulations of 2009 concerning communal lands. Noting that the Act concerning the regularization of land tenure has still not been adopted, the Committee also requests the Government to adopt transitional measures without delay, pending the adoption of the aforementioned Act, to give adequate protection to the land rights of the indigenous peoples in accordance with Article 14 of the Convention. The Committee requests the Government to send detailed information on any further developments in this respect. The Committee also requests the***

**Government to send information on the situation at Finca La Perla and Finca San Luis Malacatán and send a copy of the National Policy for Comprehensive Rural Development and provide information on its implementation.**

*Article 24 et seq. Health.* The Committee notes the report of the United Nations Committee on the Elimination of Racial Discrimination (CERD), which expressed concern at the fact that “the highest maternal and infant mortality figures are in the departments of Alta Verapaz, Huehuetenango, Sololá and Totonicapán, where the indigenous population accounts for between 76 and 100 per cent of the population.” The CERD also expressed concern about “the lack of adequate and accessible health services for these communities ...” (CERD/C/GTM/CO/12-13, 19 May 2010, paragraph 13). **While noting the recent extension in coverage provided by the sickness and maternity programmes of the Guatemalan Social Security Institute, the Committee requests the Government to take the necessary measures without delay to ensure that these programmes are effective in reaching the peoples concerned so that in practice they are on an equal footing with the rest of the population regarding access to health care. The Committee requests the Government to send detailed information in this regard.**

## India

### **Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)**

*Bauxite mining project.* The Committee recalls that in its previous comments it took note of the communication from the International Trade Union Confederation (ITUC) dated 27 August 2009 concerning the situation of the Dongria Kondh indigenous community and the bauxite mining project to be developed in the lands traditionally occupied by them. On that occasion, the Committee had expressed its concern over the reported adverse impact on the Dongria Kondh of the bauxite mining and expressed serious concern at the apparent lack of involvement of the tribal communities affected in matters related to the project which affected them directly. The Committee urged the Government to take the measures necessary to ensure that their rights and interests were fully respected and guaranteed and to report on the implementation of the rehabilitation and development measures ordered by the Supreme Court and the measures taken to ensure the involvement of the communities themselves in the design and implementation of such measures. In this regard, the Committee takes note of the Government’s indication according to which the Special Purpose Vehicle (SPV) for Scheduled Area Development of Lanjigarh Project, which was established following the order from the Supreme Court, is mandated to undertake a wide range of projects within a radius of 50 km of the Lanjigarh project for the development of the region. These projects concern health, education, children’s and women’s development, child care, upgrading of skills, communication, irrigation, agriculture, infrastructure development, etc. Moreover, the Scheduled Castes and Scheduled Tribes Development Department of the State has prepared a comprehensive conservation and development plan for the Dongria Kondhs for the period 2007–12. The SPV will adapt its programme to this plan. The Committee further notes that in its report, received in September 2010, the Government indicates that the final approval for the diversion of forest land into the bauxite mining project has not been agreed yet and it highlights that without the final environmental clearance, which has not been issued yet, work cannot be carried out. **The Committee therefore requests the Government to provide information regarding any new developments with respect to the development of the bauxite mining project including on any judicial proceedings. The Committee requests the Government to take measures to ensure that the rights and interests of the Dongria Kondhs are fully respected and guaranteed and to indicate any measures taken in this respect. The Committee further requests the Government to continue to provide information on the implementation and development measures ordered by the Supreme Court as well as the comprehensive conservation and development plan for the period 2007–12 for the Dongria Kondhs prepared by the Scheduled Castes and Scheduled Tribes Development Department of the State, and the measures taken to ensure the involvement of the communities themselves in the design and implementation of such measures.**

*Articles 2, 5 and 27 of the Convention. Coordinated and systematic action.* The Committee notes from the Government’s report that the Draft National Tribal Policy was submitted for public comments and suggestions including to the Scheduled Tribes and is currently under consideration by the Government. The Government further indicates that the main issues covered in the Draft policy refer to the following: alienation of tribal land; tribal-forest interface; displacement; resettlement and rehabilitation; enhancement of human development index; creation of critical infrastructure; violent manifestations; conservation and development of particularly vulnerable tribal groups; empowerment and gender equity, among others. This policy, once approved will, according to the Government, be the first comprehensive policy document developed for empowering the Scheduled Tribes of India and improving their Human Development Index. The Government refers also to the collaboration undertaken with the International Fund for Agriculture Development (IFAD) and the World Food Programme (WFP) for the implementation of food security and livelihood programmes in the States of Jharkhand, Chattisgarh and Orissa. The Government further indicates that it has requested ILO assistance in order to develop workshops and training programmes concerning tribal peoples’ rights that will help to identify best practices. **The Committee requests the Government to continue to provide information on the progress made in adopting the National Tribal Policy, including information on the collaboration with and consultation of tribal groups and their representatives in the process of developing the policy. The Committee hopes**

*that the activities indicated by the Government will be undertaken with ILO technical assistance, and asks the Government to provide information in this regard.*

*Articles 11–13 Land rights. Legislative developments.* In its previous observation, the Committee noted the adoption of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2007 and requested the Government to provide information on their implementation. In this regard, the Committee notes the Government's indication that the Ministry of Tribal Affairs has requested the state and union territories governments, in November 2008, to initiate action for the implementation of the Act with a time-bound schedule. They were also requested to create awareness about the objectives, provisions and procedures of the Act among the forest dwelling scheduled tribes and other traditional forest dwellers and the concerned authorities under the Act. The Government further indicates that translation and publication of the Act and Rules in all the regional languages and their distribution among Gram Sabhas (assembly of all men and women in the village above 18 years of age), forest rights committees and all the departments of government will be ensured. The Office of the Prime Minister, the Cabinet Secretariat and the Planning Commission monitor the progress of the implementation. The Government indicates that as of 31 March 2010, 274,400 claims have been filed, 782,000 land titles distributed and more than 31,000 titles were ready for distribution. The Government further indicates that taking into account that the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006, provides for a comprehensive legal framework to protect land and common resource rights of the tribal peoples, no further legislative initiatives are envisaged in this regard. ***The Committee requests the Government to continue to provide information on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, as well as the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2007. The Committee also requests the Government to continue to provide information on the number of claims processed and title deeds issued as well as any grievances brought against decisions made under the Act and their outcomes.***

*Article 12. Removal of populations.* The Committee referred in its previous comments to the possibility of relocating forest dwellers, under certain conditions and after completion of appropriate procedures, provided for in the Forest Rights Act. ***Noting that the Government does not reply to the Committee's request, it again asks the Government to indicate whether any relocation has taken place in the country, and, in such cases, whether resettlement has been undertaken in compliance with Article 12(2) and (3) of the Convention.***

*The Sardar Sarovar Dam Project.* In its previous observation, the Committee requested the Government to provide updated information on the number of persons belonging to the tribal population displaced from the land they traditionally occupied as a result of the Sardar Sarovar Dam Project and the measures taken to guarantee their resettlement and compensation in conformity with *Articles 12(2) and (3) of the Convention*. The Committee notes in this regard the Government's indication, that until 31 December 2009, out of 46,700 families, only 322 remained to be resettled. The Government provides additional information concerning land allocation and other financial allowances granted to the displaced families. ***The Committee requests the Government to take the necessary measures for the rapid resettlement of the remaining families and to continue to provide information on any developments thereon.***

*Part III–VI of the Convention.* The Committee notes the information provided by the Government concerning the education of Scheduled Tribes, including the implementation of a "Post Matric" Scholarship to promote higher education, the establishment of Vocational Tribal Centres in tribal areas, the establishment of 14 educational complexes for Scheduled Tribe girls, as well as financial assistance to non-governmental organizations for those projects covering schools, hospitals, mobile dispensaries and computer training, among others. The Government further indicates that the Directorate General of Employment and Training has set up 23 Coaching and Guidance Centres for Scheduled Castes and Scheduled Tribes in States. Moreover, the Central and State governments have made provisions for the allocation of posts and services within the Government for Scheduled Tribes. In this regard, their representation in government employment has increased from 2.25 per cent in 1965 to 6.83 per cent in 2008. ***The Committee requests the Government to continue to provide updated information on the various measures taken in the areas of education, training and employment and other areas covered in Parts III–VI of the Convention, to the benefit of the tribal population, including statistical information on the participation of men and women belonging to tribal groups in education and employment. In particular, the Committee requests the Government to provide updated information on the implementation and the impact of the Tribal Sub Plan as well as national programmes such as the National Rural Employment Guarantee Programme (NREGP), the Integrated Child Development Services (ICDS), National Rural Health Mission (NRHM) and Sarva Shiksha Abhiyan (SSA) with respect to the rights set out in the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

## Mexico

### ***Indigenous and Tribal Peoples Convention, 1989 (No. 169)*** ***(ratification: 1990)***

The Committee notes the observations made by the Independent Workers' Union of "La Jornada" Newspaper (SITRAJOR), of 4 August 2010, referring to matters raised previously, and the Government's reply thereto.

*Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO (GB.272/7/2)). Community of San Andrés de Cohamiata.* The Committee recalls that in its previous comments it requested the Government to take the necessary measures to ensure that full effect is given in practice to *Article 14 of the Convention* through the resolution of the case relating to the Bancos community, and in particular to ensure that account is taken of traditional occupation as a source of land rights, including through negotiations. Taking into account the fact that the claims of the Huichol community of Cohamiata also include the reincorporation of areas other than Bancos, the Committee also requested the Government to take steps to ensure that there are adequate procedures to settle land claims which are still pending and to contemplate the possibility of modifying existing procedures relating to land claims in order to resolve problems relating to the full application of *Article 14* of the Convention, such as those which have arisen in the case of San Andrés de Cohamiata.

In this regard the Committee notes that, in its communication of 25 September 2009, the National Union of Education Workers (SNTE) refers to the court decisions which the Committee noted in its previous comments. The SNTE indicates, in particular, that the *amparo* (judicial means for the protection of constitutional rights in Mexico) ruling No. 46/2009 of the Administrative Collegial Tribunal of 17 June 2009 and the decision of the Higher Agrarian Tribunal of 11 August 2009, benefiting them by acknowledging that the President's decisions which granted formal land titles to the San Lucas de Jalpa community did not take into account the claims of the Cohamiata community, treated those legal titles in equal footing with the historical land titles (stemming from traditional occupation) to which the Cohamiata community is entitled, and which the Bancos de San Hipólito community considers to have inherited. The trade union emphasizes that the ruling authority failed to realize that those former legal titles were precisely the reason for the dispute and that existing judicial procedures do not allow recognition of titles derived from traditional occupation.

In this respect, the Committee notes the Government's indication that: (1) the dispute concerning an area of approximately 10,720 hectares between the Bancos de San Hipólito community and the agrarian unit of San Lucas de Jalpa comes within the competence of agrarian tribunals and the secretariat of the Agrarian Reform through the Programme to Address Social Conflicts in Rural Areas (COSOMER); (2) the lands in question were not returned to Bancos de San Hipólito on the grounds that, according to the decisions of the agrarian tribunals, among other reasons, it was for San Andrés de Cohamiata to seek the return of that area; (3) the National Commission for the Development of Indigenous Peoples (CDI) in collaboration with the governments of the federated states in which the Huichol are settled, have undertaken various actions to strengthen and update the rights of that people; (4) COSOMER has given this dispute priority among all the pending matters, but has not been able to achieve conciliation, nor a negotiated settlement, as it has not been accepted by the parties to the dispute; (5) at the present time, the claim for *amparo* lodged by the San Lucas de Jalpa community against the decision of the agrarian superior tribunal that decided that the rights of Bancos had not been taken into account is still pending; (6) the Office of the Agrarian Public Prosecutor has not undertaken procedures in the context of any programme for the certification of rights, as that has not been requested by the interested parties. In this regard, while acknowledging the measures adopted so far by the agrarian tribunals with the aim of resolving the dispute, as well as the activities undertaken by the Government for the protection of the Huichol communities, the Committee notes with *regret* that this dispute, which has been continuing for many years, has not yet been resolved. The Committee observes that the decisions of the agrarian tribunals have not settled the dispute, and that a claim for *amparo* filed by the community of San Lucas de Jalpa is still pending examination. ***The Committee therefore requests the Government to take all necessary measures to settle this conflict that has continued for many years. The Committee once again emphasizes the Government's obligation to recognize the rights of the peoples concerned to the lands they traditionally occupy and to which they have traditionally had access, in accordance with Article 14 of the Convention. The Committee once again urges the Government to take all necessary steps to ensure full compliance in practice with this provision in resolving the case of the Bancos community and, in particular, to ensure that account is taken of traditional occupation as a source of land rights, including by means of negotiation. The Committee suggests, in this regard, that the Government endeavour to resolve the dispute through a system of conciliation and negotiation which enjoys the confidence of both parties. The Committee reminds the Government of the recommendation made in report GB.272/7/2 concerning the possibility of assigning additional lands to the Huichol people when they do not have the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers, as provided for in Article 19. The Committee also requests the parties to the dispute to make every effort to endeavour to reach a solution that is satisfactory for both parties and to bring an end to this dispute which has been going on for decades and that jeopardizes peace in the area.***

***In more general terms, the Committee requests the Government to consider the possibility, in consultation with the indigenous peoples, of establishing adequate procedures to resolve land claims with a view to giving full effect to Article 14 of the Convention, and to provide detailed information on the measures adopted in this respect.***

*Articles 2, 3 and 7. Forced sterilization. Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO (GB.289/17/3)).* In its previous comments, the Committee requested the Government to: (1) provide information on the measures taken to guarantee that the decision to take permanent contraceptive measures is indeed a free choice and to ensure that the persons concerned are fully aware of the permanent nature of the contraceptive measures concerned; (2) provide statistical information disaggregated by sex, age and ethnic origin on the persons who have adopted such methods; (3) provide information on the manner in which

indigenous peoples participate and are consulted with regard to reproductive health and family-planning programmes and policies; (4) carry out appropriate investigations into the allegations of forced sterilization and supply information on the results of the investigations and, where applicable, the penalties imposed and the measures taken to compensate the victims; and (5) provide information on the steps taken to promote community health services for indigenous peoples with their full participation.

The Committee notes the Government's denial of the existence of a state policy or systematic practice to promote violations of the sexual and reproductive rights of the population. However, a policy does exist to promote broader knowledge of reproductive health among the members of indigenous peoples. The Government provides information on the reproductive health programmes implemented, which the Government states also benefit indigenous peoples, and emphasizes that contraceptive methods are used with the full knowledge and consent of the users. The Government also refers to the persons receiving advice from family-planning services and provides information on the number of persons who have opted for temporary and definitive contraceptive methods. The Government indicates that the IMSS-Opportunities Programme is in constant contact with traditional care providers who use local therapeutic resources to treat various health problems, and that it promotes referral to medical units when the problem requires institutional care. The Government adds that, at the request of the CDI Gender Equity Board, it is intended to carry out a national consultation on the situation of indigenous women in their peoples and communities, which will include reproductive rights among its principal subjects. ***The Committee requests the Government to provide information on the impact on indigenous peoples of the reproductive health measures and programmes adopted. It also requests the Government to take the necessary measures to ensure that whenever contraceptive methods are being made available to members of indigenous peoples, such methods are undertaken only with their free and full consent and full knowledge of the effects, particularly in the case of permanent contraceptive measures. The Committee also requests the Government to continue providing statistical data on the persons who use permanent contraceptive methods, disaggregated by sex and age. Finally, while recognizing the Government's indication that there is no state policy or systematic practice that results in a violation of sexual and reproductive rights of indigenous peoples, the Committee requests the Government to provide information on the measures adopted with a view to investigating the allegations of SITRAJOR based on the reports of the Human Rights Defence Commission and the National Human Rights Commission of 2002.***

*Follow-up of the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO) (GB.296/5/3).* In its previous comments, the Committee requested the Government to provide detailed information on the follow-up measures taken in relation to the recommendations made by the Governing Body concerning the representation made in 2002 by the Union of Metal, Steel, Iron and Allied Workers (STIMAHCS) alleging the absence of consultation and participation of indigenous peoples in relation to the work carried out by the Government in connection with the Oaxaca–Istmo–Huatulco road. In this regard, the Committee notes the Government's indication that the CDI, through its Directorate for Indigenous Participation and Consultation, held a consultation meeting in 2004 on a regional development plan which would include possible solutions to the adverse effects and situations which might arise from the construction of the Oaxaca–Istmo–Huatulco road, and especially the Salina Cruz–Huatulco section. The Directorate also took the necessary measures to resolve situations giving rise to claims relating to the development projects and plans during the meeting, based on the Indigenous Consultation System. ***The Committee requests the Government to provide more detailed information on the specific claims made in relation to the work carried out by the Government in connection with the Oaxaca–Istmo–Huatulco highway, the manner in which they were resolved and whether they gave rise to the payment of compensation.***

*Comments made by SITRAJOR.* The Committee notes that, in its communications dated 7 September 2009 and 4 August 2010, SITRAJOR refers to the appointment in May 2009 of a non-indigenous governmental delegate for the State of Guerrero to the National Commission for the Development of Indigenous Peoples (CDI) without consulting the representatives of indigenous peoples. SITRAJOR indicates that, nevertheless, in 2001 the Guerrero Council “500 Years of Indigenous Resistance” had been allowed to appoint an indigenous member as representative. The same occurred in 2008, when a state indigenous convention provided a shortlist, from which the indigenous delegate was appointed. This gave rise to protests by the indigenous peoples of Guerrero, who occupied the premises of the CDI for five weeks. For this reason, according to the trade union, four criminal proceedings were initiated against five indigenous leaders. The Committee notes the Government's indication that the designation of the CDI delegate in the State of Guerrero was carried out in accordance with sections 58 and 59 of the Federal Act on parastatal bodies and section 11 of the Act respecting the National Commission for the Development of Indigenous Peoples. The Government indicates that none of these provisions require the designation of state delegates of the CDI to be undertaken through consultation with indigenous peoples. It adds that there are currently no criminal proceedings pending against the indigenous leaders who occupied the premises of the CDI. In this regard, while recognizing that there is no legal obligation to undertake consultations with indigenous peoples before designating governmental delegates, the Committee notes that the indigenous peoples had participated on two previous occasions in the designation of the delegate and it emphasizes the importance, for the discharge of her or his duties, for the state delegate to enjoy the confidence of the parties. ***The Committee therefore invites the Government to ensure that in future, when state delegates are appointed, the importance of ensuring that the person who is designated enjoys the confidence of the indigenous peoples is taken into account so that the state delegate is able to discharge her or his duties in the best possible manner.***

The Committee is raising other matters in a request addressed directly to the Government.

## Paraguay

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1993)

The Committee notes the communication from the International Trade Union Confederation (ITUC), dated 31 August 2011, transmitting the observations of the National Union of Workers of Paraguay (CNT), according to which indigenous peoples are exploited and have to work more than 12 hours each day, only receiving meals in exchange. **The Committee requests the Government to send its observations thereon.**

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 in 2006 the Conference Committee on the Application of Standards urged the Government to take measures to enable it to send full information on the questions raised by the Committee of Experts on a regular basis. In 2008 the Committee noted with regret that the Government's report had not been received and therefore repeated its previous comments. **Noting that the Government's report was received in September 2009, the Committee hopes that the Government will continue its efforts to provide regular reports.**

*Article 20 of the Convention. Recruitment and conditions of employment.* The Committee refers to its previous comments concerning discrimination relating to wages and treatment based on the indigenous origin of workers, particularly those working on ranches within the country and for Mennonite communities, which in certain cases constitute situations of forced labour. The Committee notes the conclusions of the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues in 2009 that a system of servitude and forced labour exists in the Chaco region. It notes the Government's indication that the Ministry of Justice and Labour has established, under Resolution No. 230 of 2009, a tripartite committee, the Committee on Fundamental Rights at Work and the Prevention of Forced Labour, which has been entrusted with the task of drawing up an action plan on fundamental rights at work and the prevention of forced labour involving the participation of the Paraguayan Indigenous Institute (INDI). Furthermore, it notes that in September 2008, the Regional Labour Directorate opened an office in the town of Teniente Irala Fernández (Chaco region). It also notes that the eradication of forced labour is one of the priorities of the 2009 Decent Work Country Programme and that the Decent Work Country Programme includes the promotion of the Convention. **The Committee requests the Government to provide further information on the implementation of the above action plan and its impact on the eradication of forced labour involving indigenous peoples, including information on the extent to which the indigenous peoples concerned were consulted and participated in the development of that plan. Furthermore, the Committee requests the Government to provide information on the results of the inspections carried out by the Office of the Regional Labour Directorate for the Chaco region, the action taken and penalties imposed, and on any other initiatives undertaken by that Office with the aim of eradicating forced labour of, and discrimination against, indigenous peoples, particularly those working on ranches or in Mennonite communities. The Committee also refers to its comments under the Forced Labour Convention, 1930 (No. 29).**

*Articles 2, 6 and 33. Coordinated and systematic action and consultation.* The Committee notes that, according to the Government's report, the INDI can rely on the collaboration of a series of indigenous organizations and the support of several coordinating bodies, such as the Coordinating Committee for the Self-Determination of Indigenous Peoples (CAPI). In this regard, the Committee notes that in April 2009, the CAPI drew up, with the participation of 15 indigenous organizations, a series of "proposals for public policies on indigenous peoples". It also notes the creation under Decree No. 1945 of the National Programme on Indigenous Peoples (PRONAPI) coordinated by the INDI, under which, according to the report, consultations will be held with indigenous peoples so that they can define their own needs. The Committee understands that based on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative, an indigenous policy could be defined and a legislative reform carried out which includes the creation of a State body on indigenous affairs with the participation of indigenous peoples with regard to both its definition and composition. Noting the various organizations which collaborate with the INDI and its different coordinating bodies, the Committee emphasizes the importance of institutionalizing the participation of the peoples covered by the Convention in devising, implementing and overseeing the public policies which affect them, in accordance with *Articles 2 and 33 of the Convention*. **The Committee requests the Government to provide information on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative and on any resulting initiatives relating to legislative reform, including with regard to the institutionalization of indigenous participation. Noting that the Executive Authority's Human Rights Network, created in June 2009, is competent to draw up a schedule of proposed measures, such as laws incorporating the international instruments ratified by the State, the Committee requests the Government to provide information on the initiatives undertaken by the Network in relation to the Convention and on the measures taken to ensure coordination with the INDI and the participation of the peoples concerned.**

*Article 14. Rights to land.* The Committee notes that, according to the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues, 40 per cent of the indigenous communities in Paraguay still have no legal title to their lands. The Committee also notes that in July 2009, the Inter-American Commission on Human Rights filed an application with the Inter-American Court under Case No. 12420 concerning the land rights of the indigenous community Xákmok Kásek of the Enxet-Lengua People whose land claim has been pending since 1990. The Committee notes the information provided by the Government concerning the legislation in force with regard to land claims by indigenous communities and the difficulties encountered in practice due to their geographical dispersion and creation of new communities. The Committee also notes the indigenous land regularization project, which is based on an agreement signed between the INDI and the World Bank; implementation of which began in 2008. **The Committee requests the Government to take all the necessary measures, including measures of a procedural nature, to make rapid progress, in consultation with the peoples concerned, with regard to the regularization of indigenous lands and requests it to provide information on the following:**

- (i) **the progress made in the context of the INDI/World Bank project in that regard;**
- (ii) **the initiatives undertaken by the Inter-Institutional Committee responsible for the implementation of the measures necessary to carry out international rulings (CICSI);**

(iii) *the particulars and the percentage of indigenous communities whose lands have still not been regularized.*

*The Committee also refers to its previous comments and requests the Government to provide information on the application of Acts Nos 1372/88 and 43/89 establishing a procedure for the regularization of settlements of indigenous communities, in particular with regard to resolving cases in which the land occupied is insufficient given the number of indigenous claims, and on the establishment of adequate procedures within the national legal system, in accordance with Article 14(3).*

*Article 15. Natural resources.* With regard to the exploitation of forestry resources, the Committee notes that under Resolution No. 1324 of 2008, the INDI suspended indefinitely the application of Resolution No. 139/07 on environmental and forestry management in relation to lands assigned to indigenous communities until adequate consultations with indigenous peoples determine whether the Resolution concerned will be amended or repealed. The Committee notes that Resolution No. 139/07 was adopted with the aim of “curbing the obvious plundering taking place in several communities” and that it was suspended because “in many circles there is a confusion between the authorization to implement management plans and the plundering of forest resources”. *The Committee requests the Government to provide information on the consultations held for the purpose of amending Resolution No. 139/07 in relation to lands assigned to indigenous communities and their outcome, and on the measures taken to protect the rights of indigenous peoples to the natural resources existing on their lands, including their rights to participate in the use, management and conservation of those resources. The Committee once again requests the Government to provide information on the penalties imposed by the Office of the Environmental Prosecutor at the request of the INDI in cases of ecological offences, and on applications submitted to the INDI by exploration companies seeking information on the existence of indigenous communities in certain areas of the country.*

The Committee is raising other points in a request addressed directly to the Government.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

## Peru

### **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** (ratification: 1994)

The Committee notes the observations from the Single Confederation of Workers of Peru (CUT) and the General Union of Wholesalers and Retailers of the Grau Tacna Commercial Centre (SIGECOMGT) dated 28 April 2011, and the observations from the General Confederation of Workers of Peru (CGTP) dated 25 July 2011. The Committee also notes the observations from the International Organisation of Employers (IOE) dated 19 October 2011. *The Committee requests the Government to send its comments on these observations.*

The Committee recalls that the Conference Committee, at its 2010 session, welcomed the adoption by the Congress of the Republic of the Act concerning prior consultation and expressed its confidence that the Act would be promulgated by the President in the very near future. However, the Committee noted at its last meeting that the President had not promulgated the Act and had made a series of observations on it. In this regard, the Committee notes with *satisfaction* the adoption by the Congress of the Republic on 23 August 2011 of the “Act regulating the right of indigenous and original peoples to prior consultation as recognized by ILO Convention No. 169”, which was promulgated by the President of the Nation on 7 September 2011. Under section 1, the new Act must be interpreted in conformity with the Convention. *Noting that the aforementioned Act requires the adoption of implementing regulations within a period of 180 days, the Committee requests the Government to take the necessary steps to ensure that any regulations adopted take full account of the provisions of the Convention. The Committee requests the Government to send information on this matter and on any measures relating to implementation of the Act. Such information will be examined by the Committee at its next session together with other pending issues.*

## Tunisia

### **Indigenous and Tribal Populations Convention, 1957 (No. 107)** (ratification: 1962)

The Committee notes the Government’s brief report indicating that the Berbers are the first inhabitants of Tunisia, a fact which is accepted by Tunisians who generally recognize their Berber origins. The Government adds that Tunisian society is homogenous and there is no phenomenon of racial discrimination.

The Committee recalls that in its previous comments, it requested the Government to reply in detail to those comments. *The Committee requests the Government to provide information on the measures adopted or envisaged to give effect to the relevant provisions of the Convention in relation to Berber communities, and more specifically the measures adopted to seek the collaboration of the representatives of these populations (Article 5(a) of the Convention).*

*Furthermore, recalling that the present Convention has been revised by the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Committee encourages the Government to envisage ratifying the latter instrument.*

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 107** (El Salvador, India); **Convention No. 169** (Argentina, Guatemala, Mexico, Paraguay).

## Specific categories of workers

### Guinea

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1982)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Articles 2 to 7 of the Convention. Employment and working conditions of nursing personnel.* The Committee notes that the information provided by the Government in its last report remains fragmentary, and estimates that, in the interest of maintaining a meaningful dialogue on the application of the Convention in law and practice, the Government should make a genuine effort to collect and transmit all relevant information, including legislative texts or other official documents, dealing with health care policy and nursing services. For instance, despite repeated requests in the last ten years, the Committee has still not received a copy of Decree No. 93/043/PRG/SGG of 26 March 1993, establishing general regimes for hospitals; nor has it received copies of the statutory texts and collective agreements applicable to nursing staff, particularly as regards remuneration and hours of work. Moreover, the Government has been referring since 1992 to ongoing negotiations on two sets of general regulations, one for medical and paramedical staff and another for nurses, without any indication as to the time frame for the possible conclusion of those negotiations. In addition, the Committee notes with concern the Government's last statement to the effect that there is no specific policy concerning nursing services and that accordingly there are no particular texts or provisions addressing the special nature of nursing work.

*Under the circumstances, the Committee asks the Government to prepare a detailed and fully documented report on the effect given to the main requirements of the Convention, particularly as regards: (i) the formulation of a national policy on nursing services designed to improve the quality standards of public health care but also to create a stimulating environment for the exercise of the nursing profession (Article 2(1)); (ii) measures relating to nursing education and training as may be taken in consultation with the National Nurses Association (ANIGUI) (Article 2(2)(a) and Article 3); (iii) the institutional framework and practical modalities of the process of consultation with employers' and workers' organizations in matters of nursing policy (Article 2(3) and Article 5(1)); (iv) sufficient protection for nursing personnel, in light of the constraints and hazards inherent in the profession, especially in terms of hours of work and rest periods, paid absence and social security benefits (Article 6); and (v) measures to improve the occupational safety and health conditions of health workers, including any specific initiative aimed at protecting nursing personnel from HIV/AIDS infection (Article 7).*

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Kyrgyzstan

#### **Nursing Personnel Convention, 1977 (No. 149) (ratification: 1992)**

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

*Article 2 of the Convention. Policy concerning nursing services and personnel.* Noting that the Government has not communicated a report on the application of the Convention for more than ten years, the Committee requests the Government to provide detailed information concerning the application of all the provisions of the Convention, especially in the light of the Labour Code (Act No. 106 of 4 August 2004) and of Act No. 6 of 9 January 2005 on the protection of citizens' health.

*The Committee hopes that the Government will make every effort to take the necessary action in the near future.*

### Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 110** (Côte d'Ivoire); **Convention No. 149** (Congo, Fiji, Guyana, Kenya); **Convention No. 172** (Guyana); **Convention No. 177** (Albania, Ireland).

## **II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labor Conference (article 19 of the Constitution)**

### **Albania**

*The Committee hopes that the Government will soon announce that the remaining instruments adopted by the Conference at its 82nd Session (the Protocol of 1995 to the Labour Inspection Convention, 1947), 90th Session (Recommendations Nos 193 and 194), and all the instruments adopted at the 78th, 86th, 89th, 92nd, 94th, 95th, 96th, 99th and 100th Sessions were submitted to the Albanian Parliament.*

### **Angola**

The Committee recalls the communication provided by the Government in June 2010 in which the Ministry of Public Administration, Employment and Social Security indicated that it encountered difficulties in forwarding the submission files to the competent authorities. *The Committee reiterates its hope that the Government will soon be in a position to provide the required information on the submission to the National Assembly of the instruments adopted at the 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions of the Conference (2003–11).* The Committee also recalls that the Government is requested to provide information on the submission to the National Assembly of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the 1995 Protocol to the Labour Inspection Convention, 1947 (82nd Session, 1995), and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) (86th Session, 1998).

### **Antigua and Barbuda**

The Committee notes with *interest* that the ratification of the Maritime Labour Convention, 2006, (MLC, 2006), was registered on 11 August 2011. *In the same way as the Conference Committee, it urges the Government to supply the relevant information concerning the submission to the Parliament of Antigua and Barbuda of 22 instruments adopted by the Conference during 12 sessions held between 1996 and 2011 (83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th and 100th Sessions).*

### **Azerbaijan**

The Committee notes with *interest* that the ratification of Conventions Nos 156 and 183 was registered in October 2010. *It refers to its previous observations and requests the Government to provide information with regard to the submission to the Milli Mejlis (National Assembly) of Recommendation No. 180 (79th Session), and the instruments adopted at the 83rd, 84th, 89th, 90th, 94th, 95th, 96th, 99th and 100th Sessions of the Conference. Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.*

## Bahamas

*The Committee asks the Government to supply information on the submission to Parliament of the 19 instruments adopted by ten sessions of the Conference held between 1997 and 2011 (85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th and 100th Sessions).*

## Bahrain

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2011. It further notes the detailed replies provided by the Government in September 2011 recalling that, with the beginning of parliamentary life in 2002 and the establishment of a National Assembly – composed of the Consultative Council (*Majlis Al-Shura*) and the Council of Representatives (*Majlis al-Nuwab*) – there was a need to establish a new mechanism to submit the instruments adopted by the Conference to the National Assembly. *The Committee therefore urges the Government, as did the Conference Committee, to provide information indicating that the 18 instruments adopted by the Conference at ten sessions held between 2000 and 2011, were submitted to the National Assembly.*

## Bangladesh

*Serious failure to submit.* The Committee notes the information provided by the Government in October 2011 indicating that it will take gradual steps to submit the instruments adopted at different sessions of the Conference to the competent authority through the process of tripartite consultation. *The Committee asks the Government to provide information on the submission to Parliament of the instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), the 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179 and Recommendations Nos 185, 186 and 187), and the 85th Session (Recommendation No. 188), as well as all the instruments adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 36 pending instruments to Parliament.*

## Belize

*Serious failure to submit.* *The Committee refers to its previous observations and asks the Government to provide information on the submission to the National Assembly of the 43 instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and during the other 19 sessions held between 1990 and 2011. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 43 pending instruments to the National Assembly.*

## Plurinational State of Bolivia

The Committee recalls 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 reiterates its request that the Government report on the decision taken by the National Congress with regard to the Conventions submitted. It also requests the Government to indicate the representative organizations of employers and workers to which the information forwarded to the Director-General concerning the submission of the abovementioned Conventions was communicated. The Committee again asks the Government to provide all the information required on the submission to the National Congress of the remaining Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2011.*

## Brazil

The Committee notes that the ratification of Convention No. 151 was registered in June 2010. It recalls that Conventions Nos 128, 129, 130, 149, 150, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (1995 Protocol), 83rd, 84th (Conventions Nos 179 and 180; 1996 Protocol, Recommendations Nos 186 and 187), 85th, 86th, 88th, 90th, 92nd, 94th, 95th, 96th, 99th and 100th Sessions of the Conference are still waiting to be submitted to the National Congress. *The Committee hopes that the Government will soon report on other measures that have been taken to submit the 40 pending instruments to the National Congress.* In this regard, the Committee again recalls that the Tripartite Committee on International Relations (CTRI) requested the Ministry of External Relations in March 2006 to take the necessary steps to submit to the National Congress the Tenants and Share-croppers Recommendation, 1968 (No. 132), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Human Resources Development Recommendation, 2004 (No. 195).

## Cambodia

*Serious failure to submit.* The Committee notes the statement made by the Government representative of Cambodia at the Conference Committee in June 2011, recalling that, owing to the technical assistance provided by the ILO, the instruments to be submitted to the competent authorities had been translated into Khmer. The Government representative also indicated that the instruments have been submitted to the Cabinet of the Council of Ministers for consideration and preparation of submission to the National Assembly. ***The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the instruments to the National Assembly.***

## Cape Verde

*Submission to the National Assembly.* The Committee notes with ***interest*** the communication of 18 August 2011 by which the Ministry of Youth, Employment and Human Resources Development addressed the President of the National Assembly for the submission of the Conventions, Recommendations and Protocols adopted by the Conference between 1995 and 2010. ***The Committee welcomes the progress achieved in relation to the obligation to submit to the National Assembly the instruments adopted by the Conference over several sessions and hopes the Government will continue to provide the required information on a regular basis.***

## Central African Republic

*Submission to the National Assembly.* The Committee notes with ***interest*** the documents provided by the Government in June 2011 indicating that on 10 October 2008 the National Assembly received the instruments adopted by the Conference during the 20 sessions held between 1988 and 2007. ***The Committee welcomes this progress and hopes that the Government will continue to provide on a regular basis the required information on the obligation to submit the instruments adopted by the Conference to the National Assembly.***

## Chile

The Committee notes with ***interest*** that the ratification of Convention No. 187 was registered in April 2011. The Committee recalls the previous communications in which the Government undertook to examine the failure to submit to the National Congress the instruments adopted at the Conference and to inform the Office of the measures that would be taken to resolve the situation. ***The Committee once again requests the Government to provide the information required on the submission to the National Congress of the instruments adopted at 14 sessions of the Conference held between 1996 and 2011 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th (Recommendation No. 198), 96th, 99th and 100th Sessions).***

## Colombia

*Serious failure to submit.* ***The Committee asks the Government to provide all relevant information on the submission to the Congress of the Republic of the 34 instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th (Recommendation No. 191), 89th (Recommendation No. 192), 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions of the Conference.***

## Comoros

*Serious failure to submit.* ***The Committee, in the same way as the Conference Committee, urges the Government to submit the 39 instruments adopted at the 18 sessions held between 1992 and 2011 to the Assembly of the Union of Comoros.***

## Congo

*Serious failure to submit. ILO assistance.* The Committee recalls the ILO mission that took place in May 2010. It further notes the statement by the Government representative to the Conference Committee in June 2011. The Government representative indicated that the Ministry of Labour and the Secretary-General of the Government had agreed to submit to the National Assembly, every three months, a certain number of Conventions with a view to their ratification. The Committee notes the Bills ratifying Conventions Nos 118, 158 and 160. The Committee welcomes the efforts made by the administrative departments concerned with a view to complying with the country's constitutional obligations. ***The Committee, in the same way as the Conference Committee, invites the Government to complete the procedure of the submission of the 89 Conventions, Recommendations and Protocols not yet submitted to the National Assembly.*** It recalls that these consist of the instruments adopted by the Conference at its 54th (Recommendations Nos 135 and 136), 55th (Recommendations Nos 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Conventions Nos 141 and 143, Recommendations Nos 149 and 151), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos 167 and

168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th and 75th (Recommendations Nos 175 and 176) Sessions, as well as the instruments adopted at 20 sessions of the Conference held between 1990 and 2011.

## Côte d'Ivoire

*Serious failure to submit.* The Committee notes the Government's communication received in October 2011 indicating that the Conventions and Recommendations adopted by the Conference between 1995 and 2010 were submitted to the Economic and Social Council on 25 August 2011. ***The Committee invites the Government, in the same way as the Conference Committee, to complete the steps to submit to the National Assembly the 30 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at the 14 sessions between June 1996 and 2011 (83rd, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions).***

## Croatia

***The Committee invites the Government to take appropriate measures in order to ensure that the 18 remaining instruments adopted by the Conference at ten sessions between 1998 and 2011 are submitted soon to the Croatian Parliament.***

## Democratic Republic of the Congo

*Serious failure to submit.* The Committee recalls that the Ministry of Labour prepared submission reports for the instruments adopted by the Conference from its 83rd to its 98th Sessions with a view to forwarding them to the competent authorities for examination and adoption. ***The Committee, in the same way as the Conference Committee, urges the Government to provide other relevant information on the effective submission to Parliament of the 30 instruments adopted at the 14 sessions of the Conference held between 1996 and 2011.***

## Djibouti

*Serious failure to submit.* The Committee notes with ***serious concern*** that the failure of submission by Djibouti concerns the instruments adopted at the 28 sessions of the Conference held between 1980 and 2011. ***The Committee, in the same way as the Conference Committee, requests the Government to make every effort in a tripartite framework to ensure that it is in a position in the near future to provide the required information on the submission to the National Assembly of the 64 instruments adopted at the 28 sessions of the Conference held between 1980 and 2011 (66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions).***

## Dominica

*Serious failure to submit.* The Committee ***regrets*** that the Government has not replied to its previous observations. ***In the same way as the Conference Committee, it reiterates its hope that the Government will soon announce that the 37 instruments adopted by the Conference during 17 sessions held between 1993 and 2011 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions) have been submitted to the House of Assembly.***

## El Salvador

In its previous comments, the Committee observed the failure to submit to the Congress of the Republic the instruments adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference, as well as the remaining instruments from the 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. ***The Committee requests the Government to provide information on the submission to the Congress of the Republic of all the remaining instruments, including Recommendations Nos 193 and 194 (90th Session, 2002) and the instruments adopted at the 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions (2003–11).***

## Equatorial Guinea

*Serious failure to submit.* The Committee recalls the communication dated 9 May 2008 in which the Ministry of Labour and Social Security requested the Head of Government to proceed with the submission to the House of People's Representatives of the instruments adopted by the Conference at 13 sessions held between 1993 and 2006. ***The Committee asks the Government to provide the other relevant information on compliance with the obligation of submission, and particularly the date on which the instruments adopted between 1993 and 2006 were in fact submitted to the House of People's Representatives. The Committee requests the Government to report on the submission to the House of People's Representatives of the instruments adopted by the Conference at its 99th and 100th Sessions (2010–11).***

## Ethiopia

*Serious failure to submit. The Committee asks the Government to provide the relevant information on the submission to the House of People's Representatives of the instruments adopted by the Conference at its 88th (Recommendation No. 191), 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions.*

## Fiji

The Committee recalls the information provided by the Government in May 2010 indicating that Fiji has not had a Parliament since 2006. The Government further stated that it is committed to adopt a progressive and democratic Constitution by 2013 and to hold for the first time a non-race based election in 2014 after which a Parliament will be constituted. The Committee thus notes that the Government will be able to submit all instruments adopted by the Conference at its 84th Session (Maritime, October 1996) and at its 83rd, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions to Parliament only after its establishment. *The Committee therefore requests information about any developments in regard to the submission to Parliament of 26 instruments adopted by the Conference at 13 sessions held between June 1996 and June 2011, as required by article 19 of the ILO Constitution.*

## Gabon

The Committee notes with *interest* that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), was registered in May 2011. In its previous comments, the Committee invited the Government to report on Parliament's decision regarding Conventions Nos 142, 155, 176, 177, 179, 181, 184 and 185. *The Committee invites the Government to provide information concerning the submission to Parliament of the other Conventions, Recommendations and Protocols not yet submitted to Parliament that were adopted at the 74th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 92nd, 95th, 96th, 99th and 100th Sessions of the Conference.*

## Georgia

*Serious failure to submit.* The Committee notes the communication received in November 2011, indicating that the instruments adopted at the 100th Session of the Conference were submitted to the Parliament of Georgia. *The Committee refers to its previous observations and asks the Government to report on the submission to Parliament of the instruments adopted by the Conference at the 14 sessions held between 1993 and 2011 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th and 99th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the instruments to Parliament.*

## Ghana

The Committee notes with *interest* the ratification of Conventions Nos 138, 144 and 184 was registered in June 2011. It also notes that the Government submitted Conventions Nos 183, 187 and 188 as well as Recommendation No. 191 to Parliament on 23 September 2011. *The Committee invites the Government to report on the submission of the 21 instruments adopted by the Conference between June 1993 and 2011 that have still not been submitted to Parliament.*

## Guinea

*Serious failure to submit. The Committee refers to its previous comments and, in the same way as the Conference Committee, urges the Government to provide the information requested regarding the submission to the National Assembly of the 28 instruments adopted at the 13 sessions held by the Conference between October 1996 and June 2011 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions).*

## Guinea-Bissau

The Committee notes the communication received from the Government in August 2011 indicating that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), has been approved by the Council of Ministers and is pending tabling in the National People's Assembly. The Government also intends to request support from the ILO Subregional Office in Dakar in order to conclude the process of submission of 15 pending instruments adopted by the Conference. *The Committee hopes that the Government will soon be in a position to report that the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th, 96th, 99th and 100th Sessions were submitted to the National People's Assembly.*

## Haiti

*Serious failure to submit. The Committee, in the same way as the Conference Committee, hopes that the Government will make every effort in the near future to be in a position to announce the submission to the National Assembly of the following instruments:*

- (a) *the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);*
- (b) *the instruments adopted at the 68th Session;*
- (c) *the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and*
- (d) *the instruments adopted at 21 sessions of the Conference held between 1989 and 2011.*

## Iraq

The Committee *regrets* that the Government has not replied to its previous observations. *The Committee hopes that the Government will soon be in a position to provide information on the submission to the Council of Representatives established under the 2005 Iraqi Constitution of the Conventions, Recommendations and Protocols adopted by the Conference from 2000 to 2011.*

## Ireland

*Serious failure to submit. The Committee regrets that the Government has not replied to its previous observation. In the same way as the Conference Committee, it urges the Government to provide information on the submission to the Oireachtas (Parliament) of the instruments adopted by the Conference at the ten sessions held between 2000 and 2011 (88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions).*

## Jamaica

*The Committee invites the Government to provide the relevant information regarding the submission to Parliament of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th and 100th Sessions (2004–11).*

## Kazakhstan

*Serious failure to submit. The Committee refers to its previous observations and requests the Government to supply the requested information on the submission to Parliament of the 34 instruments still pending submission which were adopted by the Conference between 1993 and 2011. It urges the Government to take steps without delay to submit the pending instruments to Parliament.*

## Kiribati

The Committee notes with *interest* that the ratification of the Maritime Labour Convention, 2006 (MLC, 2006), was registered in October 2011. *In the same way as the Conference Committee, the Committee invites the Government to submit to Parliament the other 17 instruments adopted by the Conference at nine sessions held between 2000 and 2011 (88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th and 100th Sessions).*

## Kuwait

The Committee recalls the information provided by the Government in September 2009, indicating that it will solicit the views of the social partners on the possibility of ratifying Conventions before referring the matter to the National Assembly. *The Committee hopes that the Government will soon complete the submission of the instruments adopted by the Conference at its 92nd, 94th, 95th, 96th, 99th and 100th Sessions to the National Assembly (Majlis al-Ummah).*

*The Committee hopes that the Government will also provide the date of submission to the National Assembly of the instruments adopted at the 77th Session (1990: Conventions Nos 170 and 171, Recommendations Nos 177 and 178, and the Protocol of 1990), 80th Session (1993: Recommendation No. 181), 86th Session (1998: Recommendation No. 189) and 89th Session (2001: Convention No. 184 and Recommendation No. 192) of the Conference.*

## Kyrgyzstan

*Serious failure to submit. The Committee notes with serious concern that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at the 18 sessions held between 1992 and 2011.*

The Committee notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.*

*The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.*

## Liberia

The Committee *regrets* that the Government has not replied to its previous observations. The Committee recalls the information provided by the Government in May 2009 indicating that the instruments adopted by the Conference at its 88th, 89th, 90th, 92nd and 95th Sessions, as well as the Protocols of 1990 and of 1995, have yet to be submitted to the National Legislature. *The Committee reiterates its hope that the Government will soon be in a position to submit to the National Legislature the 18 remaining instruments adopted by the Conference between 2000 and 2011, as well as the 1990 and 1995 Protocols.*

## Madagascar

The Committee notes the Government’s communication received in November 2011 indicating that the submission procedure is not yet possible. The Government will take the necessary arrangements as soon as the national circumstances permit. *The Committee would appreciate being kept informed of any developments with regard to the submission to the National Assembly of 13 instruments adopted by the Conference at seven sessions held between 2002 and 2011.*

## Mali

*The Committee asks the Government to provide the relevant information concerning the submission to the National Assembly of the Protocols of 1996 and 2002, as well as of the instruments adopted at the 86th, 92nd, 94th, 95th, 96th, 99th and 100th Sessions of the Conference.*

## Mongolia

*Submission to the State Great Hural.* The Committee notes with *interest* that, on 10 February 2011, the Government submitted to the State Great Hural seven Conventions, 11 Recommendations and one Protocol adopted by the Conference between the 82nd Session (June 1995) and the 99th Session (June 2010). It also notes that the texts of the instruments were made available to the Cabinet members and the members of the State Great Hural in Mongolian, English and Russian. *The Committee welcomes this progress and hopes that the Government will continue to provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the State Great Hural.*

## Mozambique

*Serious failure to submit.* *The Committee, in the same way as the Conference Committee, hopes that the Government will be in a position to provide the relevant information on the submission to the Assembly of the Republic of the 30 instruments adopted by the Conference at the 14 sessions held between 1996 and 2011.*

## Niger

*The Committee invites the Government to provide the information required concerning the submission to the National Assembly of the 26 instruments adopted by the Conference at 13 sessions (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th, 95th (for the Employment Relationship Recommendation, 2006 (No. 198)), 96th, 99th and 100th Sessions) held between 1996 and 2011.*

## Pakistan

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observations. *The Committee asks the Government to report on the measures taken to submit to Majlis-e-Shoora (Parliament) the instruments adopted by the Conference at 16 sessions held between 1994 and 2011 (81st, 82nd, 83rd, 84th, 85th, 86th,*

88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). *The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 34 pending instruments to Parliament.*

## Papua New Guinea

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2011. *In the same way as the Conference Committee, the Committee urges the Government to comply with this constitutional obligation and to quickly submit to the National Assembly the 18 instruments adopted by the Conference at ten sessions held between 2000 and 2011.*

## Peru

*Serious failure to submit.* *The Committee recalls its previous observations and requests the Government to provide information on the measures adopted for the submission to the Congress of the Republic of the remaining instruments adopted at the 84th, 88th and 90th Sessions of the Conference, and at the sessions held between 2002 and 2011.*

## Russian Federation

*Serious failure to submit.* The Committee recalls the communication dated 17 June 2009 that was sent by the Chair of the Committee on Labour and Social Policy of the State Duma to the Ministry of Health and Social Development of the Russian Federation requesting the Government of the Russian Federation to comply in a timely manner with its obligations under article 19 of the ILO Constitution. The Committee further recalls the resolution adopted by the State Duma on 29 June 2007 requesting the Government of the Russian Federation to take additional measures to ensure unconditional observance of article 19 of the ILO Constitution with regard to the mandatory and timely submission to the State Duma of the Conventions and Recommendations adopted by the Conference. *In conformity with article 19 of the ILO Constitution, the Committee again asks the Government to take appropriate measures to comply with the requirement of the submission to the State Duma of the instruments adopted by the Conference at nine sessions held between 2001 and 2011 (89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions).*

## Rwanda

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observations. *The Committee asks the Government to report on the submission to the National Assembly of the Conventions, Recommendations and Protocols adopted by the Conference at 16 sessions held between 1993 and 2011 (80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 35 pending instruments to the National Assembly.*

## Saint Kitts and Nevis

*Serious failure to submit.* *The Committee refers to its previous observations and asks the Government to provide the required information on the submission to the National Assembly of the instruments adopted by the Conference at 14 sessions held between 1996 and 2011 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.*

## Saint Lucia

*Serious failure to submit.* The Committee notes with *regret* that the Government has not replied to its previous comments. It recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia, as a Member of the Organization, has the obligation to submit to Parliament all the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2011 (66th, 67th (Conventions Nos 155 and 156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). *The Committee, in the same way as the Conference Committee, urges the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.*

## Saint Vincent and the Grenadines

The Committee recalls that the ratification of Conventions Nos 122, 129, 144 and of the Maritime Labour Convention, 2006 (MLC, 2006), was registered on 9 November 2010. It also recalls that, under the 1979 Constitution of

Saint Vincent and the Grenadines, the Cabinet is the executive authority which has the responsibility for making final decisions on ratification and for determining any matter that is brought before the House of Assembly for legislative action. *The Committee asks the Government to fulfil its obligations under article 19, paragraphs 5 and 6, of the ILO Constitution by submitting to the House of Assembly the 24 instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 12 sessions held from June 1995 to June 2011 (82nd, 83rd, 85th, 88th, 89th, 90th, 91st, 92nd, 95th, 96th, 99th and 100th Sessions).*

## Samoa

The Committee notes that, as of 7 March 2005, the Independent State of Samoa became a Member of the Organization. In accordance with article 19, paragraphs 5(a) and 6(a), of the ILO Constitution, the Office communicated to the Government the text of the Conventions and Recommendations adopted by the Conference at its 94th, 95th, 96th, 99th and 100th Sessions held in 2006, 2007, 2010 and 2011. *It hopes that the Government will soon be in a position to provide information on the submission to the Legislative Assembly of these instruments.* It recalls that the Government may request the technical assistance of the Office, if it so wishes, to help in achieving compliance with its obligations under article 19 of the Constitution relating to the submission of the instruments adopted by the Conference to the Legislative Assembly.

## Sao Tome and Principe

*Serious failure to submit.* The Committee *regrets* that the Government has not replied to its previous observation. The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 44 instruments adopted by the Conference between 1990 and 2011 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). *The Committee requests the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the ILO is available to provide the necessary technical assistance to give effect to this essential obligation.*

## Seychelles

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2011 indicating that, following the training received from the ILO, the Employment Department is better equipped to comply with the obligation to submit. The Committee further notes that the information provided in September 2011, indicating that the Government intends to bring the instruments to the attention of the Tripartite National Consultation Committee on Employment before endorsement by the Council of Ministers and the National Assembly. *In the same way as the Conference Committee, the Committee urges the Government to comply with this constitutional obligation and to quickly submit to the National Assembly the instruments adopted by the Conference at nine sessions held between 2001 and 2011.*

## Sierra Leone

*Serious failure to submit.* The Committee notes with *serious concern* that the Government has not replied to its previous comments. *The Committee asks the Government to report on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session) and the instruments adopted between 1977 and 2011. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 94 pending instruments to Parliament.*

## Solomon Islands

*Serious failure to submit. ILO technical assistance.* The Committee notes the information provided by the Government in September 2011 indicating that, following ILO technical assistance, a draft document was prepared to submit the 60 instruments adopted by the Conference between 1984 and 2011 to Cabinet. The Government further indicates that Cabinet will approve ratifications and review the instruments. The Committee notes with *interest* that the Government intends to promptly ratify the eight fundamental Conventions as well as Convention No. 144 and the Maritime Labour Convention, 2006 (MLC, 2006).

The Committee recalls that, under the relevant provisions of article 19, paragraphs 5 and 6, of the ILO Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority within whose competence the matter lies for the enactment of legislation or other action. In the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be

desirable to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met by submitting these instruments to the parliamentary body.

*The Committee therefore requests the Government to make every effort to comply with its constitutional obligation to submit the instruments adopted by the Conference between 1984 and 2011 to the National Parliament. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 60 pending instruments to the National Parliament.*

## **Somalia**

*Serious failure to submit. The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference between October 1976 and June 2011.*

## **Sudan**

*Serious failure to submit. The Committee notes with regret that the Government has not replied to its previous comments. The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 35 pending instruments adopted by the Conference between 1994 and 2011 to the National Assembly.*

## **Suriname**

*Serious failure to submit. The Committee recalls the information provided by the Government in August 2010 indicating that the instruments adopted by the Conference at its 90th to 96th Sessions were submitted to the Council of Ministers. The Government also indicated that efforts will be made to submit the instruments to the newly elected National Assembly. The Committee invites the Government to indicate if the instruments adopted by the Conference at its 90th to 96th Sessions have been submitted to the National Assembly. It also requests the Government to provide information on the submission to the National Assembly of the instruments adopted by the Conference at its 99th and 100th Sessions held in 2010 and 2011.*

## **Syrian Arab Republic**

The Committee notes with *regret* that the Government has not replied to its previous observations. The Committee recalls that 42 of the instruments adopted by the Conference are still waiting to be submitted to the People's Council. *The Committee hopes that the Government will be in a position to announce that the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 90th (Recommendations Nos 193 and 194) 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions have been submitted to the People's Council.*

## **Tajikistan**

*Serious failure to submit. The Committee notes the information provided by the Government in July 2011 indicating that the HIV and AIDS Recommendation, 2010 (No. 200), has been translated into Tajik and was submitted to the relevant ministries and national committees for its approval. The Committee recalls that only Conventions are communicated for ratification in conformity with article 19(5)(a) of the ILO Constitution. It further recalls that the Government is required to provide information on the submission to the Supreme Council (*Majlisi Oli*) of the instruments adopted by the Conference at 12 sessions held between October 1996 and June 2011 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the 27 pending instruments to the Supreme Council (*Majlisi Oli*).*

## **The former Yugoslav Republic of Macedonia**

*Serious failure to submit. The Committee notes with regret that the Government has not provided the information concerning the submission to the competent authorities of instruments adopted by the Conference at 14 sessions held between 1996 and 2011 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). The Committee, in the same way as the Conference Committee, urges the Government to take steps without delay to submit the pending instruments to the competent authorities.*

## **Togo**

*Serious failure to submit. The Committee refers to its previous comments and requests the Government to indicate the date on which the instruments on maternity protection (88th Session, 2000) were submitted to the National Assembly and the representative employers' and workers' organizations to which the information supplied to the Office*

was communicated. The Committee requests the Government to indicate whether the instruments adopted by the Conference at eight sessions held between 2002 and 2011 have been submitted to the National Assembly.

## Turkmenistan

*Serious failure to submit.* The Committee notes with **serious concern** that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at 16 sessions held by the Conference between 1994 and 2011.

The Committee notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. **The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.**

**The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.**

## Uganda

*Serious failure to submit.* **The Committee requests the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 16 sessions held between 1994 and 2011 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions). In the same way as the Conference Committee, it urges the Government to take steps without delay to submit the pending instruments to Parliament.**

## Ukraine

The Committee notes with **regret** that the Government has not responded to its previous observation. The Committee recalls the reply provided by the Government, in May 2009, to its previous comments indicating that the instruments adopted by the Conference between 2003 and 2007 were referred to the competent bodies of the executive authority in order to examine the possibility of their ratification. The Government further stated that these instruments were not submitted to the Supreme Rada of Ukraine since no proposals were made with regard to their ratification.

The Committee notes that, by virtue of the relevant provisions of article 19, paragraphs 5, 6 and 7, of the Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be desirable to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met by submitting these instruments to the parliamentary body.

The Committee also notes that for many years the Government has provided information on the submission of the instruments adopted by the Conference to the Supreme Rada. Submission of the instruments adopted by the Conference to the Supreme Rada does not imply any obligation for the Government to propose the ratification of a Convention or Protocol, or the application of a Recommendation. Governments have complete freedom as to the nature of the proposals to be made when submitting instruments to the competent authorities. Furthermore, the proposals to be made to the competent authority or authorities in connection with submission have to be the subject of consultation in accordance with the tripartite procedures required in Article 5(1)(b) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which has been ratified by Ukraine.

**The Committee therefore hopes that the Government will be in a position in the near future to provide all the information requested in the questionnaire at the end of the Memorandum on the submission to the Supreme Rada of Ukraine regarding the 11 instruments adopted at the 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions of the Conference (2003–11).**

## Uzbekistan

*Serious failure to submit.* The Committee notes the statement made by the Government representative at the Conference Committee in June 2011 on the work undertaken by an inter-ministerial team responsible for reporting obligations. It further notes the information provided by the Government indicating that all the instruments adopted by the Conference were referred to the Council of the Federation of Trade Unions and the Chamber of Trade and Industry. The Committee recalls that compliance with the constitutional obligation does not only require the instruments to be communicated to the social partners; the instruments adopted by the Conference must also be submitted to the competent authorities, that is, the Supreme Assembly (*Oliy Majlis*) in the case of Uzbekistan, following article 19, paragraphs 5 and 6, of the ILO Constitution. The Committee notes with **serious concern** that the Government has not communicated information on the submission to the Supreme Assembly of 37 Conventions, Recommendations and Protocols adopted by the Conference during 16 sessions held between 1993 and 2011. **The Committee urges the Government, as did 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.**

## Vanuatu

The Committee recalls that, as of 22 May 2003, Vanuatu became a Member of the Organization. It further recalls that the ratification by Vanuatu of the eight fundamental Conventions was registered in July 2006. **The Committee invites the Government to provide information on the submission to the Parliament of Vanuatu of the five Conventions and six Recommendations adopted by the Conference at the six sessions held between 2003–11 (92nd, 94th, 95th, 96th, 99th and 100th Sessions).** It recalls that the Government may request the technical assistance of the Office to help in achieving compliance with its obligations under article 19 of the Constitution relating to the submission of the instruments adopted by the Conference to the Parliament of Vanuatu.

## Yemen

**The Committee hopes that the Government will soon be in a position to provide the requested information on the submission of the instruments adopted by the Conference at its 90th, 94th, 95th, 96th, 99th and 100th Sessions, as well as Recommendations Nos 191 and 192 (88th and 89th Sessions) to the House of Representatives (Majlis El-Nouwab).**

## Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Argentina, Austria, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chad, China, Cuba, Cyprus, Dominican Republic, Ecuador, Eritrea, Finland, France, Gambia, Germany, Grenada, Guatemala, Guyana, Honduras, Hungary, Iceland, India, Islamic Republic of Iran, Italy, Jordan, Kenya, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Lithuania, Luxembourg, Malawi, Malaysia, Malta, Mauritania, Mexico, Republic of Moldova, Mongolia, Myanmar, Namibia, Nepal, Netherlands, Nicaragua, Nigeria, Norway, Oman, Panama, Paraguay, Portugal, San Marino, Saudi Arabia, Senegal, Singapore, South Africa, Spain, Sri Lanka, Swaziland, Sweden, United Republic of Tanzania, Thailand, Timor-Leste, Trinidad and Tobago, Tunisia, United Arab Emirates, United Kingdom, United States, Uruguay, Zambia, Zimbabwe.*



## *Appendices*



**Appendix I. Table of reports received on ratified  
Conventions as of 9 December 2011**  
(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 9 December 2011**

(articles 22 and 35 of the Constitution)

*Note: First reports are indicated in parentheses.*

<b>Afghanistan</b>	<b>4 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 95, 100, 111, 141	
<b>Albania</b>	<b>17 reports requested</b>
<hr/>	
· 9 reports received: Conventions Nos 77, 78, 87, 95, 98, 131, 141, 144, 173	
· 8 reports not received: Conventions Nos 6, 11, (88), 100, 111, (122), 156, 176	
<b>Algeria</b>	<b>24 reports requested</b>
<hr/>	
· 23 reports received: Conventions Nos 6, 11, 13, 29, 32, 42, 78, 81, 87, 88, 94, 95, 98, 99, 100, 111, 119, 120, 122, 144, 155, 181, 182	
· 1 report not received: Convention No. 77	
<b>Angola</b>	<b>12 reports requested</b>
<hr/>	
· 10 reports received: Conventions Nos 6, 17, 26, 29, 45, 87, 98, 100, 105, 111	
· 2 reports not received: Conventions Nos 81, 88	
<b>Antigua and Barbuda</b>	<b>11 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 87, 94, 98, 100, 111, 122, 131, 138, 144, 158	
<b>Argentina</b>	<b>17 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 26, 77, 78, 79, 87, 90, 95, 96, 98, 100, 111, 115, 124, 144, 156, 184	
<b>Armenia</b>	<b>13 reports requested</b>
<hr/>	
· 8 reports received: Conventions Nos 29, 81, 87, 94, 95, 131, 151, 173	
· 5 reports not received: Conventions Nos 98, 100, 111, 122, 144	
<b>Australia</b>	<b>15 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 10, 11, 87, 98, 99, 100, 111, 112, 122, 123, 131, 144, 156, 158, 173	
<i>Norfolk Island</i>	<b>9 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 10, 11, 87, 98, 100, 112, 122, 131, 156	
<b>Austria</b>	<b>15 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 6, 11, 26, 87, 94, 95, 98, 99, 100, 111, 122, 124, 141, 144, 173	
<b>Azerbaijan</b>	<b>19 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 13, 77, 78, 79, 87, 90, 95, 98, 100, 111, 113, 119, 122, 124, 126, 131, 138, 144	
<b>Bahamas</b>	<b>15 reports requested</b>
<hr/>	
· 3 reports received: Conventions Nos 26, 81, 94	
· 12 reports not received: Conventions Nos 11, 87, 88, 95, 98, 100, 105, 111, 138, 144, 182, (185)	
<b>Bahrain</b>	<b>2 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 111, (155)	
<b>Bangladesh</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 59, 87, 90, 98, 100, 111, 144	

<b>Barbados</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos 11, 29, 100, 122, 138, 182</li> <li>· 13 reports not received: Conventions Nos 26, 81, 87, 90, 94, 95, 98, 105, 108, 111, 115, 144, 147</li> </ul>	
<b>Belarus</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 26, 77, 78, 79, 87, 90, 95, 98, 100, 111, 122, 124, 144</li> </ul>	
<b>Belgium</b>	<b>27 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 6, 11, 12, 19, 26, 77, 87, 94, 95, 98, 99, 100, 102, 111, 113, 114, 121, 122, 124, 125, 126, 139, 141, 144, 148, 162, 182</li> </ul>	
<b>Belize</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 26, 87, 94, 95, 98, 99, 100, 111, 141, 144, 156</li> </ul>	
<b>Benin</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 6, 11, 26, 81, 87, 95, 98, 100, 111, 144</li> </ul>	
<b>Plurinational State of Bolivia</b>	<b>16 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 77, 78, 81, 87, 90, 95, 96, 98, 100, 111, 122, 123, 124, 129, 131, 156</li> </ul>	
<b>Bosnia and Herzegovina</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 87, 90, 98, 100, 111, 113, 114, 122, 126, 131, 144, 156, 158, (185)</li> </ul>	
<b>Botswana</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos 19, 29, 87, 100, 105, 138, 151, 176, 182</li> <li>· 5 reports not received: Conventions Nos 95, 98, 111, 144, 173</li> </ul>	
<b>Brazil</b>	<b>22 reports requested</b>
<ul style="list-style-type: none"> <li>· 21 reports received: Conventions Nos 6, 11, 95, 98, 100, (102), 111, 113, 122, 124, 125, 126, 131, 140, 141, 144, 155, 161, 167, 169, (185)</li> <li>· 1 report not received: Convention No. 94</li> </ul>	
<b>Brunei Darussalam</b>	<b>1 report requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Convention No. (182)</li> </ul>	
<b>Bulgaria</b>	<b>32 reports requested</b>
<ul style="list-style-type: none"> <li>· 15 reports received: Conventions Nos 13, 29, 45, 55, 62, 81, 87, (102), 105, 120, (122), 127, 138, 181, 182</li> <li>· 17 reports not received: Conventions Nos 6, 11, 26, 77, 78, 79, 94, 95, 98, 100, 111, 113, 124, 144, 156, 173, (177)</li> </ul>	
<b>Burkina Faso</b>	<b>25 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 6, 11, 13, 29, 81, 87, 95, 98, 100, 105, 111, (122), 129, 131, 135, 138, 141, (142), 144, 159, 161, 170, 173, 182, (184)</li> </ul>	
<b>Burundi</b>	<b>20 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 1, 11, 14, 26, 29, 52, 62, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144</li> </ul>	
<b>Cambodia</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos 6, 13, 98, 100, 111, 122, 138, 150, 182</li> <li>· 2 reports not received: Conventions Nos 29, 87</li> </ul>	
<b>Cameroon</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 10, 11, 29, 33, 77, 78, 87, 90, 94, 95, 98, 100, 111, 122, 123, 131, 158</li> </ul>	
<b>Canada</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 26, 87, 88, 100, 111, 122, 162</li> </ul>	

<b>Cape Verde</b>	<b>5 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 87, 98, 100, 111, 155	
<b>Central African Republic</b>	<b>24 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 6, 11, 13, 29, 62, 81, 87, 88, 94, 95, 98, 100, 105, 111, 119, 120, 122, 131, 138, 142, 144, 155, 158, 182	
<b>Chad</b>	<b>16 reports requested</b>
<hr/>	
· No reports received: Conventions Nos 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173, 182	
<b>Chile</b>	<b>10 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 6, 11, 87, 98, 100, 111, 122, 131, 144, 156	
<b>China</b>	<b>6 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 26, 100, 111, 122, 144	
<b>Hong Kong Special Administrative Region</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 87, 90, 98, 122, 124, 141, 144	
<b>Macao Special Administrative Region</b>	<b>8 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 6, 26, 87, 98, 100, 111, 122, 144	
<b>Colombia</b>	<b>17 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 2, 6, 11, 26, 81, 87, 88, 95, 98, 99, 100, 111, 144, 159, 161, 162, 170	
<b>Comoros</b>	<b>22 reports requested</b>
<hr/>	
· 5 reports received: Conventions Nos 26, 78, 95, 111, 122	
· 17 reports not received: Conventions Nos 6, 11, 12, 13, 14, 29, 77, 81, 87, 89, 98, 99, 100, 105, 106, 138, 182	
<b>Congo</b>	<b>21 reports requested</b>
<hr/>	
· 15 reports received: Conventions Nos 6, 14, 26, 29, 81, 87, 89, 95, 98, 100, 111, 138, 144, 149, 150	
· 6 reports not received: Conventions Nos 11, 13, 105, 119, 152, 182	
<b>Costa Rica</b>	<b>16 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 81, 87, 90, 94, 95, 98, 100, 111, 113, 114, 122, 129, 131, 141, 144	
<b>Côte d'Ivoire</b>	<b>11 reports requested</b>
<hr/>	
· 8 reports received: Conventions Nos 26, 87, 95, 98, 99, 100, 111, 144	
· 3 reports not received: Conventions Nos 6, 11, 133	
<b>Croatia</b>	<b>12 reports requested</b>
<hr/>	
· 1 report received: Convention No. 98	
· 11 reports not received: Conventions Nos 11, 87, 90, 100, 105, 111, 113, 119, 122, 148, 156	
<b>Cuba</b>	<b>16 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 77, 78, 79, 81, 87, 90, 94, 95, 98, 100, 111, 113, 122, 131, 141	
<b>Cyprus</b>	<b>22 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 19, 45, 87, 90, 94, 95, 98, 100, 102, 111, 114, 121, 122, 123, 124, 128, 141, 144, 158, 182, (187)	
<b>Czech Republic</b>	<b>23 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 12, 17, 19, 26, 42, 77, 78, 87, 90, 95, 98, 99, 100, 102, 105, 111, 122, 123, 124, 128, 130, 144	

<b>Democratic Republic of the Congo</b>	<b>25 reports requested</b>
<ul style="list-style-type: none"> <li>· 15 reports received: Conventions Nos 12, 19, 62, 81, 87, 88, 89, 94, 98, 100, 111, 119, 121, 144, 182</li> <li>· 10 reports not received: Conventions Nos 11, 26, 29, 95, 105, 120, 135, 138, 150, 158</li> </ul>	
<b>Denmark</b>	<b>29 reports requested</b>
<ul style="list-style-type: none"> <li>· 19 reports received: Conventions Nos 6, 19, 29, 87, 88, 94, 98, 115, 122, 138, 139, 144, 148, 155, 159, 162, 169, 182, (187)</li> <li>· 10 reports not received: Conventions Nos 11, 12, 42, 100, 102, 111, 118, 126, 130, 141</li> </ul>	
<i>Faeroe Islands</i>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 5, 6, 11, 87, 98, 126</li> </ul>	
<i>Greenland</i>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 5, 6, 11, 87, 122, 126</li> </ul>	
<b>Djibouti</b>	<b>43 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 1, 9, 11, 13, 16, 19, 22, 23, 26, 29, 38, 53, 55, 56, 63, 69, 71, 73, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 101, 105, 106, 108, 111, 115, 120, 122, 124, 125, 126, 138, 144, 182</li> </ul>	
<b>Dominica</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 15 reports received: Conventions Nos 11, 16, 19, 26, 29, 81, 87, 95, 100, 105, 111, 138, 144, (147), 182</li> <li>· 2 reports not received: Conventions Nos 94, 98</li> </ul>	
<b>Dominican Republic</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 11 reports received: Conventions Nos 29, 77, 79, 87, 90, 98, 100, 111, 122, 144, 167</li> <li>· 2 reports not received: Conventions Nos 26, 95</li> </ul>	
<b>Ecuador</b>	<b>23 reports requested</b>
<ul style="list-style-type: none"> <li>· 22 reports received: Conventions Nos 11, 77, 78, 87, 95, 98, 100, 111, 112, 113, 114, 115, 119, 122, 124, 131, 136, 139, 141, 144, 148, 162</li> <li>· 1 report not received: Convention No. 123</li> </ul>	
<b>Egypt</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 87, 94, 95, 96, 98, 100, 111, 131, 144, 148</li> </ul>	
<b>El Salvador</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 77, 78, 87, 98, 99, 100, 111, 122, 131, 141, 144, 156</li> </ul>	
<b>Equatorial Guinea</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182</li> </ul>	
<b>Eritrea</b>	<b>4 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 87, 98, 100, 111</li> </ul>	
<b>Estonia</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 6, 11, 87, 98, 100, 111, 122, 144</li> </ul>	
<b>Ethiopia</b>	<b>16 reports requested</b>
<ul style="list-style-type: none"> <li>· 14 reports received: Conventions Nos 2, 29, 87, 88, 98, 100, 105, 111, 138, 155, 158, 159, 181, 182</li> <li>· 2 reports not received: Conventions Nos 11, 156</li> </ul>	
<b>Fiji</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 16 reports received: Conventions Nos 8, 11, 26, 29, 45, (81), 87, 98, 100, 105, 144, (149), 159, 169, (178), 182</li> <li>· 1 report not received: Convention No. 111</li> </ul>	
<b>Finland</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 87, 94, 98, 100, 111, 122, 124, 141, 144, 156, 158, 173</li> </ul>	

- France** **57 reports requested**
- 
- 52 reports received: Conventions Nos 8, 11, 12, 16, 17, 19, 22, 23, 24, 35, 36, 42, 53, 55, 56, 68, 69, 71, 73, 74, 77, 78, 87, 90, 92, 94, 95, 96, 97, 98, 100, 102, 118, 122, 124, 131, 133, 134, 141, 144, 145, 146, 147, 156, 158, 163, 164, 166, 178, 179, 180, (185)
  - 5 reports not received: Conventions Nos 111, 113, 114, 125, 126
- French Polynesia* **22 reports requested**
- 
- No reports received: Conventions Nos 5, 6, 10, 11, 33, 77, 78, 87, 94, 95, 98, 100, 111, 115, 122, 123, 124, 125, 126, 131, 141, 144
- French Southern and Antarctic Territories* **20 reports requested**
- 
- 18 reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146, 147
  - 2 reports not received: Conventions Nos 98, 111
- New Caledonia* **21 reports requested**
- 
- All reports received: Conventions Nos 5, 6, 10, 11, 33, 77, 78, 87, 94, 95, 98, 100, 111, 122, 123, 124, 125, 126, 131, 141, 144
- Gabon** **16 reports requested**
- 
- All reports received: Conventions Nos 6, 11, 26, 81, 87, 95, 98, 99, 100, 111, (122), 123, 124, 144, (151), 158
- Gambia** **8 reports requested**
- 
- All reports received: Conventions Nos 29, 87, 98, 100, 105, 111, 138, 182
- Georgia** **5 reports requested**
- 
- All reports received: Conventions Nos 87, 98, 100, 111, 122
- Germany** **22 reports requested**
- 
- 21 reports received: Conventions Nos 11, 12, 19, 26, 87, 98, 99, 100, 102, 111, 113, 114, 121, 122, 125, 126, 128, 130, 141, 144, 162
  - 1 report not received: Convention No. 118
- Ghana** **13 reports requested**
- 
- No reports received: Conventions Nos 11, 26, 59, 74, 81, 87, 90, 92, 94, 98, 100, 105, 111
- Greece** **26 reports requested**
- 
- 5 reports received: Conventions Nos 13, 88, 136, 159, 182
  - 21 reports not received: Conventions Nos 11, 17, 19, 42, 77, 78, 87, 90, 95, 98, 100, 102, 111, 122, 124, 126, 141, 144, 150, 154, 156
- Grenada** **17 reports requested**
- 
- No reports received: Conventions Nos 11, 16, 26, 29, 81, 87, 94, 95, 98, 99, 100, 105, 108, 111, 138, 144, 182
- Guatemala** **25 reports requested**
- 
- All reports received: Conventions Nos 11, 59, 77, 78, 79, 81, 87, 90, 94, 95, 98, 100, 103, 111, 112, 113, 114, 117, 122, 124, 129, 131, 141, 144, 156
- Guinea** **48 reports requested**
- 
- No reports received: Conventions Nos 3, 11, 13, 14, 16, 26, 29, 45, 62, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 114, 115, 117, 118, 119, 120, 121, 122, 132, 133, 134, 135, 136, 138, 139, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159, 182
- Guinea-Bissau** **29 reports requested**
- 
- 27 reports received: Conventions Nos 1, 6, 12, 14, 17, 18, 19, 26, 27, 29, 45, 68, 69, 73, 74, 81, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111
  - 2 reports not received: Conventions Nos (138), (182)
- Guyana** **36 reports requested**
- 
- No reports received: Conventions Nos 2, 11, 12, 19, 29, 42, 45, 81, 87, 94, 95, 97, 98, 100, 105, 108, 111, 115, 129, 131, 135, 136, 137, 138, 139, 140, 141, 142, 144, 149, 150, 151, 166, 172, 175, 182

<b>Haiti</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 6 reports received: Conventions Nos 29, 45, 77, 78, 81, (138)</li> <li>· 7 reports not received: Conventions Nos 87, 90, 98, 100, 105, 111, 182</li> </ul>	
<b>Honduras</b>	<b>8 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 78, 81, 87, 95, 98, 100, 111, 122</li> </ul>	
<b>Hungary</b>	<b>32 reports requested</b>
<ul style="list-style-type: none"> <li>· 18 reports received: Conventions Nos 13, 81, 88, 105, 115, 127, 129, 136, 138, 139, 148, 155, 159, 161, 167, 181, 182, (185)</li> <li>· 14 reports not received: Conventions Nos 6, 26, 77, 78, 87, 95, 98, 99, 100, 111, 122, 124, 141, 144</li> </ul>	
<b>Iceland</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 11, (81), 87, 98, 100, 111, 122, (129), 144, 156</li> </ul>	
<b>India</b>	<b>11 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 5, 11, 26, 90, 100, 111, 122, 123, 141, (142), 144</li> </ul>	
<b>Indonesia</b>	<b>5 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 87, 98, 100, 111, 144</li> </ul>	
<b>Islamic Republic of Iran</b>	<b>5 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 95, 100, 108, 111, 122</li> </ul>	
<b>Iraq</b>	<b>13 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos 94, 95, 98, 100, 111, 122, 131, 144, 167</li> <li>· 4 reports not received: Conventions Nos 11, 77, 78, 135</li> </ul>	
<b>Ireland</b>	<b>36 reports requested</b>
<ul style="list-style-type: none"> <li>· No reports received: Conventions Nos 6, 11, 12, 14, 19, 26, 27, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 111, 118, 121, 122, 124, 132, 138, 139, 142, 144, 155, 159, 160, 176, 177, 179, 180, 182</li> </ul>	
<b>Israel</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 77, 78, 79, 87, 90, 94, 95, 98, 100, 111, 122, 141</li> </ul>	
<b>Italy</b>	<b>24 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 11, 12, 19, 26, 42, 77, 78, 79, 87, 90, 94, 95, 98, 99, 100, 102, 111, 114, 118, 122, 124, 139, 141, 144</li> </ul>	
<b>Jamaica</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· 9 reports received: Conventions Nos 11, 26, 29, 87, 98, 100, 111, 122, 144</li> <li>· 1 report not received: Convention No. 94</li> </ul>	
<b>Japan</b>	<b>9 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 81, 87, 98, 100, 122, 131, 144, 156, 159</li> </ul>	
<b>Jordan</b>	<b>6 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos 98, 100, 111, 122, 124, 144</li> </ul>	
<b>Kazakhstan</b>	<b>14 reports requested</b>
<ul style="list-style-type: none"> <li>· 10 reports received: Conventions Nos 29, 81, 87, 98, 105, 111, 129, 138, 144, 182</li> <li>· 4 reports not received: Conventions Nos 100, 122, (167), (185)</li> </ul>	
<b>Kenya</b>	<b>15 reports requested</b>
<ul style="list-style-type: none"> <li>· 8 reports received: Conventions Nos 11, 12, 16, 27, 94, 118, 138, 141</li> <li>· 7 reports not received: Conventions Nos 17, 19, 29, 81, 105, 129, 182</li> </ul>	

<b>Kiribati</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos 29, 87, 98, (100), 105, (111), (138), (182)	
<b>Republic of Korea</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 19, 81, 138, 156, 182	
<b>Kuwait</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 29, 81, 105, 138, 182	
<b>Kyrgyzstan</b>	<b>42 reports requested</b>
· No reports received: Conventions Nos 11, 16, (17), 23, 29, 69, 73, 77, 78, 79, 81, 87, 92, 95, (97), 98, 100, 105, 108, (111), 113, 115, 119, 120, 122, 124, 126, (131), 133, 134, 138, (144), 147, 148, 149, 150, 154, (157), 159, 160, 182, (184)	
<b>Lao People's Democratic Republic</b>	<b>7 reports requested</b>
· All reports received: Conventions Nos 4, 6, 29, (100), (111), 138, 182	
<b>Latvia</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 18, 19, 24, 29, 81, 105, 129, 138, 158, 182, (183)	
<b>Lebanon</b>	<b>8 reports requested</b>
· No reports received: Conventions Nos 17, 19, 29, 81, 105, 122, 138, 182	
<b>Lesotho</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos 19, 29, 81, 105, 138, 158, 182	
· 1 report not received: Convention No. 11	
<b>Liberia</b>	<b>14 reports requested</b>
· 1 report received: Convention No. 144	
· 13 reports not received: Conventions Nos 23, 29, 81, 87, 98, 105, 108, 111, 112, 113, 114, 150, 182	
<b>Libya</b>	<b>13 reports requested</b>
· No reports received: Conventions Nos 29, 53, 81, 88, 102, 105, 118, 121, 122, 128, 130, 138, 182	
<b>Lithuania</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 11, 19, 24, 29, 81, 105, 138, 156, 160, 182	
<b>Luxembourg</b>	<b>42 reports requested</b>
· 25 reports received: Conventions Nos 8, 11, 12, 13, 19, 29, 55, 56, 81, 87, 88, 102, 105, 108, 121, 130, 138, 146, (149), 150, 155, 158, (171), 182, (183)	
· 17 reports not received: Conventions Nos 9, 16, 22, 23, 53, 68, 69, 73, 74, 92, 111, 129, 133, 147, 166, 178, 180	
<b>Madagascar</b>	<b>10 reports requested</b>
· 9 reports received: Conventions Nos 11, 12, 19, 81, 105, 118, 129, 138, 182	
· 1 report not received: Convention No. 29	
<b>Malawi</b>	<b>17 reports requested</b>
· 15 reports received: Conventions Nos 11, 12, 29, 81, 87, 98, 100, 105, 111, 129, 138, 144, 150, 158, 182	
· 2 reports not received: Conventions Nos 19, 159	
<b>Malaysia</b>	<b>4 reports requested</b>
· 3 reports received: Conventions Nos 29, 81, 138	
· 1 report not received: Convention No. 182	
<b>Peninsular Malaysia</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 19	

**Sarawak** 3 reports requested

· All reports received: Conventions Nos 11, 12, 19

**Mali** 10 reports requested

· 5 reports received: Conventions Nos 29, 81, 138, 141, 182  
 · 5 reports not received: Conventions Nos 11, 17, 18, 19, 105

**Malta** 25 reports requested

· 13 reports received: Conventions Nos 8, 16, 22, 53, 73, 74, 87, 98, 100, 108, 111, 147, 180  
 · 12 reports not received: Conventions Nos 11, 12, 19, 29, 42, 81, 105, 129, 138, 141, 148, 182

**Mauritania** 14 reports requested

· 11 reports received: Conventions Nos 11, 17, 18, 19, 29, 81, 102, 105, 118, 138, 182  
 · 3 reports not received: Conventions Nos 112, 114, 122

**Mauritius** 11 reports requested

· All reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 81, 105, 138, 156, 182

**Mexico** 13 reports requested

· All reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 102, 105, 112, 118, 141, 155, 182

**Republic of Moldova** 9 reports requested

· All reports received: Conventions Nos 11, 29, 81, 105, 129, 138, 141, 158, 182

**Mongolia** 7 reports requested

· 1 report received: Convention No. 155  
 · 6 reports not received: Conventions Nos 29, 105, 111, 138, 144, 182

**Montenegro** 19 reports requested

· 17 reports received: Conventions Nos 11, 17, 18, 19, 24, 25, 29, 81, 102, 105, 113, 121, 129, 138, 156, 158, 182  
 · 2 reports not received: Conventions Nos 114, 126

**Morocco** 14 reports requested

· All reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 81, 105, 129, 138, (150), (154), 158, 182

**Mozambique** 9 reports requested

· All reports received: Conventions Nos 11, 17, 18, 29, 81, 105, 138, 144, 182

**Myanmar** 7 reports requested

· All reports received: Conventions Nos 2, 11, 17, 19, 29, 42, 87

**Namibia** 6 reports requested

· All reports received: Conventions Nos 29, 105, 138, 144, 158, 182

**Nepal** 4 reports requested

· No reports received: Conventions Nos 29, 105, 138, 182

**Netherlands** 19 reports requested

· All reports received: Conventions Nos 11, 12, 19, 29, 81, 102, 105, 113, 114, 121, 126, 128, 129, 130, 138, 141, 156, 182, (183)

*Aruba* 21 reports requested

· All reports received: Conventions Nos 8, 9, 22, 23, 25, 29, 69, 74, 81, 87, 105, 113, 114, 118, 121, 122, 138, 144, 145, 146, 147

*Curaçao* 9 reports requested

· No reports received: Conventions Nos 11, 12, 17, 25, 29, 42, 81, 105, 118

<i>Sint Maarten</i>	<b>9 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 25, 29, 42, 81, 105, 118	
<b>New Zealand</b>	<b>9 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 29, 42, 81, 84, 105, 182	
<i>Tokelau</i>	<b>2 reports requested</b>
· All reports received: Conventions Nos 29, 105	
<b>Nicaragua</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 18, 19, 24, 25, 29, 88, 105, 136, 138, 139, 141, 182	
<b>Niger</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 11, 18, 29, 81, 98, 102, 105, 138, (155), 156, 158, (161), 182, (187)	
<b>Nigeria</b>	<b>26 reports requested</b>
· No reports received: Conventions Nos 8, 11, 16, 19, 29, 32, 45, 81, 87, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182, (185)	
<b>Norway</b>	<b>19 reports requested</b>
· 17 reports received: Conventions Nos 11, 12, 19, 29, 42, 81, 102, 105, 113, 118, 126, 128, 130, 138, 141, 156, 182	
· 2 reports not received: Conventions Nos 129, 168	
<b>Oman</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos 29, 105, 138, 182	
<b>Pakistan</b>	<b>18 reports requested</b>
· 8 reports received: Conventions Nos 16, 22, 96, 98, 100, 111, 159, (185)	
· 10 reports not received: Conventions Nos 11, 18, 19, 29, 81, 87, 105, 118, 138, 182	
<b>Panama</b>	<b>18 reports requested</b>
· 16 reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 87, 100, 105, 111, 113, 114, 125, 126, 138, (167)	
· 2 reports not received: Conventions Nos 81, 182	
<b>Papua New Guinea</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 8, 11, 12, 19, 22, 29, 42, 85, 87, 105, 111, 138, 158, 182	
<b>Paraguay</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos 11, 29, 81, 105, 138, 156, 182	
· 1 report not received: Convention No. 169	
<b>Peru</b>	<b>22 reports requested</b>
· 12 reports received: Conventions Nos 11, 12, 19, 29, 81, 102, 105, 114, 138, 156, 169, 182	
· 10 reports not received: Conventions Nos 24, 25, 35, 36, 37, 38, 39, 40, 112, 113	
<b>Philippines</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 17, 19, 29, (97), 105, 118, 138, 141, 157, 182	
<b>Poland</b>	<b>16 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 19, 24, 25, 29, 42, 81, 102, 105, 113, 129, 138, 141, 182	
<b>Portugal</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 18, 19, 29, 81, 102, 105, 129, 138, 156, 158, 182	
<b>Qatar</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 29, 81, 105, 138, 182	

<b>Romania</b>	<b>11 reports requested</b>
· All reports received: Conventions Nos 11, 24, 29, 81, 98, (102), 105, 129, 138, 168, 182	
<b>Russian Federation</b>	<b>16 reports requested</b>
· 15 reports received: Conventions Nos 11, 29, 81, 87, 98, 105, 111, 119, 126, 138, 152, 156, 162, 182, (185)	
· 1 report not received: Convention No. 113	
<b>Rwanda</b>	<b>17 reports requested</b>
· No reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 62, 81, 87, 94, 98, 100, 105, 111, 118, 138, 182	
<b>Saint Kitts and Nevis</b>	<b>5 reports requested</b>
· All reports received: Conventions Nos 29, 105, 138, 144, 182	
<b>Saint Lucia</b>	<b>10 reports requested</b>
· All reports received: Conventions Nos 11, 12, 16, 17, 19, 29, 105, 108, 158, 182	
<b>Saint Vincent and the Grenadines</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos 11, 12, 19, 29, 81, 105, 138, 182	
<b>Samoa</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos (29), (87), (98), (100), (105), (111), (138), (182)	
<b>San Marino</b>	<b>18 reports requested</b>
· No reports received: Conventions Nos 29, 87, 98, 100, 105, 111, 119, 138, 140, 148, 150, 151, 154, 156, 159, 160, 161, 182	
<b>Sao Tome and Principe</b>	<b>17 reports requested</b>
· No reports received: Conventions Nos 17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 106, 111, 138, 144, 159, 182, (184)	
<b>Saudi Arabia</b>	<b>5 reports requested</b>
· 4 reports received: Conventions Nos 29, 81, 174, 182	
· 1 report not received: Convention No. 105	
<b>Senegal</b>	<b>12 reports requested</b>
· 11 reports received: Conventions Nos 11, 12, 19, 29, 81, 98, 102, 105, 121, 125, 138	
· 1 report not received: Convention No. 182	
<b>Serbia</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 144, 156, 158, (167), 182, (187)	
<b>Seychelles</b>	<b>16 reports requested</b>
· 12 reports received: Conventions Nos 8, 11, 22, 29, (73), 81, 105, 138, 148, 150, 151, 155	
· 4 reports not received: Conventions Nos (147), (161), (180), 182	
<b>Sierra Leone</b>	<b>26 reports requested</b>
· No reports received: Conventions Nos 8, 16, 17, 19, 22, 26, 29, 32, 45, 58, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144	
<b>Singapore</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos 8, 11, 12, 16, 19, 22, 29, 81, 94, 98, 100, 138, 182	
<b>Slovakia</b>	<b>28 reports requested</b>
· 6 reports received: Conventions Nos (81), 100, (129), (135), 148, (154)	
· 22 reports not received: Conventions Nos 11, 12, 17, 19, 29, 42, 102, 105, 120, 122, 128, 130, 138, 139, 156, 159, 161, 163, 164, 167, 176, 182	

<b>Slovenia</b>	<b>23 reports requested</b>
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· 9 reports received: Conventions Nos 9, 11, 56, 91, 102, 129, 138, 156, 180	
· 14 reports not received: Conventions Nos 12, 19, 24, 25, 29, 81, (95), 105, 113, 114, 121, 126, 158, 182	
<b>Solomon Islands</b>	<b>15 reports requested</b>
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· 13 reports received: Conventions Nos 8, 11, 12, 14, 16, 26, 29, 42, 45, 81, 94, 95, 108	
· 2 reports not received: Conventions Nos 19, 84	
<b>Somalia</b>	<b>13 reports requested</b>
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· No reports received: Conventions Nos 16, 17, 19, 22, 23, 29, 45, 84, 85, 94, 95, 105, 111	
<b>South Africa</b>	<b>7 reports requested</b>
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· All reports received: Conventions Nos 19, 29, 42, 105, 138, 155, 182	
<b>Spain</b>	<b>23 reports requested</b>
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· 22 reports received: Conventions Nos 11, 12, 17, 24, 25, 29, 42, 44, 81, 102, 105, 113, 114, 126, 129, 138, 141, 156, 157, 158, 182, (187)	
· 1 report not received: Convention No. 19	
<b>Sri Lanka</b>	<b>10 reports requested</b>
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· All reports received: Conventions Nos 11, 18, 29, 81, 103, 105, 108, 138, 144, 182	
<b>Sudan</b>	<b>6 reports requested</b>
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· All reports received: Conventions Nos 19, 29, 81, 105, 138, 182	
<b>Suriname</b>	<b>10 reports requested</b>
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· All reports received: Conventions Nos 11, 17, 19, 29, 42, 81, 105, 112, 118, 182	
<b>Swaziland</b>	<b>9 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 19, 29, 81, 87, 105, 138, 182	
<b>Sweden</b>	<b>19 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 19, 29, 81, 102, 105, 118, 121, 128, 129, 130, 138, 141, 156, 157, 158, 168, 182	
<b>Switzerland</b>	<b>12 reports requested</b>
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· All reports received: Conventions Nos 11, 18, 19, 29, 81, 102, 105, 128, 138, 141, 168, 182	
<b>Syrian Arab Republic</b>	<b>17 reports requested</b>
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· All reports received: Conventions Nos 11, 17, 18, 19, 29, 53, 81, 96, 100, 105, 118, 125, 129, 138, (155), 170, 182	
<b>Tajikistan</b>	<b>15 reports requested</b>
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· 11 reports received: Conventions Nos 11, 29, (81), 105, 106, 115, 138, 143, 148, (155), 182	
· 4 reports not received: Conventions Nos 32, 113, 120, 126	
<b>United Republic of Tanzania</b>	<b>8 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 17, 19, 29, 105, 138, 182	
<b>Tanganyika</b>	<b>1 report requested</b>
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· No reports received: Convention No. 81	
<b>Zanzibar</b>	<b>1 report requested</b>
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· All reports received: Convention No. 85	
<b>Thailand</b>	<b>7 reports requested</b>
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· 2 reports received: Conventions Nos 122, (159)	
· 5 reports not received: Conventions Nos 19, 29, 105, 138, 182	

<b>The former Yugoslav Republic of Macedonia</b>	<b>18 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 182	
<b>Timor-Leste</b>	<b>4 reports requested</b>
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· No reports received: Conventions Nos (29), (87), (98), (182)	
<b>Togo</b>	<b>14 reports requested</b>
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· 11 reports received: Conventions Nos 6, 11, 13, 14, 26, 29, 85, 95, 100, 111, 143	
· 3 reports not received: Conventions Nos 105, 138, 182	
<b>Trinidad and Tobago</b>	<b>13 reports requested</b>
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· All reports received: Conventions Nos 16, 19, 29, 81, 98, 100, 105, 111, 125, 138, 144, 150, 182	
<b>Tunisia</b>	<b>21 reports requested</b>
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· 19 reports received: Conventions Nos 11, 12, 17, 18, 19, 81, 87, 88, 98, 100, 105, 107, 111, 113, 114, 118, 122, 138, 150	
· 2 reports not received: Conventions Nos 29, 182	
<b>Turkey</b>	<b>28 reports requested</b>
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· 27 reports received: Conventions Nos 11, 29, 42, 53, 55, 68, 69, 73, 81, 92, 98, 100, 102, 105, 108, 111, 118, 122, 133, 134, 138, 144, 146, 158, 164, 166, 182	
· 1 report not received: Convention No. 87	
<b>Turkmenistan</b>	<b>2 reports requested</b>
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· All reports received: Conventions Nos 29, 105	
<b>Uganda</b>	<b>26 reports requested</b>
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· 7 reports received: Conventions Nos 11, 26, 81, 122, 138, 159, 162	
· 19 reports not received: Conventions Nos 12, 17, 19, 29, 45, 87, 94, 95, 98, 100, 105, 111, 123, 124, 143, 144, 154, 158, 182	
<b>Ukraine</b>	<b>14 reports requested</b>
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· All reports received: Conventions Nos 11, 23, 29, 81, 105, 113, 120, 126, 129, 138, 156, 158, 182, (184)	
<b>United Arab Emirates</b>	<b>5 reports requested</b>
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· All reports received: Conventions Nos 29, 81, 105, 138, 182	
<b>United Kingdom</b>	<b>19 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 17, 19, 24, 25, 29, 42, 81, 100, 102, 105, 111, 114, 126, 138, 141, 160, 182	
<i>Anguilla</i>	<b>8 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 98, 105	
<i>Bermuda</i>	<b>17 reports requested</b>
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· All reports received: Conventions Nos 11, 12, 16, 17, 19, 22, 23, 29, 42, 58, 82, 87, 98, 105, 108, 133, 147	
<i>British Virgin Islands</i>	<b>20 reports requested</b>
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· 15 reports received: Conventions Nos 8, 10, 14, 26, 29, 58, 59, 82, 85, 87, 94, 97, 98, 105, 108	
· 5 reports not received: Conventions Nos 11, 12, 17, 19, 23	
<i>Falkland Islands (Malvinas)</i>	<b>22 reports requested</b>
<hr/>	
· 21 reports received: Conventions Nos 8, 10, 11, 12, 14, 19, 22, 23, 29, 32, 42, 45, 58, 59, 82, 87, 98, 105, 108, 141, (182)	
· 1 report not received: Convention No. 17	
<i>Gibraltar</i>	<b>19 reports requested</b>
<hr/>	
· 15 reports received: Conventions Nos 8, 12, 16, 17, 19, 22, 23, 42, 58, 87, 108, 133, 147, 150, 160	
· 4 reports not received: Conventions Nos 11, 29, 81, 105	
<i>Guernsey</i>	<b>14 reports requested</b>
<hr/>	
· All reports received: Conventions Nos 11, 12, 17, 19, 24, 25, 29, 42, 56, 81, 105, 114, 141, 182	

<i>Isle of Man</i>	<b>15 reports requested</b>
· All reports received: Conventions Nos 11, 12, 16, 17, 19, 24, 25, 29, 42, 56, 81, 102, 105, 126, 150	
<i>Jersey</i>	<b>10 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 19, 24, 25, 29, 42, 81, 105	
<i>Montserrat</i>	<b>7 reports requested</b>
· All reports received: Conventions Nos 11, 12, 17, 19, 29, 42, 105	
<i>St Helena</i>	<b>21 reports requested</b>
· 20 reports received: Conventions Nos 8, 10, 11, 12, 14, 16, 17, 19, 29, 58, 59, 63, 82, 85, 87, 98, 105, 108, 150, 151	
· 1 report not received: Convention No. (182)	
<b>United States</b>	<b>2 reports requested</b>
· All reports received: Conventions Nos 105, 182	
<i>Guam</i>	<b>1 report requested</b>
· All reports received: Convention No. 144	
<i>Northern Mariana Islands</i>	<b>1 report requested</b>
· All reports received: Convention No. 147	
<b>Uruguay</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos 11, 19, 29, 81, 98, 105, 113, 114, 118, 121, 128, 129, 130, 138, 141, 148, 155, 156, 162, 167, 182	
<b>Uzbekistan</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos 29, 105, (138), 182	
<b>Vanuatu</b>	<b>8 reports requested</b>
· 2 reports received: Conventions Nos (29), (105)	
· 6 reports not received: Conventions Nos (87), (98), (100), (111), (182), (185)	
<b>Bolivarian Republic of Venezuela</b>	<b>18 reports requested</b>
· All reports received: Conventions Nos 11, 19, 29, 81, 102, 105, 118, 121, 128, 130, 138, 139, 141, 150, 155, 156, 158, 182	
<b>Viet Nam</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos 29, 81, 138, 182	
<b>Yemen</b>	<b>17 reports requested</b>
· No reports received: Conventions Nos 16, 19, 29, 58, 81, 87, 98, 100, 105, 111, 122, 138, 144, 156, 158, 182, (185)	
<b>Zambia</b>	<b>26 reports requested</b>
· 14 reports received: Conventions Nos 29, 87, 98, 100, 103, 111, 122, 136, 138, 144, 148, 150, 158, 182	
· 12 reports not received: Conventions Nos 11, 12, 17, 18, 19, 105, 135, 141, 151, 154, 159, 176	
<b>Zimbabwe</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos 19, 29, 81, 87, 105, 129, 138, 182	

## Grand Total

A total of 2,735 reports (article 22) were requested, of which 1,855 reports (67.82 per cent) were received.

A total of 278 reports (article 35) were requested, of which 229 reports (82.37 per cent) were received.

**Appendix II. Statistical table of reports received on  
ratified Conventions as of 9 December 2011**  
(article 22 of the Constitution)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee of Experts	Reports received in time for the session of the Conference
<b>As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals</b>				
1977	1529	215 14.0%	1120 73.2%	1328 87.0%
1978	1701	251 14.7%	1289 75.7%	1391 81.7%
1979	1593	234 14.7%	1270 79.8%	1376 86.4%
1980	1581	168 10.6%	1302 82.2%	1437 90.8%
1981	1543	127 8.1%	1210 78.4%	1340 86.7%
1982	1695	332 19.4%	1382 81.4%	1493 88.0%
1983	1737	236 13.5%	1388 79.9%	1558 89.6%
1984	1669	189 11.3%	1286 77.0%	1412 84.6%
1985	1666	189 11.3%	1312 78.7%	1471 88.2%
1986	1752	207 11.8%	1388 79.2%	1529 87.3%
1987	1793	171 9.5%	1408 78.4%	1542 86.0%
1988	1636	149 9.0%	1230 75.9%	1384 84.4%
1989	1719	196 11.4%	1256 73.0%	1409 81.9%
1990	1958	192 9.8%	1409 71.9%	1639 83.7%
1991	2010	271 13.4%	1411 69.9%	1544 76.8%
1992	1824	313 17.1%	1194 65.4%	1384 75.8%
1993	1906	471 24.7%	1233 64.6%	1473 77.2%
1994	2290	370 16.1%	1573 68.7%	1879 82.0%
<b>As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995</b>				
1995	1252	479 38.2%	824 65.8%	988 78.9%
<b>As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals</b>				
1996	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	1701 72.6%
2004	2569	659 25.6%	1645 64.0%	1852 72.1%
2005	2638	696 26.4%	1820 69.0%	2065 78.3%
2006	2586	745 28.8%	1719 66.5%	1949 75.4%
2007	2478	845 34.1%	1611 65.0%	1812 73.2%
2008	2515	811 32.2%	1768 70.2%	1962 78.0%
2009	2733	682 24.9%	1853 67.8%	2120 77.6%
2010	2745	861 31.4%	1866 67.9%	2122 77.3%
2011	2735	960 35.1%	1855 67.8%	

### Appendix III. List of observations made by employers' and workers' organizations

<b>Albania</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Algeria</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Angola</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Argentina</b>	
<hr/>	
• Confederation of Workers of Argentina (CTA)	on Conventions Nos 1, 30, 81, 87, 98, 111, 169
• General Confederation of Labour (CGT)	26, 87, 95, 100, 111
• International Trade Union Confederation (ITUC)	87, 98
<b>Armenia</b>	
<hr/>	
• Confederation of Trade Unions of Armenia (CTUA)	on Conventions Nos 26, 73, 87, 94, 95, 98, 131, 144, 173
• Republican Union of Employers of Armenia	87, 94, 95, 97, 98, 122, 131, 143, 144, 173
<b>Australia</b>	
<hr/>	
• Australian Council of Trade Unions (ACTU)	on Conventions Nos 87, 98, 100, 111, 122, 131, 144, 156, 158, 173
• International Trade Union Confederation (ITUC)	87, 98
<b>Austria</b>	
<hr/>	
• Federal Chamber of Labour (BAK)	on Conventions Nos 6, 11, 26, 87, 94, 95, 98, 99, 100, 111, 122, 124, 141, 144, 173
<b>Azerbaijan</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Bahamas</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Bangladesh</b>	
<hr/>	
• International Trade Union Confederation (ITUC)	on Conventions Nos 87, 98
<b>Barbados</b>	
<hr/>	
• Barbados Workers' Union (BWU)	on Conventions Nos 11, 26, 29, 81, 87, 90, 95, 98, 100, 111, 115, 122, 138, 144
• International Trade Union Confederation (ITUC)	87, 98
<b>Belarus</b>	
<hr/>	
• Belarusian Congress of Democratic Trade Unions (CDTU)	on Conventions Nos 87, 98, 122
• International Trade Union Confederation (ITUC)	87, 98
<b>Belgium</b>	
<hr/>	
• Confederation of Christian Trade Unions (CSC), General Labour Federation of Belgium (FGTB) and General Confederation of Liberal Trade Unions of Belgium (CGSLB)	on Conventions Nos 95
• General Confederation of Liberal Trade Unions of Belgium (CGSLB)	98
• International Trade Union Confederation (ITUC)	87, 98

<b>Belize</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> <li>• National Trade Union Congress of Belize (NTUCB)</li> </ul>	<b>on Conventions Nos</b> 87, 98 87, 98, 141
<b>Benin</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98
<b>Plurinational State of Bolivia</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• Bolivian Central of Workers (COB)</li> <li>• Confederation of Private Employers of Bolivia (CEPB)</li> <li>• International Democratic Bolivian Assembly (ABDI)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 169 87, 98 169 87, 98
<b>Bosnia and Herzegovina</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98
<b>Botswana</b>	
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<ul style="list-style-type: none"> <li>• Education International</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98 87, 98
<b>Brazil</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• Brazilian Association of Industries and Distributors of Fibrocement Products (ABIFibro)</li> <li>• International Trade Union Confederation (ITUC)</li> <li>• Single Confederation of Workers (CUT)</li> <li>• Union of Hotel, Bar and Allied Workers of São Paulo and Region (SINTHORESP) and Confederation of Tourism Workers (CONTRATUH)</li> </ul>	<b>on Conventions Nos</b> 162 98 131 98, 154
<b>Bulgaria</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 102, 181 87, 98
<b>Burkina Faso</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98
<b>Burundi</b>	
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<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98
<b>Cambodia</b>	
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<ul style="list-style-type: none"> <li>• Cambodian Labour Confederation (CLC)</li> <li>• Education International</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98 87, 98 87, 98
<b>Cameroon</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• Confederation of United Workers of Cameroon (CTUC)</li> <li>• General Union of Workers of Cameroon (UGTC)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 29, 33, 87, 90, 94, 95, 98, 100, 111, 131 78, 87, 95, 98, 111, 131 87, 98
<b>Canada</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• Canadian Labour Congress (CLC)</li> <li>• Confederation of National Trade Unions (CSN)</li> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 100, 111, 122, 162 162 87
<b>Central African Republic</b>	
<hr/>	
<ul style="list-style-type: none"> <li>• International Trade Union Confederation (ITUC)</li> </ul>	<b>on Conventions Nos</b> 87, 98

## Chad

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Chile

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- Confederation of Production and Commerce (CPC)
- International Trade Union Confederation (ITUC)
- National Association of Public Employees (ANEF), Association of Employees of the Women's National Service, College of Teachers of Chile A.G., National Confederation of Business and Services, and Confederation of Unions in the Banking and Financial Sector of Chile

on Conventions Nos  
87, 98  
87, 98  
35, 36, 100, 111

## Hong Kong Special Administrative Region

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Macau Special Administrative Region

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Colombia

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- Fibers Producers Association of Colombia (ASCOLFIBRAS)
- General Confederation of Labour (CGT)
- International Organization of Employers (IOE)
- International Trade Union Confederation (ITUC)
- National Employers Association of Colombia (ANDI)
- National Federation of State Workers (FENALTRASE-CUT) - National Federation of Public Servants (FENASER-CTC) - National Union of State and Public Service Workers (UNETE-CGT) - National Union of State and Public Service workers of Colombia (UTRADEC-CGT)
- Single Confederation of Workers of Colombia (CUT)
- Single Confederation of Workers of Colombia (CUT) and Confederation of Workers of Colombia (CTC)
- Union of Workers of the National Mining Enterprise 'Minercol Ltda.' (SINTRAMINERCOL)

on Conventions Nos  
162  
2, 11, 12, 13, 81, 87, 98, 159, 161  
169  
87, 98  
81, 87, 98, 169  
151, 154  
151, 154, 162  
2, 6, 26, 81, 87, 88, 95, 98, 99, 100,  
111, 144, 159, 161, 169, 170  
169

## Comoros

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- Workers' Confederation of Comoros (CTC)

on Conventions Nos  
17, 26, 42, 77, 78, 81, 98, 100, 111,  
122

## Congo

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Costa Rica

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- Confederation of Workers Rerum Novarum (CTRN)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
81, 87, 98, 122, 129, 131  
87, 98

## Côte d'Ivoire

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- General Confederation of Enterprises of Côte d'Ivoire (CGECI)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
29, 81, 111, 129, 138, 144, 159, 182  
87, 98

## Croatia

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- International Trade Union Confederation (ITUC)
- Trade Union of State and Local Government Employees of Croatia

on Conventions Nos  
87, 98  
98

## Cuba

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- Coalition of Independent Trade Unions of Cuba (CSIC)
- International Trade Union Confederation (ITUC)
- Worker's Central Union of Cuba (CTC)

on Conventions Nos  
87, 98  
87, 98  
98

## Czech Republic

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- Czech-Moravian Confederation of Trade Unions (CM KOS)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
26, 87, 95, 98, 111, 122  
87, 98

## Democratic Republic of the Congo

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- Confederation of Trade Unions of Congo (CSC)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
29  
87, 98

## Denmark

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- Danish Confederation of Trade Unions (LO)

on Conventions Nos  
87, 98

## Djibouti

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- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98

## Dominican Republic

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- Autonomous Confederation of Workers' Unions (CASC), National Confederation of Trade Union Unity (CNUS) and National Confederation of Dominican Workers (CNTD)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 95, 98, 100, 111, 144  
87, 98

## Ecuador

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- International Trade Union Confederation (ITUC)
- National Federation of Chambers of Industries of Ecuador

on Conventions Nos  
87, 98  
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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- Education International
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98  
87, 98

## Fiji

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- Education International
- Fiji Mine Workers Union (FMWU)
- International Trade Union Confederation (ITUC)

on Conventions Nos  
87, 98  
87, 98  
87, 98

## Finland

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	on Conventions Nos
• Central Organization of Finnish Trade Unions (SAK)	87, 98, 100, 122, 124
• Commission for Local Authority Employers (KT)	122, 156
• Confederation of Finnish Industries (EK)	100
• Confederation of Unions for Academic Professionals in Finland (AKAVA) - Central Organisation of Finnish Trade Unions (SAK)	156
• Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA)	98, 100
• Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK).	94, 111, 158
• Finnish Confederation of Professionals (STTK)	100

## France

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	on Conventions Nos
• General Confederation of Labour (CGT)	97
• International Trade Union Confederation (ITUC)	87, 98
• Inter-Union Association CGT-SUD-UNSA-SNU TEFE	81

## Gabon

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	on Conventions Nos
• Education International	87
• International Metalworkers' Federation (IMF)	87
• International Trade Union Confederation (ITUC)	87, 98

## Georgia

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	on Conventions Nos
• Education International	87, 98
• International Trade Union Confederation (ITUC)	29, 87, 98

## Germany

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	on Conventions Nos
• German Confederation of Trade Unions (DGB)	129
• International Trade Union Confederation (ITUC)	87, 98

## Ghana

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	on Conventions Nos
• International Trade Union Confederation (ITUC)	87, 98

## Greece

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	on Conventions Nos
• Greek Federation of Bank Employee Unions (OTOE)	87, 98
• Greek General Confederation of Labour (GSEE)	81, 87, 95, 98, 100, 111, 122, 150, 154, 156
• Hellenic Federation of Enterprises and Industries (SEV)	98, 154

## Guatemala

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	on Conventions Nos
• Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF)	87, 98, 169
• Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG)	87, 98, 117, 131
• International Organization of Employers (IOE)	169
• International Trade Union Confederation (ITUC)	87, 98
• Trade Union Confederation of Guatemala (UNSTRAGUA) - General Confederation of Workers of Guatemala (CGTG) - Trade Unions' Unity of Guatemala (CUSG)	87, 98

## Guinea

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	on Conventions Nos
• International Trade Union Confederation (ITUC)	87, 98

## Guinea-Bissau

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	on Conventions Nos
• International Trade Union Confederation (ITUC)	98
• National Workers' Union of Guinea (UNTG)	81

## Haiti

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	on Conventions Nos
• International Trade Union Confederation (ITUC)	29, 81, 87, 98, 105, 182

**Honduras**

- 
- International Trade Union Confederation (ITUC) 87, 98
  - Single Confederation of Workers of Honduras (CUTH) 42, 81, 87, 95, 111, 122, 169
  - Worker's Central Union of Honduras (CTH), Worker's General Central Union (CGT), and Single Confederation of Workers of Honduras (CUTH) 95, 106, 111, 122

**Hungary**

- 
- International Trade Union Confederation (ITUC) 87, 98

**India**

- 
- Trade Union Co-Ordination Centre 144

**Indonesia**

- 
- International Trade Union Confederation (ITUC) 87, 98

**Iraq**

- 
- International Trade Union Confederation (ITUC) 98

**Israel**

- 
- General Federation of Labour in Israel (HISTADRUT) 138
  - International Trade Union Confederation (ITUC) 87, 98
  - International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) 97, 100, 111

**Italy**

- 
- International Trade Union Confederation (ITUC) 87, 98
  - Italian General Confederation of Labour (CGIL) 111, 118, 181
  - Italian Union of Labour (UIL) 111, 118

**Jamaica**

- 
- International Trade Union Confederation (ITUC) 87, 98

**Japan**

- 
- All Japan Shipbuilding and Engineering Union (AJSEU) 29
  - Federation of Korean Trade Unions (FKTU) - Korean Confederation of Trade Unions (KCTU) 29
  - International Trade Union Confederation (ITUC) 87, 98
  - Japanese Trade Union Confederation (JTUC-RENGO) 81, 87, 98, 100, 122, 131, 144, 156, 159
  - Labour Union of Migrant Workers 29
  - National Confederation of Trade Unions (ZENROREN) 87, 98, 122, 131
  - National Union of Welfare and Childcare Workers 159
  - Working Women's Network (WWN) 100

**Jordan**

- 
- International Trade Union Confederation (ITUC) 98

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**Appendix IV. Summary of information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities**

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6, and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of any action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures to rationalize and simplify proceedings. As a result, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains the most recent information on the submission to the competent authorities of the HIV and AIDS Recommendation, 2010 (No. 200), adopted by the Conference at its 99th Session (June 2010). The Conference adopted no international labour Conventions or Recommendations at two consecutive sessions, in June 2008 and 2009 (97th and 98th Sessions). In addition, the present summary contains information supplied by governments with respect to earlier adopted instruments submitted to the competent authorities in 2011.

The summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 100th Session of the Conference (Geneva, June 2011) and which could not therefore be laid before the Conference at that session.

In the next report, the Appendix IV summary will contain information showing how far governments have progressed in the submission to the competent authorities of the Domestic Workers Convention (No. 189) and Recommendation (No. 201), adopted by the Conference at its 100th Session (June 2011).

**Armenia.** Recommendation No. 200 was submitted to the National Assembly in August 2011.

**Australia.** Recommendation No. 200 was submitted to the House of Representatives and the Senate on 15 June 2011.

**Barbados.** The instruments adopted by the Conference at the 96th Session were submitted to Parliament on 4 May 2010. Recommendation No. 200 was submitted to Parliament on 5 July 2011.

**Belgium.** Recommendation No. 200 was submitted to the House of Representatives and to the Senate on 19 January 2011.

**Cape Verde.** The instruments adopted at the sessions of the Conference held between 1995 and 2010 were submitted to the National Assembly on 18 August 2011.

**Czech Republic.** Recommendation No. 200 was submitted to the Chamber of Deputies and the Senate on 8 and 9 June 2011.

**Costa Rica.** Recommendation No. 199 was submitted to the Legislative Assembly on 11 July 2011. Recommendation No. 200 was submitted to the Legislative Assembly on 4 February 2011.

**Denmark.** Recommendation No. 200 was submitted to Parliament (*Folketinget*) on 28 January 2011.

**Dominican Republic.** Recommendation No. 200 was submitted to the National Congress on 22 July 2010.

**Estonia.** The instruments adopted at the 96th, 99th and 100th Sessions were submitted to Parliament on 25 May 2009, 11 May 2011 and 24 October 2011, respectively.

**Greece.** Recommendation No. 200 was submitted to the Hellenic Parliament on 3 November 2011.

**Indonesia.** Recommendation No. 200 was submitted to the House of Representatives on 24 March 2011.

**Israel.** Recommendation No. 200 was submitted to the Knesset on 31 July 2011.

**Italy.** Recommendation No. 200 has been submitted to Parliament.

**Japan.** Recommendation No. 200 was submitted to the Diet on 14 June 2011.

**Kenya.** On 13 September 2010, the Protocols adopted at the 82nd and 84th Sessions and all the other instruments adopted by the Conference between 2000 and 2007 were submitted to the National Assembly.

**Republic of Korea.** Recommendation No. 200 was submitted to the National Assembly on 13 April 2011.

**Mauritius.** Recommendation No. 200 was submitted to the National Assembly on 21 June 2011.

**Montenegro.** The Convention and the Recommendations adopted at the 96th and 99th Sessions were submitted to Parliament on 15 April 2011.

**Mongolia.** The instruments adopted by the Conference at the sessions held between June 1995 and June 2010 were submitted to the State Great Hural on 10 February 2011.

**Morocco.** Recommendation No. 200 was submitted to the House of Representatives and the House of Councillors on 23 December 2010.

**New Zealand.** Recommendation No. 200 was submitted to the House of Representatives on 18 January 2011.

**Philippines.** Recommendation No. 200 was submitted to the Senate and the House of Representatives on 7 February 2011.

**Portugal.** Convention No. 188 and Recommendation No. 199 were submitted to the Assembly of the Republic in April 2008.

**Poland.** Recommendation No. 200 was submitted to the Sejm on 31 March 2011.

**Qatar.** The instruments adopted at the 94th, 95th, 96th and 99th Sessions were submitted to the Council of Ministers and the Advisory Council on 27 April 2011.

**Romania.** Recommendation No. 200 was submitted to the Chamber of Deputies and to the Senate on 18 July 2011.

**Serbia.** The Convention and Recommendations adopted at the 99th and 100th Sessions were submitted to the National Assembly on 29 June 2011.

**Slovakia.** Recommendation No. 200 was submitted to the National Council on 3 December 2010.

**Slovenia.** Recommendation No. 200 was submitted to the National Assembly on 24 August 2010.

**Spain.** Recommendation No. 200 was submitted to the Cortes Generales.

**Turkey.** Recommendation No. 200 was submitted to the Grand National Assembly on 17 December 2010.

**Bolivarian Republic of Venezuela.** Recommendation No. 200 was submitted to the National Assembly on 25 May 2011.

**Viet Nam.** The Convention and Recommendations adopted at the 96th and 99th Sessions were submitted to the National Assembly on 13 September 2010. The instruments adopted at the 100th Session were submitted to the National Assembly on 23 September 2011.

**Zimbabwe.** The instruments adopted at the 100th Session were submitted to Parliament on 12 October 2011.

The Committee has deemed it necessary, in certain cases, to request additional information on the nature of the competent authorities to which the instruments adopted by the Conference have been submitted, as well as other particulars required by the questionnaire at the end of the Memorandum 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 99th Sessions of the International Labour Conference, 1948-2010)

*Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.*

*Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.*

*The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2005), 97th Session (June 2008) and 98th Session (June 2009).*

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Afghanistan</b> 31-56, 58-72, 74-92, 94-95	<b>96, 99</b>
<b>Albania</b> 31-49, 79-81, 82(C176; R183), 83, 84(C178; P147; R186), 85, 87-88, 90(P155), 91	<b>78, 82(P081), 84(C179; C180; R185; R187), 86, 89, 90(R193; R194), 92, 94, 95, 96, 99</b>
<b>Algeria</b> 47-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Angola</b> 61-72, 74-78, 79(C173), 80-81, 82(C176; R183), 83-85, 87-90	<b>79(R180), 82(P081), 86, 91, 92, 94, 95, 96, 99</b>
<b>Antigua and Barbuda</b> 68-72, 74-82, 84, 87, 94	<b>83, 85, 86, 88, 89, 90, 91, 92, 95, 96, 99</b>
<b>Argentina</b> 31-56, 58-72, 74-90, 92, 94, 96	<b>91, 95, 99</b>
<b>Armenia</b> 80-92, 94-96, 99	-
<b>Australia</b> 31-56, 58-72, 74-92, 94-96, 99	-
<b>Austria</b> 31-56, 58-72, 74-92, 95-96	<b>94, 99</b>
<b>Azerbaijan</b> 79(C173), 80-82, 85-88, 91-92	<b>79(R180), 83, 84, 89, 90, 94, 95, 96, 99</b>
<b>Bahamas</b> 61-72, 74-84, 87, 91, 94	<b>85, 86, 88, 89, 90, 92, 95, 96, 99</b>
<b>Bahrain</b> 63-72, 74-87	<b>88, 89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Bangladesh</b> 58-72, 74-76, 77(C171; R178), 78, 80, 84(C178; C180; P147), 85(C181), 87	<b>77(C170; P089; R177), 79, 81, 82, 83, 84(C179; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91, 92, 94, 95, 96, 99</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>Barbados</b>	51-56, 58-72, 74-92, 94-96, 99	-
<b>Belarus</b>	37-56, 58-72, 74-92, 94-96	99
<b>Belgium</b>	31-56, 58-72, 74-92, 94, 95(C187; R197), 99	95(R198), 96
<b>Belize</b>	68-72, 74-76, 84(P147), 87-88	77, 78, 79, 80, 81, 82, 83, 84(C178; C179; C180; R185; R186; R187), 85, 86, 89, 90, 91, 92, 94, 95, 96, 99
<b>Benin</b>	45-56, 58-72, 74-92, 94-96	99
<b>Plurinational State of 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	80(R181), 81(R182), 82(P081; R183), 83(R184), 84(P147; R185; R186; R187), 85(R188), 86, 88(R191), 89(R192), 90, 92, 94, 95, 96, 99
<b>Bosnia and Herzegovina</b>	80-81, 82(C176; R183), 83-89, 90(R193; R194), 91-92, 94-96	82(P081), 90(P155), 99
<b>Botswana</b>	64-72, 74-88, 90(R193; R194), 94-95	89, 90(P155), 91, 92, 96, 99
<b>Brazil</b>	31-50, 51(C127; R128; R129; R130; R131), 53(R133; R134), 54-56, 58-62, 63(C148; R156; R157), 64(C151; R158; R159), 65-66, 67(C154; C155; R163; R164; R165), 68(C158; P110; R166), 69-72, 74-77, 80, 82(C176; R183), 84(C178; R185), 87, 89, 91	51(C128), 52, 53(C129; C130), 63(C149), 64(C150), 67(C156), 68(C157), 78, 79, 81, 82(P081), 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 92, 94, 95, 96, 99
<b>Brunei Darussalam</b>	-	96, 99
<b>Bulgaria</b>	31-56, 58-72, 74-92, 94-96	99
<b>Burkina Faso</b>	45-56, 58-72, 74-92, 94-96	99
<b>Burundi</b>	47-56, 58-72, 74-92, 95	94, 96, 99
<b>Cambodia</b>	53-54, 56, 58(C138; R146), 64(C150; R158), 87	55, 58(C137; R145), 59, 60, 61, 62, 63, 64(C151; R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Cameroon</b>	44-56, 58-72, 74-92, 94-96	99
<b>Canada</b>	31-56, 58-72, 74-92, 94-96	99

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Cape Verde</b>	65-72, 74-92, 94-96, 99	-
<b>Central African Republic</b>	45-56, 58-72, 74-92, 94-96	99
<b>Chad</b>	45-56, 58-72, 74-92, 94-96	99
<b>Chile</b>	31-56, 58-72, 74-82, 87, 95(C187; R197)	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95(R198), 96, 99
<b>China</b>	31-56, 58-72, 74-92, 94-96	99
<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, 96, 99
<b>Comoros</b>	65-72, 74-78, 87	79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<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, 96, 99
<b>Costa Rica</b>	31-56, 58-72, 74-92, 94-96, 99	-
<b>Côte d'Ivoire</b>	45-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Croatia</b>	80-85, 87, 94	86, 88, 89, 90, 91, 92, 95, 96, 99
<b>Cuba</b>	31-56, 58-72, 74-92, 94-96	99
<b>Cyprus</b>	45-56, 58-72, 74-90, 92	91, 94, 95, 96, 99
<b>Czech Republic</b>	80-92, 94-96, 99	-
<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, 96, 99
<b>Denmark</b>	31-56, 58-72, 74-92, 94-96, 99	-
<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, 96, 99

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Dominica</b> 68-72, 74-79, 87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Dominican Republic</b> 31-56, 58-72, 74-92, 94-95, 99	96
<b>Ecuador</b> 31-56, 58-72, 74-88, 90(P155), 91-92, 94-95	89, 90(R193; R194), 96, 99
<b>Egypt</b> 31-56, 58-72, 74-92, 94-96	99
<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, 96, 99
<b>Equatorial Guinea</b> 67-72, 74-79, 84, 87	80, 81, 82, 83, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Eritrea</b> 80-92, 94-95	96, 99
<b>Estonia</b> 79-92, 94-96, 99	-
<b>Ethiopia</b> 31-56, 58-72, 74-87, 88(C183), 89	88(R191), 90, 91, 92, 94, 95, 96, 99
<b>Fiji</b> 59-72, 74-82, 84(C178; R185), 87, 89	83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 91, 92, 94, 95, 96, 99
<b>Finland</b> 31-56, 58-72, 74-92, 94-96	99
<b>France</b> 31-56, 58-72, 74-92, 94-96	99
<b>Gabon</b> 45-56, 58-72, 75-81, 82(C176), 83(C177), 84(C179), 85(C181), 87, 89(C184), 91, 94	74, 82(P081; R183), 83(R184), 84(C178; C180; P147; R185; R186; R187), 85(R188), 86, 88, 89(R192), 90, 92, 95, 96, 99
<b>Gambia</b> 82-92, 94-96	99
<b>Georgia</b> 85, 86-87	80, 81, 82, 83, 84, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Germany</b> 34-56, 58-72, 74-76, 77(C170; R177), 78-92, 94-96	77(C171; P089; R178), 99
<b>Ghana</b> 40-56, 58-72, 74-79, 83, 84(C178; C179; C180; P147; R187), 85-89, 95(C187), 96(C188)	80, 81, 82, 84(R185; R186), 90, 91, 92, 94, 95(R197; R198), 96(R199), 99
<b>Greece</b> 31-56, 58-72, 74-92, 94-96, 99	-

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Grenada</b> 66-72, 74-92, 94-95	<b>96, 99</b>
<b>Guatemala</b> 31-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Guinea</b> 43-56, 58-72, 74-83, 87	<b>84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Guinea-Bissau</b> 63-72, 74-88, 94	<b>89, 90, 91, 92, 95, 96, 99</b>
<b>Guyana</b> 50-56, 58-72, 74-92, 94-95	<b>96, 99</b>
<b>Haiti</b> 31-56, 58-66, 67(C156; R165), 69-72, 74, 75(C167), 87	<b>67(C154; C155; R163; R164), 68, 75(C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Honduras</b> 39-56, 58-72, 74-92	<b>94, 95, 96, 99</b>
<b>Hungary</b> 31-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Iceland</b> 31-56, 58-72, 74-92, 94-96	<b>99</b>
<b>India</b> 31-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Indonesia</b> 33-56, 58-72, 74-92, 94-96, 99	<b>-</b>
<b>Islamic Republic of Iran</b> 31-56, 58-72, 74-89, 90(R193; R194), 91-92, 94-96	<b>90(P155), 99</b>
<b>Iraq</b> 31-56, 58-72, 74-87, 89	<b>88, 90, 91, 92, 94, 95, 96, 99</b>
<b>Ireland</b> 31-56, 58-72, 74-87	<b>88, 89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Israel</b> 32-56, 58-72, 74-92, 94-96, 99	<b>-</b>
<b>Italy</b> 31-56, 58-72, 74-92, 94-96, 99	<b>-</b>
<b>Jamaica</b> 47-56, 58-72, 74-91	<b>92, 94, 95, 96, 99</b>
<b>Japan</b> 35-56, 58-72, 74-92, 94-96, 99	<b>-</b>
<b>Jordan</b> 39-56, 58-72, 74-91	<b>92, 94, 95, 96, 99</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>Kazakhstan</b>	82(C176; R183), 87, 91	80, 81, 82(P081), 83, 84, 85, 86, 88, 89, 90, 92, 94, 95, 96, 99
<b>Kenya</b>	48-56, 58-72, 74-92, 94-96	99
<b>Kiribati</b>	94	88, 89, 90, 91, 92, 95, 96, 99
<b>Republic of Korea</b>	79-92, 94-96, 99	-
<b>Kuwait</b>	45-56, 58-72, 74-76, 78-79, 80(C174), 81-85, 87-88, 90-91	77, 80(R181), 86, 89, 92, 94, 95, 96, 99
<b>Kyrgyzstan</b>	87, 89	79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95, 96, 99
<b>Lao People's Democratic Republic</b>	48-56, 58-72, 74-81, 82(C176; R183), 83-92, 94-96, 99	82(P081)
<b>Latvia</b>	79-92, 94-96	99
<b>Lebanon</b>	31-56, 58-72, 74-92, 94-96	99
<b>Lesotho</b>	51-53, 66-72, 74-92, 94-96	99
<b>Liberia</b>	31-56, 58-72, 74-76, 77(C170; C171; R177; R178), 78-81, 82(C176; R183), 83-87, 91, 94	77(P089), 82(P081), 88, 89, 90, 92, 95, 96, 99
<b>Libya</b>	35-56, 58-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Lithuania</b>	79-92, 94-96	99
<b>Luxembourg</b>	31-56, 58-72, 74-92, 94-96	99
<b>Madagascar</b>	45-56, 58-72, 74-89, 91	90, 92, 94, 95, 96, 99
<b>Malawi</b>	49-56, 58-72, 74-92, 94-96	99
<b>Malaysia</b>	41-56, 58-72, 74-92, 94	95, 96, 99
<b>Republic of Maldives</b>	-	99
<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, 96, 99

	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Malta</b>	49-56, 58-72, 74-92, 94-95	96, 99
<b>Marshall Islands</b>	-	96, 99
<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, 96, 99
<b>Mauritius</b>	53-56, 58-72, 74-92, 94-96, 99	-
<b>Mexico</b>	31-56, 58-72, 74-89, 90(P155; R194), 91, 94	90(R193), 92, 95, 96, 99
<b>Republic of Moldova</b>	79-91, 95(C187; R197)	92, 94, 95(R198), 96, 99
<b>Mongolia</b>	52-56, 58-72, 74-81, 82(C176; R183), 83-92, 94-96, 99	82(P081)
<b>Montenegro</b>	96, 99	-
<b>Morocco</b>	39-56, 58-72, 74-92, 94-96, 99	-
<b>Mozambique</b>	61-72, 74-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Myanmar</b>	31-56, 58-72, 74-92, 94-96	99
<b>Namibia</b>	78-92, 94-96	99
<b>Nepal</b>	51-56, 58-72, 74-92, 94-95	96, 99
<b>Netherlands</b>	31-56, 58-72, 74-92, 94, 95(R198), 96	95(C187; R197), 99
<b>New Zealand</b>	31-56, 58-72, 74-92, 94-96, 99	-
<b>Nicaragua</b>	40-56, 58-72, 74-92, 94-96	99
<b>Niger</b>	45-56, 58-72, 74-82, 87-88, 95(C187; R197)	83, 84, 85, 86, 89, 90, 91, 92, 94, 95(R198), 96, 99
<b>Nigeria</b>	45-56, 58-72, 74-92, 95	94, 96, 99
<b>Norway</b>	31-56, 58-72, 74-92, 94-96	99
<b>Oman</b>	81-91	92, 94, 95, 96, 99

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Pakistan</b> 31-56, 58-72, 74-80, 87, 91	81, 82, 83, 84, 85, 86, 88, 89, 90, 92, 94, 95, 96, 99
<b>Panama</b> 31-56, 58-72, 74-87, 88(R191), 89(R192), 90(R193); R194), 92, 94	88(C183), 89(C184), 90(P155), 91, 95, 96, 99
<b>Papua New Guinea</b> 61-72, 74-87	88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Paraguay</b> 40-56, 58-72, 74-92, 94-96	99
<b>Peru</b> 31-56, 58-72, 74-83, 84(C178; R185; R186), 85-87, 88(C183), 90(R193)	84(C179; C180; P147; R187), 88(R191), 89, 90(P155; R194), 91, 92, 94, 95, 96, 99
<b>Philippines</b> 31-56, 58-72, 74-92, 94-96, 99	-
<b>Poland</b> 31-56, 58-72, 74-92, 94-96, 99	-
<b>Portugal</b> 31-56, 58-72, 74-92, 94-96	99
<b>Qatar</b> 58-72, 74-92, 94-96, 99	-
<b>Romania</b> 39-56, 58-72, 74-92, 94-96, 99	-
<b>Russian Federation</b> 37-56, 58-72, 74-88, 91, 95(C187; R198)	89, 90, 92, 94, 95(R197), 96, 99
<b>Rwanda</b> 47-56, 58-72, 74-79, 81, 87	80, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Saint Kitts and Nevis</b> 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<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, 96, 99
<b>Saint Vincent and the Grenadines</b> 84, 86-87, 94	82, 83, 85, 88, 89, 90, 91, 92, 95, 96, 99
<b>Samoa</b> -	94, 95, 96, 99
<b>San Marino</b> 69-72, 74-92, 94-96	99
<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, 96, 99
<b>Saudi Arabia</b> 61-72, 74-92, 94-96	99

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Senegal</b> 44-56, 58-72, 74-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 91-92, 94-96	<b>82(P081), 84(P147), 90(P155), 99</b>
<b>Serbia</b> 89-92, 94-96, 99	-
<b>Seychelles</b> 63-72, 74-88	<b>89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Sierra Leone</b> 45-56, 58-61, 62(C145; C147; R153; R155)	<b>62(C146; R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 99</b>
<b>Singapore</b> 50-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Slovakia</b> 80-92, 94-96, 99	-
<b>Slovenia</b> 79-92, 94-96, 99	-
<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, 96, 99</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, 96, 99</b>
<b>South Africa</b> 31-50, 68, 74, 81-92, 94-96	<b>99</b>
<b>Spain</b> 39-56, 58-72, 74-87, 89, 90(R193; R194), 91-92, 94-95, 99	<b>88, 90(P155), 96</b>
<b>Sri Lanka</b> 31-56, 58-72, 74-92	<b>94, 95, 96, 99</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, 96, 99</b>
<b>Suriname</b> 61-72, 74-89	<b>90, 91, 92, 94, 95, 96, 99</b>
<b>Swaziland</b> 60-72, 74-92, 94-96	<b>99</b>
<b>Sweden</b> 31-56, 58-72, 74-92, 95	<b>94, 96, 99</b>
<b>Switzerland</b> 31-56, 58-72, 74-92, 94-96	<b>99</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>Syrian Arab Republic</b>	
77(C170; R177), 87-89, 90(P155)	66, 69(R168), 70, 77(C171; P089; R178), 78, 79, 80, 81, 82, 83, 84, 85, 86, 90(R193; R194), 91, 92, 94, 95, 96, 99
<b>Tajikistan</b>	
81-83, 86-87	84, 85, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>United Republic of Tanzania</b>	
46-56, 58-72, 74-92, 94-96	99
<b>Thailand</b>	
31-56, 58-72, 74-92, 94-96	99
<b>The former Yugoslav Republic of Macedonia</b>	
80-82, 87	83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Timor-Leste</b>	
92, 94-96	99
<b>Togo</b>	
44-56, 58-72, 74-87, 89	88, 90, 91, 92, 94, 95, 96, 99
<b>Trinidad and Tobago</b>	
47-56, 58-72, 74-92, 94-95	96, 99
<b>Tunisia</b>	
39-56, 58-72, 74-92, 94-96	99
<b>Turkey</b>	
31-56, 58-72, 74-92, 94-96, 99	-
<b>Turkmenistan</b>	
87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Tuvalu</b>	
-	99
<b>Uganda</b>	
47-56, 58-72, 74-80, 87	81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99
<b>Ukraine</b>	
37-56, 58-72, 74-90	91, 92, 94, 95, 96, 99
<b>United Arab Emirates</b>	
58-72, 74-92, 95-96	94, 99
<b>United Kingdom</b>	
31-56, 58-72, 74-92, 94-96	99
<b>United States</b>	
31-56, 58-60, 66-72, 74-92, 94-96	99
<b>Uruguay</b>	
31-56, 58-72, 74-89, 90(R193; R194), 91-92, 95(R197; R198)	90(P155), 94, 95(C187), 96, 99
<b>Uzbekistan</b>	
87	80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96, 99

Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
<b>Vanuatu</b> -	<b>91, 92, 94, 95, 96, 99</b>
<b>Bolivarian Republic of Venezuela</b> 31-56, 58-72, 74-92, 94-96, 99	-
<b>Viet Nam</b> 33-56, 58-63, 80-92, 94-96, 99	-
<b>Yemen</b> 49-56, 58-72, 74-87, 88(C183), 89(C184), 91	<b>88(R191), 89(R192), 90, 92, 94, 95, 96, 99</b>
<b>Zambia</b> 49-56, 58-72, 74-92, 94-96	<b>99</b>
<b>Zimbabwe</b> 66-72, 74-92, 94-96	<b>99</b>

**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 9 December 2011)

Sessions of the ILC	Number of States in which, according to the information supplied by the Government:			ILO Member States at the time of the session
	All the instruments have been submitted	Some of the instruments have been submitted	None of the instruments have been submitted	
<i>All the instruments adopted between the 31st and the 50th Sessions have been submitted to the competent authorities by member States</i>				
51st (June 1967)	116	1		117
52nd (June 1968)	117		1	118
53rd (June 1969)	120	1		121
54th (June 1970)	119	1		120
55th (October 1970)	117	1	2	120
56th (June 1971)	120			120
58th (June 1973)	121	2		123
59th (June 1974)	124		1	125
60th (June 1975)	123	1	2	126
61st (June 1976)	129		2	131
62nd (October 1976)	127	1	3	131
63rd (June 1977)	128	3	3	134
64th (June 1978)	132	2	1	135
65th (June 1979)	133		4	137
66th (June 1980)	136		6	142
67th (June 1981)	135	5	3	143
68th (June 1982)	138	3	6	147
69th (June 1983)	140	3	5	148
70th (June 1984)	140		9	149
71st (June 1985)	143	1	5	149
72nd (June 1986)	143		6	149
74th (October 1987)	142		7	149
75th (June 1988)	140	3	6	149
76th (June 1989)	139		8	147
77th (June 1990)	132	4	11	147
78th (June 1991)	135		14	149
79th (June 1992)	138	3	15	156
80th (June 1993)	145	2	20	167
81st (June 1994)	143	3	25	171
82nd (June 1995)	134	12	27	173
83rd (June 1996)	134	2	38	174
84th (October 1996)	128	12	34	174
85th (June 1997)	132	3	39	174
86th (June 1998)	129		45	174
87th (June 1999)	171		3	174
88th (June 2000)	121	6	48	175
89th (June 2001)	120	5	50	175
90th (June 2002)	103	14	58	175
91st (June 2003)	120		56	176
92nd (June 2004)	104		73	177
94th (February 2006)	104		74	178
95th (June 2006)	95	8	75	178
96th (June 2007)	84	1	93	178
99th (June 2010)	33		150	183

### **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, 141</b> <i>Direct requests on Conventions Nos 95, 111</i> <i>Direct request on submission</i>
<b>Albania</b>	<b>Observations on Conventions Nos 87, 98, 111</b> <i>Direct requests on Conventions Nos 29, 52, 77, 78, 81, 95, 100, 102, 105, 111, 129, 131, 144, 156, 168, 171, 173, 175, 176, 177</i> <i>Response received to a direct request on Convention No. 141</i> <b>Observation on submission</b>
<b>Algeria</b>	<b>Observations on Conventions Nos 6, 13, 29, 32, 42, 68, 87, 92, 94, 119, 120, 138, 182</b> <i>Direct requests on Conventions Nos 29, 56, 77, 78, 81, 88, 95, 99, 127, 144, 150, 155, 167, 181, 182</i> <i>Response received to a direct request on Convention No. 98</i> <i>Direct request on submission</i>
<b>Angola</b>	<b>Observations on Conventions Nos 17, 81, 88, 98, 100, 111</b> <i>Direct requests on Conventions Nos 17, 26, 29, 45, 74, 87, 98, 100, 105, 111</i> <b>Observation on submission</b>
<b>Antigua and Barbuda</b>	<b>Observations on Conventions Nos 87, 111, 138</b> <i>Direct requests on Conventions Nos 29, 100, 111, 122, 144, 158</i> <b>Observation on submission</b>
<b>Argentina</b>	<b>Observations on Conventions Nos 1, 29, 30, 81, 87, 95, 111, 129, 169, 184</b> <i>Direct requests on Conventions Nos 26, 81, 96, 98, 100, 111, 115, 156, 169, 184</i> <i>Direct request on submission</i>
<b>Armenia</b>	<b>Observation on Convention No. 100</b> <i>Direct requests on Conventions Nos 87, 94, 95, 97, 98, 100, 111, 122, 131, 135, 143, 144, 151, 154, 173</i>
<b>Australia</b>	<b>Observations on Conventions Nos 29, 87, 98, 111, 156, 158</b> <i>Direct requests on Conventions Nos 8, 11, 29, 87, 98, 99, 100, 111, 112, 122, 123, 131, 173</i> <i>Response received to a direct request on Convention No. 10</i> Norfolk Island <i>Direct requests on Conventions Nos 100, 112, 122, 131, 156</i>
<b>Austria</b>	<b>Observation on Convention No. 29</b> <i>Response received to direct requests on Conventions Nos. 94, 124, 173</i> <i>Direct request on submission</i>
<b>Azerbaijan</b>	<b>Observations on Conventions Nos 87, 98, 138</b> <i>Direct requests on Conventions Nos 13, 73, 77, 78, 79, 88, 90, 92, 105, 113, 115, 119, 120, 124, 131, 133, 140, 144, 147, 159</i> <i>Response received to a direct request on Convention No. 11</i> <b>Observation on submission</b>
<b>Bahamas</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98, 105</b> <i>Direct requests on Conventions Nos 26, 81, 88, 94, 95, 100, 111, 138, 144, 182</i> <b>Observation on submission</b>
<b>Bahrain</b>	<i>Direct request on Convention No. 155</i> <b>Observation on submission</b>
<b>Bangladesh</b>	<b>Observations on Conventions Nos 11, 29, 59, 87, 98, 105, 144</b> <i>Direct requests on Conventions Nos 11, 105</i> <b>Observation on submission</b>

<b>Barbados</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 87, 98, 108, 111, 115, 118</b></p> <p>Direct requests on Conventions Nos 26, 95, 98, 100, 105, 111, 138, 144, 147, 182</p>
<b>Belarus</b>	<p><b>Observations on Conventions Nos 87, 98</b></p> <p>Direct requests on Conventions Nos 26, 29, 45, 77, 78, 79, 81, 88, 90, 95, 105, 115, 120, 124, 144, 155, 167</p> <p>Direct request on submission</p>
<b>Belgium</b>	<p><b>Observations on Conventions Nos 81, 87, 95, 129</b></p> <p>Direct requests on Conventions Nos 26, 29, 55, 56, 94, 98, 99, 113, 114, 182</p> <p>Response received to direct requests on Conventions Nos. 148, 162</p> <p>Direct request on submission</p>
<b>Belize</b>	<p><b>Observations on Conventions Nos 87, 98, 105, 115</b></p> <p>Direct requests on Conventions Nos 26, 29, 55, 81, 88, 95, 99, 100, 105, 111, 141, 155, 156</p> <p>Response received to a direct request on Convention No. 94</p> <p>Observation on submission</p>
<b>Benin</b>	<p><b>Observations on Conventions Nos 6, 87, 98, 161</b></p> <p>Direct requests on Conventions Nos 26, 81, 95, 100, 111, 144, 161</p> <p>Direct request on submission</p>
<b>Plurinational State of Bolivia</b>	<p><b>Observations on Conventions Nos 77, 78, 81, 87, 88, 95, 98, 100, 102, 103, 105, 111, 118, 121, 124, 128, 130, 136, 138, 159, 169, 182</b></p> <p>Direct requests on Conventions Nos 19, 29, 81, 95, 100, 103, 105, 129, 138, 156, 162, 182</p> <p>Observation on submission</p>
<b>Bosnia and Herzegovina</b>	<p><b>Observation on Convention No. 87</b></p> <p>Direct requests on Conventions Nos 29, 87, 88, 90, 98, 100, 105, 113, 114, 122, 131, 144, 156, 158, 159</p> <p>Direct request on submission</p>
<b>Botswana</b>	<p><b>Observations on Conventions Nos 87, 98, 111, 151, 182</b></p> <p>Direct requests on Conventions Nos 19, 29, 95, 100, 105, 138, 144, 173, 176, 182</p> <p>Direct request on submission</p>
<b>Brazil</b>	<p><b>Observations on Conventions Nos 29, 94, 98, 136, 138, 139, 141, 148, 155, 161, 162, 167, 169, 170, 182</b></p> <p>Direct requests on Conventions Nos 11, 29, 53, 98, 115, 131, 136, 138, 139, 145, 155, 161, 162, 168, 174, 182</p> <p>Observation on submission</p>
<b>Brunei Darussalam</b>	<p>Direct request on Convention No. 182</p> <p>Direct request on submission</p>
<b>Bulgaria</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 81, 87, 94, 98, 111, 120</b></p> <p>Direct requests on Conventions Nos 8, 26, 29, 45, 53, 55, 56, 71, 77, 78, 81, 95, 100, 105, 111, 113, 122, 156, 173, 181, 182</p> <p>Direct request on submission</p>
<b>Burkina Faso</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 87, 98, 100, 129, 161, 182</b></p> <p>Direct requests on Conventions Nos 6, 29, 81, 87, 95, 100, 105, 111, 131, 138, 141, 144, 159, 170, 173, 182</p> <p>Direct request on submission</p>
<b>Burundi</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 11, 29, 62, 81, 87, 94, 98, 100, 111, 138, 144, 182</b></p> <p>Direct requests on Conventions Nos 14, 26, 29, 52, 87, 89, 100, 101, 105, 111, 135, 138, 182</p> <p>Direct request on submission</p>
<b>Cambodia</b>	<p><b>Observations on Conventions Nos 13, 87, 98, 100, 122, 182</b></p> <p>Direct requests on Conventions Nos 6, 29, 87, 98, 100, 105, 111, 138, 150, 182</p> <p>Observation on submission</p>

<b>Cameroon</b>	<p><b>Observations on Conventions Nos 29, 77, 78, 87, 94, 95, 98, 100, 105, 111, 158, 162</b>  <i>Direct requests on Conventions Nos 29, 100, 111, 122, 131</i>  <i>Response received to a direct request on Convention No. 33</i>  <i>Direct request on submission</i></p>
<b>Canada</b>	<p><b>Observations on Conventions Nos 1, 87, 88, 111, 122, 162</b>  <i>Direct requests on Conventions Nos 26, 111, 162</i>  <i>Direct request on submission</i></p>
<b>Cape Verde</b>	<p><b>Observations on Conventions Nos 98, 118</b>  <i>Direct requests on Conventions Nos 17, 87, 100, 111, 118</i>  <b>Observation on submission</b></p>
<b>Central African Republic</b>	<p><b>Observations on Conventions Nos 13, 29, 62, 81, 87, 94, 95, 98, 100, 105, 119, 120, 138, 155, 158, 182</b>  <i>Direct requests on Conventions Nos 29, 87, 88, 98, 100, 105, 111, 122, 131, 138, 142, 144, 158, 182</i>  <i>Response received to a direct request on Convention No. 6</i>  <b>Observation on submission</b></p>
<b>Chad</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 29, 81, 87, 98, 111, 144, 182</b>  <i>Direct requests on Conventions Nos 29, 95, 100, 105, 138, 173, 182</i>  <i>Direct request on submission</i></p>
<b>Chile</b>	<p><b>Observations on Conventions Nos 6, 35, 87, 98, 100, 144, 156</b>  <i>Direct requests on Conventions Nos 29, 100, 105, 115, 121, 131, 136, 156, 159</i>  <b>Observation on submission</b></p>
<b>China</b>	<p><i>Direct request on submission</i></p>
<b>Hong Kong Special Administrative Region</b>	<p><b>Observations on Conventions Nos 87, 97, 98, 144</b>  <i>Direct request on Convention No. 97</i></p>
<b>Macau Special Administrative Region</b>	<p><b>Observation on Convention No. 115</b>  <i>Direct requests on Conventions Nos 74, 87, 98, 115, 148, 167</i></p>
<b>Colombia</b>	<p><b>Observations on Conventions Nos 2, 6, 13, 87, 88, 95, 98, 100, 111, 144, 159, 161, 162, 169, 170</b>  <i>Direct requests on Conventions Nos 26, 98, 99, 151, 154, 161, 162, 167, 174</i>  <b>Observation on submission</b></p>
<b>Comoros</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 26, 78, 81, 95, 98, 99, 100, 111, 122</b>  <i>Direct requests on Conventions Nos 12, 13, 29, 52, 77, 95, 100, 101, 105, 111, 138, 182</i>  <b>Observation on submission</b></p>
<b>Congo</b>	<p><b>Observations on Conventions Nos 29, 81, 87, 95, 138, 152, 182</b>  <i>Direct requests on Conventions Nos 14, 26, 29, 87, 89, 98, 100, 105, 111, 138, 144, 149, 150, 182</i>  <b>Observation on submission</b></p>
<b>Costa Rica</b>	<p><b>Observations on Conventions Nos 1, 81, 87, 88, 94, 95, 98, 100, 102, 111, 122, 129, 131, 134, 141</b>  <i>Direct requests on Conventions Nos 29, 45, 81, 100, 111, 113, 114, 120, 127, 129, 145, 148, 159</i></p>
<b>Côte d'Ivoire</b>	<p><b>Observations on Conventions Nos 87, 95, 111, 144</b>  <i>Direct requests on Conventions Nos 14, 19, 26, 41, 52, 98, 99, 100, 110, 111, 133, 159</i>  <b>Observation on submission</b></p>
<b>Croatia</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 81, 87, 98, 111, 155, 156, 161</b>  <i>Direct requests on Conventions Nos 8, 29, 53, 56, 74, 81, 90, 91, 100, 102, 111, 113, 119, 121, 122, 129, 139, 147, 155, 156, 161, 179</i>  <b>Observation on submission</b></p>
<b>Cuba</b>	<p><b>Observations on Conventions Nos 79, 81, 87, 90, 98, 100</b>  <i>Direct requests on Conventions Nos 77, 78, 81, 95, 100, 111, 113, 122</i>  <i>Direct request on submission</i></p>

<b>Cyprus</b>	<b>Observations on Conventions Nos 81, 90, 95, 122, 182</b> <i>Direct requests on Conventions Nos 81, 94, 95, 114, 158, 182, 187</i> <i>Response received to a direct request on Convention No. 45</i> <i>Direct request on submission</i>
<b>Czech Republic</b>	<b>Observations on Conventions Nos 88, 98, 111, 122, 142, 144</b> <i>Direct requests on Conventions Nos 17, 26, 29, 42, 77, 78, 87, 95, 100, 102, 105, 111, 123, 124, 128, 130, 140, 150, 159, 160, 163, 181</i> <i>Response received to a direct request on Convention No. 90</i>
<b>Democratic Republic of the Congo</b>	<b>Observations on Conventions Nos 29, 62, 81, 87, 88, 94, 98, 100, 102, 111, 119, 121, 144, 150, 182</b> <i>Direct requests on Conventions Nos 12, 19, 26, 29, 81, 87, 89, 95, 98, 100, 105, 111, 117, 119, 135, 138, 150, 158, 182</i> <b>Observation on submission</b>
<b>Denmark</b>	<b>Observation on Convention No. 87</b> <i>Direct requests on Conventions Nos 81, 87, 94, 100, 102, 111, 115, 118, 126, 129, 138, 139, 144, 155, 162, 182, 187</i> <i>Response received to a direct request on Convention No. 148</i>
Greenland	<i>General direct request</i> <i>Direct requests on Conventions Nos 5, 7, 122, 126</i>
<b>Djibouti</b>	<b>General observation</b> <b>Observations on Conventions Nos 19, 26, 81, 87, 94, 95, 96, 98, 99, 100, 115, 120, 122, 144</b> <i>Direct requests on Conventions Nos 9, 16, 23, 29, 38, 55, 56, 63, 71, 73, 87, 88, 100, 101, 105, 106, 111, 138, 182</i> <b>Observation on submission</b>
<b>Dominica</b>	<b>Observations on Conventions Nos 29, 87, 138</b> <i>Direct requests on Conventions Nos 16, 19, 26, 29, 81, 94, 95, 100, 105, 111, 144, 182</i> <b>Observation on submission</b>
<b>Dominican Republic</b>	<b>Observations on Conventions Nos 77, 81, 87, 95, 98, 100, 111, 167, 171</b> <i>Direct requests on Conventions Nos 26, 29, 45, 81, 87, 95, 100, 111, 144, 159, 170</i> <i>Direct request on submission</i>
<b>Ecuador</b>	<b>Observations on Conventions Nos 87, 98, 105, 111, 115, 118, 119, 121, 136, 139, 148, 162</b> <i>Direct requests on Conventions Nos 29, 87, 100, 103, 111, 112, 113, 114, 123, 124, 144, 159</i> <i>Direct request on submission</i>
<b>Egypt</b>	<b>Observations on Conventions Nos 55, 81, 87, 92, 94, 95, 98, 134</b> <i>Direct requests on Conventions Nos 55, 81, 87, 131, 145, 148</i> <i>Response received to a direct request on Convention No. 68</i>
<b>El Salvador</b>	<b>Observations on Conventions Nos 98, 107, 138, 155, 182</b> <i>Direct requests on Conventions Nos 29, 77, 78, 87, 88, 99, 105, 107, 131, 144, 156, 182</i> <b>Observation on submission</b>
<b>Equatorial Guinea</b>	<b>General observation</b> <b>Observations on Conventions Nos 1, 30, 87, 98</b> <i>Direct requests on Conventions Nos 1, 29, 30, 103, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Eritrea</b>	<i>General direct request</i> <b>Observation on Convention No. 98</b> <i>Direct requests on Conventions Nos 87, 100, 111</i> <i>Direct request on submission</i>
<b>Estonia</b>	<b>Observation on Convention No. 87</b> <i>Direct requests on Conventions Nos 8, 81, 98, 105, 122, 144</i> <i>Response received to a direct request on Convention No. 6</i>
<b>Ethiopia</b>	<b>Observations on Conventions Nos 87, 98, 111, 138, 155, 181</b> <i>Direct requests on Conventions Nos 88, 100, 111, 155, 156, 158, 159, 181, 182</i> <b>Observation on submission</b>

<b>Fiji</b>	<b>Observations on Conventions Nos 87, 98, 111, 144</b> <i>Direct requests on Conventions Nos 8, 26, 29, 45, 81, 105, 111, 149, 159, 178, 182, 184</i> <b>Observation on submission</b>
<b>Finland</b>	<b>Observation on Convention No. 181</b> <i>Direct requests on Conventions Nos 29, 81, 94, 121, 122, 129, 145, 158</i> <i>Response received to a direct request on Convention No. 173</i> <i>Direct request on submission</i>
<b>France</b>	<b>Observations on Conventions Nos 94, 96, 97, 111, 122</b> <i>Direct requests on Conventions Nos 8, 16, 22, 29, 35, 36, 53, 55, 68, 69, 73, 74, 100, 102, 111, 113, 125, 126, 131, 134, 145, 146, 158, 163, 164, 166, 178, 180</i> <i>Response received to a direct request on Convention No. 87</i> <i>Direct request on submission</i>
French Polynesia	<i>General direct request</i>
French Southern and Antarctic Territories	<b>Observations on Conventions Nos 81, 115</b> <i>Direct requests on Conventions Nos 16, 29, 69, 73, 81, 94, 95, 100, 111, 122, 125, 127, 129, 131, 144, 145</i>
New Caledonia	<i>Direct requests on Conventions Nos 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 92, 111, 133, 134, 146, 147</i> <b>Observations on Conventions Nos 77, 78, 115, 127</b> <i>Direct requests on Conventions Nos 16, 22, 23, 69, 73, 94, 120, 122, 144</i>
<b>Gabon</b>	<b>Observations on Conventions Nos 81, 87, 123, 124, 158</b> <i>Direct requests on Conventions Nos 26, 81, 87, 95, 98, 99, 100, 111, 122, 123, 124, 144, 151</i> <b>Observation on submission</b>
<b>Gambia</b>	<b>Observations on Conventions Nos 98, 111</b> <i>Direct requests on Conventions Nos 87, 100, 111, 138, 182</i> <i>Direct request on submission</i>
<b>Georgia</b>	<b>Observations on Conventions Nos 87, 98, 100, 111</b> <i>Direct requests on Conventions Nos 100, 111, 122</i> <b>Observation on submission</b>
<b>Germany</b>	<b>Observations on Conventions Nos 29, 81, 87, 98, 167</b> <i>Direct requests on Conventions Nos 81, 162</i> <i>Response received to direct requests on Conventions Nos. 102, 113, 114, 126, 128, 130</i> <i>Direct request on submission</i>
<b>Ghana</b>	<i>General direct request</i> <b>Observations on Conventions Nos 81, 88, 94, 98, 100, 105</b> <i>Direct requests on Conventions Nos 8, 26, 29, 59, 69, 74, 81, 87, 92, 100, 105, 111, 148</i> <b>Observation on submission</b>
<b>Greece</b>	<i>General direct request</i> <b>Observations on Conventions Nos 81, 87, 88, 95, 98, 100, 102, 105, 111, 122, 150, 154, 156</b> <i>Direct requests on Conventions Nos 62, 102, 126, 136, 182</i>
<b>Grenada</b>	<b>General observation</b> <b>Observations on Conventions Nos 100, 144</b> <i>Direct requests on Conventions Nos 26, 81, 94, 95, 99, 100, 105, 111, 138, 182</i> <i>Direct request on submission</i>
<b>Guatemala</b>	<b>Observations on Conventions Nos 81, 87, 94, 98, 100, 105, 111, 129, 131, 138, 167, 169, 182</b> <i>Direct requests on Conventions Nos 29, 59, 77, 78, 95, 100, 111, 112, 113, 114, 144, 148, 156, 163, 167, 169, 182</i> <i>Response received to a direct request on Convention No. 141</i> <i>Direct request on submission</i>
<b>Guinea</b>	<b>General observation</b> <b>Observations on Conventions Nos 26, 81, 87, 94, 98, 111, 115, 117, 118, 119, 120, 121, 122, 134, 136, 139, 140, 142, 144, 148, 149, 152, 159</b> <i>Direct requests on Conventions Nos 3, 13, 16, 29, 62, 81, 89, 90, 95, 100, 105, 111, 113, 114, 118, 132, 133, 138, 143, 150, 156, 182</i> <b>Observation on submission</b>

<b>Guinea-Bissau</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 12, 17, 18, 19, 81, 98</b>  <i>Direct requests on Conventions Nos 1, 14, 26, 29, 45, 68, 69, 73, 81, 88, 89, 91, 92, 100, 105, 106, 108, 111</i></p> <p><b>Observation on submission</b></p>
<b>Guyana</b>	<p><b>General observation</b>  <b>Observations on Conventions Nos 29, 42, 87, 98, 100, 111, 129, 137, 140, 142, 144</b>  <i>Direct requests on Conventions Nos 2, 19, 45, 81, 94, 95, 97, 100, 111, 115, 136, 138, 139, 149, 150, 166, 172, 175, 182</i>  <i>Direct request on submission</i></p>
<b>Haiti</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 87, 98, 182</b>  <i>Direct requests on Conventions Nos 77, 78, 100, 111, 182</i></p> <p><b>Observation on submission</b></p>
<b>Honduras</b>	<p><b>Observations on Conventions Nos 78, 81, 87, 95, 98, 100, 106, 111, 122, 138, 182</b>  <i>Direct requests on Conventions Nos 29, 81, 100, 105, 111, 182</i>  <i>Direct request on submission</i></p>
<b>Hungary</b>	<p><b>Observations on Conventions Nos 81, 98, 148, 167</b>  <i>Direct requests on Conventions Nos 26, 77, 78, 81, 87, 88, 95, 99, 100, 105, 111, 115, 122, 129, 138, 139, 145, 155, 159, 181, 182</i>  <i>Response received to direct requests on Conventions Nos. 127, 136, 161</i>  <i>Direct request on submission</i></p>
<b>Iceland</b>	<p><i>General direct request</i>  <b>Observations on Conventions Nos 98, 159</b>  <i>Direct requests on Conventions Nos 100, 111, 122, 144, 156</i>  <i>Direct request on submission</i></p>
<b>India</b>	<p><b>Observations on Conventions Nos 1, 11, 29, 90, 107, 122, 141</b>  <i>Direct requests on Conventions Nos 1, 5, 26, 29, 105, 107, 142, 144</i>  <i>Direct request on submission</i></p>
<b>Indonesia</b>	<p><b>Observations on Conventions Nos 29, 87, 98, 100, 105, 111, 144</b>  <i>Direct requests on Conventions Nos 81, 87, 100, 105, 111</i></p>
<b>Islamic Republic of Iran</b>	<p><b>Observations on Conventions Nos 95, 122</b>  <i>Direct requests on Conventions Nos 100, 108, 142</i>  <i>Direct request on submission</i></p>
<b>Iraq</b>	<p><b>Observations on Conventions Nos 8, 94, 98, 100, 115</b>  <i>Direct requests on Conventions Nos 13, 16, 22, 29, 81, 88, 92, 95, 100, 105, 108, 111, 115, 119, 120, 131, 136, 139, 144, 145, 146, 148, 150, 167</i></p> <p><b>Observation on submission</b></p>
<b>Ireland</b>	<p><b>General observation</b>  <i>General direct request</i>  <b>Observations on Conventions Nos 88, 111, 122, 144</b>  <i>Direct requests on Conventions Nos 14, 26, 29, 53, 62, 74, 92, 96, 98, 100, 102, 111, 132, 138, 139, 155, 159, 160, 176, 177, 179, 180, 182</i></p> <p><b>Observation on submission</b></p>
<b>Israel</b>	<p><b>Observations on Conventions Nos 81, 97</b>  <i>Direct requests on Conventions Nos 77, 78, 79, 81, 87, 94, 95, 97, 122</i></p>
<b>Italy</b>	<p><b>Observations on Conventions Nos 81, 129, 139, 143, 159, 181</b>  <i>Direct requests on Conventions Nos 26, 29, 71, 74, 77, 78, 79, 90, 94, 95, 99, 102, 105, 115, 118, 119, 143, 145, 167, 170</i>  <i>Response received to direct requests on Conventions Nos. 12, 114, 148</i>  <i>Direct request on submission</i></p>
<b>Jamaica</b>	<p><b>Observations on Conventions Nos 87, 94, 98, 100</b>  <i>Direct requests on Conventions Nos 26, 100, 111, 122, 144</i></p> <p><b>Observation on submission</b></p>

<b>Japan</b>	<b>Observations on Conventions Nos 87, 98, 131, 139, 159</b> <i>Direct requests on Conventions Nos 122, 131, 139, 187</i>
<b>Jordan</b>	<b>Observations on Conventions Nos 98, 100, 111, 144</b> <i>Direct requests on Conventions Nos 100, 111</i> <i>Direct request on submission</i>
<b>Kazakhstan</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98, 100, 111, 144</b> <i>Direct requests on Conventions Nos 29, 100, 105, 122</i> <b>Observation on submission</b>
<b>Kenya</b>	<b>Observations on Conventions Nos 17, 29, 81, 105, 111, 129, 132, 138</b> <i>Direct requests on Conventions Nos 16, 19, 29, 63, 94, 100, 105, 111, 134, 149, 182</i> <i>Direct request on submission</i>
<b>Kiribati</b>	<i>General direct request</i> <b>Observations on Conventions Nos 87, 98</b> <i>Direct requests on Conventions Nos 29, 105</i> <b>Observation on submission</b>
<b>Republic of Korea</b>	<b>Observations on Conventions Nos 81, 100, 111, 122, 150, 156</b> <i>Direct requests on Conventions Nos 19, 53, 111, 138, 150, 156, 160, 182</i>
<b>Kuwait</b>	<b>Observations on Conventions Nos 1, 29, 30, 105, 136, 138</b> <i>Direct requests on Conventions Nos 29, 81, 106, 182</i> <b>Observation on submission</b>
<b>Kyrgyzstan</b>	<b>General observation</b> <b>Observations on Conventions Nos 122, 148, 149, 159, 182</b> <i>Direct requests on Conventions Nos 11, 29, 77, 78, 79, 81, 87, 95, 98, 100, 105, 115, 119, 120, 124, 138, 150, 154, 160, 182</i> <b>Observation on submission</b>
<b>Lao People's Democratic Republic</b>	<b>Observation on Convention No. 29</b> <i>Direct requests on Conventions Nos 4, 29, 100, 111, 138, 182</i> <i>Direct request on submission</i>
<b>Latvia</b>	<b>Observations on Conventions Nos 81, 129</b> <i>Direct requests on Conventions Nos 8, 17, 18, 81, 122, 138, 158, 160, 182, 183</i> <i>Response received to a direct request on Convention No. 24</i> <i>Direct request on submission</i>
<b>Lebanon</b>	<i>General direct request</i> <b>Observations on Conventions Nos 8, 29, 71, 81, 100, 111, 133, 138, 182</b> <i>Direct requests on Conventions Nos 9, 19, 29, 58, 73, 74, 81, 100, 105, 111, 122, 138, 147, 150, 182</i> <i>Direct request on submission</i>
<b>Lesotho</b>	<b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 19, 150, 182</i> <i>Direct request on submission</i>
<b>Liberia</b>	<i>General direct request</i> <b>Observations on Conventions Nos 29, 58, 87, 98, 105, 112, 113, 114</b> <i>Direct requests on Conventions Nos 29, 53, 55, 81, 105, 111, 144, 150, 182</i> <b>Observation on submission</b>
<b>Libya</b>	<b>General observation</b>
<b>Lithuania</b>	<b>Observations on Conventions Nos 100, 122</b> <i>Direct requests on Conventions Nos 19, 81, 100, 111, 138, 156, 182</i> <i>Response received to a direct request on Convention No. 160</i> <i>Direct request on submission</i>

<b>Luxembourg</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 68, 81, 155, 161</b></p> <p>Direct requests on Conventions Nos 8, 13, 55, 56, 69, 73, 81, 87, 92, 100, 102, 111, 115, 129, 133, 139, 147, 148, 150, 155, 159, 162, 166, 167, 170, 171, 174, 178, 180, 183</p> <p>Direct request on submission</p>
<b>Madagascar</b>	<p><b>Observations on Conventions Nos 100, 111, 122, 129, 138, 182</b></p> <p>Direct requests on Conventions Nos 12, 19, 29, 89, 100, 105, 111, 171, 182, 185</p> <p><b>Observation on submission</b></p>
<b>Malawi</b>	<p><b>Observations on Conventions Nos 81, 87, 100, 111, 129, 138, 144, 182</b></p> <p>Direct requests on Conventions Nos 12, 29, 87, 98, 100, 105, 111, 150, 158, 159, 182</p> <p>Direct request on submission</p>
<b>Malaysia</b>	<p><b>Observations on Conventions Nos 100, 138, 182</b></p> <p>Direct request on Convention No. 100</p> <p>Direct request on submission</p>
Peninsular Malaysia	<b>Observation on Convention No. 19</b>
Sarawak	<b>Observation on Convention No. 19</b>
<b>Mali</b>	<p><b>Observations on Conventions Nos 81, 98, 138, 182</b></p> <p>Direct requests on Conventions Nos 19, 29, 81, 105, 182, 183</p> <p>Response received to a direct request on Convention No. 141</p> <p><b>Observation on submission</b></p>
<b>Malta</b>	<p><b>Observations on Conventions Nos 87, 98, 111</b></p> <p>Direct requests on Conventions Nos 8, 16, 22, 53, 73, 74, 81, 100, 108, 111, 129, 147, 148, 180</p> <p>Direct request on submission</p>
<b>Mauritania</b>	<p><b>Observations on Conventions Nos 81, 100, 111, 122, 138, 182</b></p> <p>Direct requests on Conventions Nos 18, 22, 23, 53, 58, 81, 100, 111, 112, 114, 138, 182</p> <p>Direct request on submission</p>
<b>Mauritius</b>	<p><b>Observations on Conventions Nos 17, 19, 81, 105, 138, 160</b></p> <p>Direct requests on Conventions Nos 8, 11, 14, 19, 29, 74, 81, 100, 111, 156, 160</p>
<b>Mexico</b>	<p><b>Observations on Conventions Nos 100, 102, 150, 155, 169, 182</b></p> <p>Direct requests on Conventions Nos 53, 55, 56, 100, 112, 118, 134, 150, 155, 160, 163, 164, 169, 170, 182</p> <p>Direct request on submission</p>
<b>Republic of Moldova</b>	<p><b>Observation on Convention No. 105</b></p> <p>Direct requests on Conventions Nos 29, 105, 122, 138, 158, 182</p> <p>Direct request on submission</p>
<b>Mongolia</b>	<p>General direct request</p> <p><b>Observations on Conventions Nos 100, 122, 138</b></p> <p>Direct requests on Conventions Nos 29, 100, 105, 111, 144, 155, 182</p> <p><b>Observation on submission</b></p> <p>Direct request on submission</p>
<b>Montenegro</b>	<p><b>Observation on Convention No. 81</b></p> <p>Direct requests on Conventions Nos 2, 8, 9, 11, 19, 22, 23, 29, 53, 56, 74, 81, 88, 105, 113, 122, 129, 138, 156, 159, 182</p>
<b>Morocco</b>	<p><b>Observations on Conventions Nos 100, 111, 122, 138, 182</b></p> <p>Direct requests on Conventions Nos 17, 19, 42, 55, 81, 100, 111, 129, 145, 147, 150, 154, 158, 182</p> <p>Response received to a direct request on Convention No. 11</p>
<b>Mozambique</b>	<p><b>Observations on Conventions Nos 81, 144, 182</b></p> <p>Direct requests on Conventions Nos 17, 18, 122, 138, 182</p> <p><b>Observation on submission</b></p>
<b>Myanmar</b>	<p><b>Observations on Conventions Nos 2, 17, 19, 26, 29, 87</b></p> <p>Direct requests on Conventions Nos 19, 22, 42, 63</p> <p>Direct request on submission</p>

<b>Namibia</b>	<b>Observations on Conventions Nos 111, 150, 182</b> <i>Direct requests on Conventions Nos 111, 138, 144, 150, 158, 182</i> <i>Direct request on submission</i>
<b>Nepal</b>	<i>General direct request</i> <b>Observations on Conventions Nos 100, 111</b> <i>Direct requests on Conventions Nos 29, 100, 105, 111, 138, 182</i> <i>Direct request on submission</i>
<b>Netherlands</b>	<b>General observation</b> <b>Observations on Conventions Nos 81, 100, 111, 121, 122, 156, 181, 182</b> <i>Direct requests on Conventions Nos 71, 74, 81, 100, 111, 113, 129, 138, 145, 156, 160, 182, 183</i> <i>Response received to direct requests on Conventions Nos. 114, 126</i> <i>Direct request on submission</i>
Aruba	<b>Observations on Conventions Nos 87, 138</b> <i>Direct requests on Conventions Nos 8, 9, 22, 23, 69, 74, 87, 113, 114, 122, 144, 145, 146, 147</i>
Curaçao	<i>Direct requests on Conventions Nos 8, 74, 81, 122</i>
Sint Maarten	<i>Direct requests on Conventions Nos 42, 81, 118, 122</i>
<b>New Zealand</b>	<b>Observations on Conventions Nos 17, 81, 100, 111, 145, 160, 182</b> <i>Direct requests on Conventions Nos 8, 11, 53, 74, 100, 111, 182</i>
<b>Nicaragua</b>	<b>Observations on Conventions Nos 8, 12, 17, 18, 24, 25, 30, 111, 135, 138, 139, 182</b> <i>Direct requests on Conventions Nos 18, 19, 63, 88, 100, 111, 122, 136, 144, 146, 182</i> <i>Direct request on submission</i>
<b>Niger</b>	<b>Observations on Conventions Nos 81, 98, 138, 182</b> <i>Direct requests on Conventions Nos 100, 111, 155, 158, 161, 182, 187</i> <b>Observation on submission</b>
<b>Nigeria</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 88, 98, 105, 111, 123, 134, 144</b> <i>Direct requests on Conventions Nos 8, 19, 29, 32, 45, 94, 97, 100, 111, 133, 138, 155, 178, 179, 182</i> <i>Direct request on submission</i>
<b>Norway</b>	<b>Observations on Conventions Nos 129, 168</b> <i>Direct requests on Conventions Nos 8, 53, 71, 81, 122, 129, 134, 145, 160, 182</i> <i>Response received to a direct request on Convention No. 113</i> <i>Direct request on submission</i>
<b>Oman</b>	<b>Observation on Convention No. 182</b> <i>Direct requests on Conventions Nos 29, 105, 138, 182</i> <i>Direct request on submission</i>
<b>Pakistan</b>	<i>General direct request</i> <b>Observations on Conventions Nos 11, 29, 81, 87, 96, 98, 100, 105, 111, 138, 159, 182</b> <i>Direct requests on Conventions Nos 1, 14, 16, 18, 22, 87, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Panama</b>	<b>Observations on Conventions Nos 3, 17, 30, 55, 56, 81, 87, 88, 122, 138, 167, 182</b> <i>Direct requests on Conventions Nos 8, 12, 29, 42, 53, 71, 74, 81, 105, 113, 114, 160, 167, 182</i> <i>Response received to a direct request on Convention No. 19</i> <i>Direct request on submission</i>
<b>Papua New Guinea</b>	<b>Observations on Conventions Nos 29, 105, 111, 138, 158, 182</b> <i>Direct requests on Conventions Nos 8, 19, 22, 29, 85, 87, 111, 138, 182</i> <b>Observation on submission</b>
<b>Paraguay</b>	<b>Observations on Conventions Nos 95, 169, 182</b> <i>Direct requests on Conventions Nos 95, 111, 122, 138, 156, 169, 182</i> <i>Direct request on submission</i>
<b>Peru</b>	<b>Observations on Conventions Nos 56, 71, 81, 102, 122, 138, 152, 169, 176, 182</b> <i>Direct requests on Conventions Nos 8, 53, 55, 112, 113, 114, 127, 138, 152, 182</i> <b>Observation on submission</b>

<b>Philippines</b>	<b>Observations on Conventions Nos 122, 138, 141, 182</b> <i>Direct requests on Conventions Nos 17, 19, 53, 118, 165, 182</i>
<b>Poland</b>	<b>Observations on Conventions Nos 81, 122, 145</b> <i>Direct requests on Conventions Nos 8, 19, 42, 74, 81, 113, 129, 160, 181, 182</i> <i>Response received to direct requests on Conventions Nos. 12, 17</i>
<b>Portugal</b>	<b>Observations on Conventions Nos 81, 122, 129</b> <i>Direct requests on Conventions Nos 8, 74, 81, 100, 111, 138, 145, 146, 150, 160, 182</i> <i>Direct request on submission</i>
<b>Qatar</b>	<b>Observations on Conventions Nos 81, 111</b> <i>Direct requests on Conventions Nos 29, 105, 111</i> <i>Response received to a direct request on Convention No. 138</i>
<b>Romania</b>	<b>Observations on Conventions Nos 1, 81, 95, 98, 111, 138</b> <i>Direct requests on Conventions Nos 8, 29, 100, 105, 111, 129, 150, 168, 182</i>
<b>Russian Federation</b>	<b>Observations on Conventions Nos 92, 100, 111, 133, 152</b> <i>Direct requests on Conventions Nos 16, 23, 73, 87, 98, 111, 113, 119, 134, 147, 150, 156, 160, 162, 163</i> <b>Observation on submission</b>
<b>Rwanda</b>	<i>General direct request</i> <b>Observations on Conventions Nos 17, 62, 81, 87, 94, 98, 100, 111</b> <i>Direct requests on Conventions Nos 11, 12, 29, 81, 87, 100, 105, 111, 118, 138, 182</i> <b>Observation on submission</b>
<b>Saint Kitts and Nevis</b>	<b>Observation on Convention No. 144</b> <i>Direct requests on Conventions Nos 29, 105, 138, 182</i> <b>Observation on submission</b>
<b>Saint Lucia</b>	<b>Observation on Convention No. 17</b> <i>Direct requests on Conventions Nos 7, 8, 19, 29, 158, 182</i> <b>Observation on submission</b>
<b>Saint Vincent and the Grenadines</b>	<b>Observation on Convention No. 81</b> <i>Direct requests on Conventions Nos 81, 105, 138, 182</i> <b>Observation on submission</b>
<b>Samoa</b>	<b>Observation on Convention No. 98</b> <i>Direct request on Convention No. 87</i> <b>Observation on submission</b>
<b>San Marino</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 100, 111, 148, 150, 156, 160</i> <i>Direct request on submission</i>
<b>Sao Tome and Principe</b>	<b>General observation</b> <b>Observations on Conventions Nos 18, 81, 87, 88, 98, 144, 159</b> <i>Direct requests on Conventions Nos 19, 29, 81, 100, 105, 111, 138, 182</i> <b>Observation on submission</b>
<b>Saudi Arabia</b>	<b>Observations on Conventions Nos 81, 111, 182</b> <i>Direct requests on Conventions Nos 81, 174</i> <i>Direct request on submission</i>
<b>Senegal</b>	<b>Observations on Conventions Nos 81, 102, 105, 111, 138, 182</b> <i>Direct requests on Conventions Nos 19, 29, 98, 100, 111, 144, 182</i> <i>Direct request on submission</i>
<b>Serbia</b>	<b>Observations on Conventions Nos 81, 111, 122, 131, 144</b> <i>Direct requests on Conventions Nos 8, 29, 53, 56, 74, 100, 105, 111, 113, 114, 126, 129, 138, 158, 182</i>
<b>Seychelles</b>	<b>General observation</b> <b>Observation on Convention No. 8</b> <i>Direct requests on Conventions Nos 22, 73, 81, 105, 138, 148, 150, 151, 155, 182</i> <b>Observation on submission</b>

<b>Sierra Leone</b>	<p>General observation</p> <p><b>Observations on Conventions Nos 17, 29, 59, 94, 95, 98, 101, 111, 119, 125, 144</b></p> <p><i>Direct requests on Conventions Nos 26, 45, 81, 87, 88, 100, 105</i></p> <p><b>Observation on submission</b></p>
<b>Singapore</b>	<p><b>Observations on Conventions Nos 29, 94</b></p> <p><i>Direct requests on Conventions Nos 8, 16, 22, 138, 182</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>Slovakia</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 100, 111</b></p> <p><i>Direct requests on Conventions Nos 42, 81, 100, 105, 111, 120, 122, 128, 129, 130, 135, 139, 148, 154, 156, 160, 161, 163, 164, 167, 176, 182</i></p>
<b>Slovenia</b>	<p><i>General direct request</i></p> <p><b>Observations on Conventions Nos 97, 121, 143</b></p> <p><i>Direct requests on Conventions Nos 8, 9, 53, 56, 74, 81, 91, 97, 102, 111, 113, 114, 122, 126, 143, 158, 180, 182</i></p>
<b>Solomon Islands</b>	<p><i>Direct requests on Conventions Nos 8, 14, 16, 26, 42, 45, 94, 95, 108</i></p> <p><b>Observation on submission</b></p>
<b>Somalia</b>	<p>General observation</p> <p><b>Observation on submission</b></p>
<b>South Africa</b>	<p><b>Observations on Conventions Nos 100, 111, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 63, 100, 111, 138, 155, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Spain</b>	<p><b>Observations on Conventions Nos 44, 111, 114, 156, 158, 182</b></p> <p><i>Direct requests on Conventions Nos 8, 19, 44, 53, 55, 74, 81, 113, 129, 134, 145, 156, 160, 164, 165, 180, 187</i></p> <p><i>Direct request on submission</i></p>
<b>Sri Lanka</b>	<p><b>Observations on Conventions Nos 81, 100, 103, 108, 111, 138, 182</b></p> <p><i>Direct requests on Conventions Nos 8, 11, 81, 100, 111, 144, 160, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Sudan</b>	<p><b>Observations on Conventions Nos 122, 182</b></p> <p><i>Direct requests on Conventions Nos 138, 182</i></p> <p><b>Observation on submission</b></p>
<b>Suriname</b>	<p><b>Observations on Conventions Nos 17, 42, 81, 182</b></p> <p><i>Direct requests on Conventions Nos 81, 112, 182</i></p> <p><b>Observation on submission</b></p>
<b>Swaziland</b>	<p><b>Observations on Conventions Nos 29, 87, 138</b></p> <p><i>Direct requests on Conventions Nos 87, 100, 111, 182</i></p> <p><i>Direct request on submission</i></p>
<b>Sweden</b>	<p><b>Observations on Conventions Nos 100, 129, 187</b></p> <p><i>Direct requests on Conventions Nos 8, 81, 100, 102, 111, 121, 122, 145, 160, 168, 182, 187</i></p> <p><i>Direct request on submission</i></p>
<b>Switzerland</b>	<p><b>Observations on Conventions Nos 111, 182</b></p> <p><i>Direct requests on Conventions Nos 100, 102, 111, 138, 160, 163, 182</i></p> <p><i>Response received to a direct request on Convention No. 81</i></p>
<b>Syrian Arab Republic</b>	<p><b>Observations on Conventions Nos 29, 81, 100, 105, 129, 138</b></p> <p><i>Direct requests on Conventions Nos 29, 53, 63, 100, 155, 170, 182</i></p> <p><b>Observation on submission</b></p>
<b>Tajikistan</b>	<p><i>Direct requests on Conventions Nos 29, 32, 105, 113, 115, 120, 126, 134, 138, 182</i></p> <p><i>Response received to a direct request on Convention No. 11</i></p> <p><b>Observation on submission</b></p>

<b>United Republic of Tanzania</b>	<b>Observation on Convention No. 182</b> <i>Direct requests on Conventions Nos 12, 17, 19, 63, 100, 111, 134, 138</i> <i>Direct request on submission</i> <i>General direct request</i>
Tanganyika	<b>Observation on Convention No. 81</b> <i>Direct request on Convention No. 81</i>
<b>Thailand</b>	<i>General direct request</i> <b>Observations on Conventions Nos 19, 29, 100, 105, 122, 182</b> <i>Direct requests on Conventions Nos 100, 105, 138, 182</i> <i>Direct request on submission</i>
<b>The former Yugoslav Republic of Macedonia</b>	<b>Observations on Conventions Nos 111, 182</b> <i>Direct requests on Conventions Nos 8, 19, 24, 25, 27, 29, 32, 53, 56, 73, 74, 81, 88, 92, 102, 111, 113, 114, 119, 121, 122, 126, 129, 138, 139, 140, 142, 159, 182</i> <i>Response received to direct requests on Conventions Nos. 12, 105</i> <b>Observation on submission</b>
<b>Timor-Leste</b>	<i>General direct request</i> <i>Direct requests on Conventions Nos 87, 98</i> <i>Direct request on submission</i>
<b>Togo</b>	<b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 13, 14, 26, 95, 100, 105, 111, 182</i> <b>Observation on submission</b>
<b>Trinidad and Tobago</b>	<b>Observations on Conventions Nos 98, 100, 105, 111, 125</b> <i>Direct requests on Conventions Nos 29, 100, 111, 138, 144, 147</i> <i>Direct request on submission</i>
<b>Tunisia</b>	<b>Observations on Conventions Nos 81, 87, 107, 111, 118, 122</b> <i>Direct requests on Conventions Nos 29, 81, 88, 98, 100, 111, 113, 114, 138, 150, 182</i> <i>Direct request on submission</i>
<b>Turkey</b>	<b>Observations on Conventions Nos 87, 98, 138, 144, 182</b> <i>Direct requests on Conventions Nos 11, 53, 55, 68, 69, 73, 92, 108, 122, 133, 134, 146, 158, 164, 166, 182</i>
<b>Turkmenistan</b>	<i>Direct requests on Conventions Nos 29, 105</i> <b>Observation on submission</b>
<b>Uganda</b>	<i>General direct request</i> <b>Observations on Conventions Nos 17, 26, 29, 81, 98, 105, 122, 138, 144, 158, 182</b> <i>Direct requests on Conventions Nos 29, 87, 94, 95, 100, 105, 111, 123, 124, 138, 143, 154, 159, 162, 182</i> <i>Response received to a direct request on Convention No. 11</i> <b>Observation on submission</b>
<b>Ukraine</b>	<b>Observations on Conventions Nos 81, 95, 129, 131, 138, 182</b> <i>Direct requests on Conventions Nos 23, 29, 81, 92, 105, 113, 120, 129, 133, 140, 153, 156, 158, 160, 184</i> <b>Observation on submission</b>
<b>United Arab Emirates</b>	<b>Observations on Conventions Nos 138, 182</b> <i>Direct requests on Conventions Nos 100, 111, 138, 182</i> <i>Direct request on submission</i>
<b>United Kingdom</b>	<b>Observations on Conventions Nos 17, 29, 111, 122</b> <i>Direct requests on Conventions Nos 29, 68, 74, 100, 111, 126, 138, 160, 182</i> <i>Response received to direct requests on Conventions Nos. 81, 105, 114</i> <i>Direct request on submission</i>
Anguilla	<i>Direct requests on Conventions Nos 8, 17, 22, 23, 29, 58, 108</i> <i>Response received to a direct request on Convention No. 98</i>
Bermuda	<b>Observation on Convention No. 98</b> <i>Direct requests on Conventions Nos 12, 17, 22, 23, 58, 82, 108, 133, 147</i>

<b>British Virgin Islands</b>	<b>Observations on Conventions Nos 94, 98</b> <i>Direct requests on Conventions Nos 8, 19, 26, 82, 97, 98</i> <i>Response received to a direct request on Convention No. 59</i>
<b>Falkland Islands (Malvinas)</b>	<i>Direct requests on Conventions Nos 17, 82, 182</i> <i>Response received to direct requests on Conventions Nos. 45, 59</i>
<b>Gibraltar</b>	<i>Direct requests on Conventions Nos 8, 16, 17, 22, 23, 58, 81, 108, 133, 147, 160</i>
<b>Guernsey</b>	<i>Direct requests on Conventions Nos 8, 63, 81, 114, 182</i>
<b>Isle of Man</b>	<b>Observation on Convention No. 17</b> <i>Direct requests on Conventions Nos 81, 150, 160, 178</i>
<b>Jersey</b>	<i>Direct requests on Conventions Nos 8, 74, 160</i>
<b>Montserrat</b>	<i>Direct requests on Conventions Nos 8, 17, 29, 42</i>
<b>St Helena</b>	<b>General observation</b> <b>Observation on Convention No. 17</b> <i>Direct requests on Conventions Nos 8, 16, 17, 29, 58, 63, 85, 150</i>
<b>United States</b>	<b>Observation on Convention No. 55</b> <i>Direct request on Convention No. 74</i> <i>Response received to a direct request on Convention No. 160</i> <i>Direct request on submission</i>
<b>American Samoa</b>	<b>Observation on Convention No. 55</b>
<b>Guam</b>	<b>Observation on Convention No. 55</b> <i>Direct request on Convention No. 74</i>
<b>Northern Mariana Islands</b>	<i>Direct request on Convention No. 147</i>
<b>Puerto Rico</b>	<b>Observation on Convention No. 55</b> <i>Direct request on Convention No. 74</i>
<b>United States Virgin Islands</b>	<b>Observation on Convention No. 55</b> <i>Direct request on Convention No. 74</i>
<b>Uruguay</b>	<b>Observations on Conventions Nos 81, 98, 111, 121, 122, 133, 150, 155, 167, 182</b> <i>Direct requests on Conventions Nos 8, 23, 81, 100, 111, 113, 129, 134, 136, 138, 148, 150, 155, 156, 161, 162, 167, 182</i> <i>Response received to a direct request on Convention No. 114</i> <i>Direct request on submission</i>
<b>Uzbekistan</b>	<b>Observations on Conventions Nos 105, 122, 182</b> <i>Direct requests on Conventions Nos 29, 52, 105, 138, 182</i> <b>Observation on submission</b>
<b>Vanuatu</b>	<b>General observation</b> <b>Observation on submission</b>
<b>Bolivarian Republic of Venezuela</b>	<b>Observations on Conventions Nos 81, 102, 111, 121, 122, 128, 130, 138, 142, 155, 158, 182</b> <i>Direct requests on Conventions Nos 100, 111, 118, 139, 156, 182</i>
<b>Viet Nam</b>	<b>Observations on Conventions Nos 100, 111</b> <i>Direct requests on Conventions Nos 100, 111, 138, 182</i>
<b>Yemen</b>	<b>General observation</b> <b>Observations on Conventions Nos 87, 98, 111</b> <i>Direct requests on Conventions Nos 16, 19, 29, 100, 105, 111, 122, 138, 144, 156, 158, 182</i> <b>Observation on submission</b>
<b>Zambia</b>	<b>Observations on Conventions Nos 87, 95, 98, 103, 138, 182</b> <i>Direct requests on Conventions Nos 17, 18, 100, 111, 136, 144, 148, 150, 158, 159, 176, 182</i> <i>Direct request on submission</i>
<b>Zimbabwe</b>	<b>Observations on Conventions Nos 81, 87, 129, 138, 182</b> <i>Direct request on Convention No. 182</i> <i>Response received to a direct request on Convention No. 19</i> <i>Direct request on submission</i>