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FOURTEENTH ITEM ON THE AGENDA

Report of the Director-General

Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by the Dominican Republic of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), submitted under article 24 of the ILO Constitution by the National Confederation of Dominican Workers (CNTD)

Contents

	<i>Page</i>
I. Introduction.....	1
II. Examination of the representation	2
A. The allegations of the National Confederation of Dominican Workers (CNTD)	2
The condition of residence imposed on foreigners by the social security legislation	2
Additional obstacles to equality of treatment	3
B. The Government's observations on the representation.....	3
Legal aspects.....	3
Practical aspects.....	5

	<i>Page</i>
III. The Committee's conclusions	6
A. Main provisions of the Convention relevant to the representation	6
B. With regard to the condition of residence imposed on foreigners by the social security legislation	7
C. With regard to the additional obstacles to equality of treatment mentioned in the representation	9
Protection of informal, mobile or casual workers	9
Poor compliance with current legislation on occupational accidents	11
Lack of identity documents	12
D. Summary of the Committee's conclusions	12
IV. The Committee's recommendations	13

I. Introduction

1. In a communication dated 20 October 2010, the National Confederation of Dominican Workers (CNTD) submitted a representation to the International Labour Office, under article 24 of the ILO Constitution, alleging non-observance by the Government of the Dominican Republic of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which was ratified by the Dominican Republic on 5 December 1956 and is currently in force.
2. The following provisions of the ILO Constitution concern the submission of representations:

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of the Dominican Republic and brought the matter before the Officers of the Governing Body.
4. At its 310th Session (March 2011), the Governing Body decided that the representation was receivable. At its 311th Session (June 2011), the Governing Body appointed a committee to examine the matter, composed of Mr Carlos Enrique Flores (Government member, Bolivarian Republic of Venezuela), Mr Armando Urtecho López (Employer member, Honduras) and Mr Nilton Sousa Da Silva (Worker member, Brazil).
5. On 13 February 2012, the Government of the Dominican Republic submitted written observations on the representation.
6. In accordance with article 4(c) of the abovementioned Standing Orders and in order to proceed with a thorough analysis of the case, the tripartite committee, which met during the 313th and 315th Sessions of the Governing Body (March and November 2012), requested the Government of the Dominican Republic to provide additional information on certain points.

7. The Government submitted additional information in communications dated 17 May 2012 (received by the Office on 6 March 2013) and 11 February 2013.¹
8. The Committee met on 21 March 2013 to examine the case and adopt its report.

II. Examination of the representation

A. The allegations of the National Confederation of Dominican Workers (CNTD)

The condition of residence imposed on foreigners by the social security legislation

9. The CNTD alleges in its communication of 20 October 2010 that, as a consequence of the 2001 reform of the Dominican Republic's social security legislation (Act No. 87/01, sections 3 and 5),² occupational risks insurance is provided only for Dominican nationals and foreigners considered to be residents of the country. In this respect, according to the CNTD, national legislation does not comply with Article 1, paragraph 2, of ILO Convention No. 19 (hereinafter referred to as "the Convention"), which guarantees, with regard to occupational accidents, equality of treatment to foreign workers without any condition as to residence. The CNTD explains that the social security legislation prior to the 2001 reform did not impose such a condition of residence on foreign workers and that section 2 of Act No. 1896 of 1948 on social security provided coverage for all workers "without distinction as to sex, nationality, type of employment or kind of employer".
10. The complainant organization adds that, in order to understand the impact of the condition of residence – which was introduced in 2001 – on compliance with the Convention, the abovementioned provisions of Act No. 87/01 on social security must be read in conjunction with the 2004 General Migration Act, which considers temporary foreign workers to be non-residents. This would mean, in practice, that almost the entire foreign workforce in the country, which is made up of temporary workers from Haiti, a country where the Convention is also in force,³ would be excluded from the occupational risks insurance scheme, thus creating a significant difference in treatment between national workers and immigrant workers with regard to occupational accidents.

¹ Furthermore, in accordance with the regular reporting schedule concerning ratified Conventions, a report from the Government of the Dominican Republic relating to the application of Convention No. 19 was received by the ILO on 29 October 2012. This report was one of the sources of information used by the Committee in its examination of the present representation.

² Section 3 of Act No. 87/01: "Guiding principles of social security. The Dominican Social Security System shall be governed by the following principles: Universality: The Dominican Social Security System shall provide protection for all Dominican nationals and all persons residing in the country, without discrimination on grounds of health, sex or social, political or economic status". Section 5 of Act No. 87/01: "Beneficiaries of the system. All citizens of the Dominican Republic and all persons legally residing on national territory are entitled to register in the Dominican Social Security System. The present act and its supplementary regulations shall govern the inclusion of Dominican nationals residing abroad."

³ The Convention was ratified by Haiti on 19 April 1955.

Additional obstacles to equality of treatment

11. The complainant organization alleges that, in addition to the condition of residence that is imposed by law on foreign workers, and the resulting exclusion of temporary foreign workers from the occupational risks insurance scheme, there are also significant institutional and practical obstacles that prevent foreign workers from gaining equal access to effective protection against, and compensation for, occupational accidents in the Dominican Republic.
12. The CNTD mentions, first of all, that the social security system established under Act No. 87/01 on social security provides poor protection for “mobile or casual” workers, who were previously covered by Act No. 1896 on social security and were defined by that Act as being any worker who is not “permanently under the orders of any particular employer” and who “may be employed by various employers without distinction as occasion arises”. According to the complainant organization, the provisional mechanisms adopted to address the gaps in Act No. 87/01, to collect contributions corresponding to mobile or casual workers, and to provide these workers with social security benefits, including with regard to occupational accidents, do not achieve coverage for the majority of this category of workers. The CNTD also alleges that the weaknesses in the structure of the social security system affect Haitian workers in particular, given that a substantial proportion of this group of workers carries out mobile or casual work.
13. Second, the complainant organization highlights that there are significant practical difficulties in compensating for occupational accidents, mainly due to the very low reporting rate and employers’ low contribution levels to the occupational risks insurance scheme, especially in sectors with both a high occupational accident rate and a predominantly Haitian workforce, such as construction, the sugar industry and agriculture. With regard to the reporting of occupational accidents, the CNTD cites statements made to the press by the Director of the Occupational Risk Management Service (ARL) to the effect that there are 70,000 accidents every year in the country, of which only about 10,000 were reported in 2009. The low reporting rate is particularly marked in the construction sector (5.8 per cent of reported accidents), which coincides with the fact that, according to the Dominican College of Engineers, Architects and Surveyors, 85 per cent of workers in this sector are Haitian. Furthermore, the CNTD alleges that only 45 per cent of employers pay contributions relating to occupational risks and that, again, the sectors with the highest percentage of foreign workers, especially construction, are typically those with the highest levels of evasion, leaving immigrant workers unprotected.
14. In view of the above, the complainant organization considers that the Dominican Republic is not complying satisfactorily with the Convention, both from a legislative and a practical point of view, and that the Government of the Dominican Republic should take legal, institutional and administrative measures to guarantee equality of treatment between national and foreign workers in respect of compensation for occupational accidents.

B. The Government’s observations on the representation

Legal aspects

15. In its communications of February 2012 and February 2013, the Government states that its national legal system recognizes that the right to social security is a universal right. In that

respect, the Government refers to article 39 of the political Constitution adopted in 2010,⁴ which establishes the principle of equality and prohibits any discrimination on grounds of nationality, and article 60 of the Constitution,⁵ which provides that all persons have the right to social security.

16. The Government also indicates that the reform of the social security system under Act No. 87/01 is aimed at protecting all Dominican nationals and residents of the country, irrespective of their nationality. It indicates that the Act establishes the principle of universality according to which “[t]he Dominican Social Security System shall provide protection for all Dominican nationals and all persons residing in the country, without discrimination on grounds of health, sex or social, political or economic status”.⁶ It adds that the Act also establishes the principle of obligation, by virtue of which “membership, the payment of contributions and participation are compulsory for all citizens and institutions, in accordance with the conditions and rules established in the present act”.⁷
17. The Government explains that, in accordance with the abovementioned constitutional and legal provisions, employers have an obligation to register all their workers in the social security system, irrespective of whether they are Dominican nationals or foreigners, without distinction of any sort. In this regard, the Government adds that the Dominican labour courts recognize all the rights of foreign workers arising out of the labour relationship, regardless of the worker’s immigration status, including the right to compensation in the event of an occupational accident.⁸
18. In its communication of May 2012, the Government states that foreign non-resident workers cannot register in the social security system in general and in the occupational risks insurance scheme in particular. From the various pieces of information provided by the Government, it appears that 13,334 foreign workers are currently registered as having resident status in the country,⁹ of which 11,310 are covered by the occupational risks insurance scheme. In its communication of February 2013, the Government adds, in relation to non-resident foreign workers, that the Labour Code is grounded on the principle of territoriality, and thus the rights arising from a labour relationship are applicable to all workers regardless of whether they are Dominican nationals or foreigners and regardless of their immigration status and, by the same token, the social security provisions, with all their particularities, are also applicable to all workers.

⁴ Article 39 of the Constitution of the Dominican Republic: “Right to equality. All persons are born free and equal before the law and shall receive the same protection and treatment from institutions, authorities and other persons, and shall enjoy the same rights, freedoms and opportunities, without discrimination on grounds of sex, skin colour, age, disability, national origin, family ties, language, religion, political or philosophical opinions, or social or personal conditions.”

⁵ Article 60 of the Constitution of the Dominican Republic: “Right to social security. All persons have the right to social security. The State shall encourage the progressive development of social security to ensure universal access to adequate protection in cases of illness, disability, unemployment and old age.”

⁶ Section 3 of Act No. 87/01.

⁷ *ibid.*

⁸ In this regard, the Government attaches three judicial decisions in which the Dominican courts recognized the right of the family members of foreign workers who died as a result of an occupational accident to be compensated by the employer.

⁹ See the report by the Government of the Dominican Republic on the application of Convention No. 19, under article 22 of the ILO Constitution, received on 29 October 2012.

19. The Government notes that its efforts to develop the country's immigration policy led to the enactment in 2011 of the implementing regulations for the General Migration Act No. 285-04. It further notes that October 2011 marked the beginning of a comprehensive consultation process, open to all interested individuals and organizations, aimed at preparing the development of a national plan for the regularization of migration, as required by the General Migration Act. In the same vein, the Ministry of Labour is consulting various sectors of the Dominican population to draw up a list of highly technical occupations that could be filled by migrant workers, regardless of the number of foreign workers in the enterprise.
20. Moreover, the Government adds that concrete steps are being taken to register migrant workers in the social security system. In 2012, a pilot project was launched with migrant workers in the agricultural sector, under which 244 work visas were issued and the corresponding employment contracts were registered with the Ministry of Labour. For its part, the Directorate-General of Migration provided these workers with documents that are being used in efforts to register them in the social security system.

Practical aspects

21. The Government indicates, in its reply of February 2012, that the implementation of the social security system poses certain difficulties, especially with regard to workers in the informal economy, who represent 56 per cent of the country's workforce. The Government mentions, in this respect, that it has been impossible, to date, and mainly for financial reasons, to launch the subsidized contributory scheme, which is designed to cover self-employed workers, of which there are particularly high numbers in the informal economy. With regard to the prevention of occupational accidents, the Government states in its communication of May 2012 that it is taking initiatives to address the high accident rate in the construction sector.¹⁰
22. Furthermore, the Government indicates that an additional obstacle to extending social security coverage is the fact that many inhabitants do not possess an identity document. This situation is especially widespread among Haitian workers in the country who do not have basic identity documents from their country of origin, which would enable them to regularize their immigration status in the country and gain access to any of the schemes under the Dominican social security system. The Government refers to the steps that have been taken with various organizations in the multilateral system and through international cooperation to address the problem of the under-registration of births and the lack of documentation among citizens. In its communication of May 2012, the Government indicates that it held a meeting with the Ambassador of the Republic of Haiti on 18 January 2012 to explore ways of expediting the process of issuing identity documents and documents to regularize immigration status.

¹⁰ The Government refers to a study by the Dominican Labour Market Observatory (OMLAD) (Ministry of Labour of the Dominican Republic), entitled *Inmigrantes Haitianos y Mercado Laboral, Estudio sobre los Trabajadores de la construcción y de la producción del guineo en República Dominicana* [Haitian immigrants and the labour market: Study on construction and banana production in the Dominican Republic], 2011.

23. With regard to the alleged difficulties in providing occupational risk coverage for mobile or casual workers, the Government replies in its communication of February 2013 that the only difficulty that workers may encounter with regard to joining the social security system is not having an identity document. As a way of providing medical care to mobile or casual workers, the National Social Security Council decided, by Resolution No. 165-03 of 30 August 2007, to authorize, on a temporary basis, the Dominican Institute of Social Insurance to continue to provide health services under the contributory scheme to mobile or casual workers who are not covered by another health insurance provider.

III. The Committee's conclusions

A. Main provisions of the Convention relevant to the representation

24. The Committee observes that the allegations made by the CNTD, and the replies provided by the Government, are based on two major issues relating to compliance with the Convention:
- the first is strictly legislative in nature, and relates to the fact that the law imposes a condition of residence in order for foreign workers to benefit from insurance against occupational risks. This issue must be examined in the light of the principle established in Article 1 of the Convention that equality of treatment in respect of compensation for occupational accidents shall be guaranteed to foreign workers without any condition as to residence;
 - the other relates to a number of institutional and practical obstacles that are preventing a significant number of foreign workers from gaining effective access to compensation for occupational accidents, which raises questions about the Government's responsibility to adopt policies that facilitate compliance with the objectives of the Convention as set out in its Article 1. Taking into account the significant migration flows between Haiti and the Dominican Republic and recalling that both countries have ratified the Convention, the Committee further notes the relevance, for the analysis of this second aspect of the representation, of Article 4 of the Convention on mutual assistance among the countries that have ratified the Convention.
25. The Committee considers therefore that the issues raised in the representation relate primarily to the application of Articles 1, paragraphs 1 and 2, and 4 of the Convention. These provisions of the Convention read as follows:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

2. This equality of treatment shall be guaranteed to foreign workers and their dependants without any condition as to residence. With regard to the payments which a Member or its nationals would have to make outside that Member's territory in the application of this principle, the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned.

[...]

Article 4

The Members which ratify this Convention further 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 and to inform the International Labour Office, which shall inform the other Members concerned, of any modifications in the laws and regulations in force on workmen's compensation.

[...]

B. With regard to the condition of residence imposed on foreigners by the social security legislation

26. The Committee observes with regard to social security in general, and compensation for occupational accidents in particular, that the Dominican Constitution and Labour Code provide for no distinction on grounds of nationality. However, the Committee notes that Act No. 87/01 on social security, which, in its section 3, defines the principle of the universality of the social security system, refers only to Dominican citizens and residents of the country, and that section 5 of the Act, which refers to all the risks covered by the social security system, including occupational risks, establishes that membership in the social security system is limited to Dominican citizens and legal residents of the country. The Committee notes that the inclusion of a condition of residence applicable to foreigners is the result of the 2001 legislative reform, as the previous legislation covered workers without distinction on grounds of nationality.¹¹
27. The Committee further notes that, under Act No. 285-04 on migration,¹² only foreign workers who have a high degree of skill or expertise in their profession may enter the country with resident status (whether permanent or temporary), while other foreign workers who are admitted into the country shall receive the status of temporary workers, enter the country without resident status and be considered as people in transit. In this regard, the Committee notes the Government's statements to the effect that there are 13,334 registered foreign workers with resident status and that, under Act No. 87/01, only foreigners with resident status can be covered by the occupational risks insurance scheme. In comparison, the Committee notes that evaluations of the total number of foreign workers in Dominican territory place that figure in the hundreds of thousands.¹³ This means that the fact that non-resident foreigners are unable to join the social security system has a very high impact and that the vast majority of foreign workers in the country cannot join the occupational risks insurance scheme.

¹¹ See para. 9 of this report.

¹² See especially sections 33, 35(1), 35(3) and 36(5) of Act No. 285-04.

¹³ Although the National Labour Force Survey 2011 indicated that there were 292,737 foreigners in the country (of which 248,000 were Haitian) and the United Nations Development Programme's Human Development Report 2009 estimated the figure to be 434,000, other estimates provided in the abovementioned study by OMLAD entitled *Inmigrantes Haitianos y Mercado Laboral, Estudio sobre los Trabajadores de la construcción y de la producción del guineo en República Dominicana* [Haitian immigrants and the labour market: Study on construction and banana production in the Dominican Republic], suggest even higher figures, ranging from 500,000 to 800,000 people. See study by OMLAD, op. cit., p. 14.

28. The Committee recalls that the issue of the incompatibility of the abovementioned sections of Act No. 87/01 and the Convention was identified by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its direct request of 2007, in which it asked the Government to “indicate the way in which it ensures that foreigners working in the territory of the Dominican Republic without being resident there receive the same treatment as nationals of the country in cases of industrial accidents”. The Committee observes that the alleged contradiction between the social security legislation and the Convention has been specifically acknowledged in public statements made by representatives of the Government of the Dominican Republic. It has been acknowledged that “a particular problem that must be resolved is the issue of foreign workers who are not legal residents but who are effectively employed in the Dominican Republic, in the light of the international conventions signed by the Dominican Republic, non-compliance with which poses serious problems for the competitiveness of Dominican products abroad”.¹⁴
29. On the specific question of the compensation mechanisms for occupational accidents that are applicable to foreign workers who do not have resident status and who, as acknowledged by the Government, cannot join the occupational risk insurance scheme, the Government refers, in its communication of February 2013, to the principle of territoriality enshrined in the Labour Code, under which the rights arising from a labour relationship are applicable to all workers, regardless of whether they are Dominican nationals or foreigners, and regardless of their immigration status and, by the same token, the social security provisions *with all the particularities contained therein*. The Committee notes that this statement is based on Principle IV of the Labour Code, which establishes the principle of territoriality, and on section 52 of the Labour Code, which in its initial part provides that “[i]n cases of accident or illness, the worker shall receive only the medical care and the compensation that is available under the laws relating to occupational accidents or social insurance *in the forms and under the conditions determined by such laws*”. This means that the social security legislation is applicable to foreign workers with the special proviso that the condition of residence under Act No. 87/01 must apply, and therefore these provisions do not allow for the coverage of the many temporary workers in the country.
30. In the light of the above factors, the Committee considers that sections 3 and 5 of Act No. 87/01 do indeed give rise to a difference in treatment between national workers and foreign workers by limiting membership in the social security system to foreign workers who have resident status in the country. In so far as they apply to the occupational risks insurance scheme, these provisions violate the principle established by Article 1, paragraph 2, of the Convention, which guarantees, with regard to compensation for occupational accidents, equality of treatment to foreign workers without any condition as to residence. The Committee expresses its concern with regard to the exclusion, which results from the failure to award resident status to workers considered to be temporary, of the vast majority of foreign workers from the social security system, in general, and from the occupational risks insurance scheme and its benefits, in particular. The Committee considers, therefore, that amending Act No. 87/01 to enable foreign workers who do not have resident status to join the occupational risks insurance scheme is a minimum requirement for ensuring the application of the Convention. The Committee considers that removing the condition of residence in other areas covered by the Dominican social security system would also make it possible to resolve the contradictions between the social security legislation and the national constitution and would strengthen coherence between the social security legislation and labour legislation.

¹⁴ See National Social Security Council, *Informa, Boletín 10*, 2011, p. 13 (statement by the then Minister of Labour and President of the National Social Security Council at the ceremony to mark the tenth anniversary of the promulgation of Act No. 87/01 and the launch of Social Security Week, Santo Domingo, May 2011).

31. The Committee also notes the Government's statement, contained in its communication of February 2012, that workers, regardless of their nationality and immigration status, are free to bring action before the labour courts to claim the application of the labour rights arising from their employment relationship, which might include claims for compensation for occupational accidents or occupational diseases. In this regard, the Committee takes note of the three judicial rulings sent by the Government in which the courts required the employer to pay compensation to foreign workers who were victims of occupational accidents and who did not belong to the social security system. While welcoming the important contribution of the judiciary to protecting foreign workers against occupational accidents, the Committee must recall that a situation in which compensation for occupational accidents is based solely on the direct liability of the employer is not compatible with Article 3 of Convention No. 19, which requires the ratifying Members to institute a system, whether by insurance or otherwise, of compensation for occupational accidents. The Committee also underscores that the fact that it is possible to initiate legal proceedings to claim compensation from the employer in the event of an occupational accident, does not eliminate the difference in treatment resulting from the exclusion of non-resident foreign workers from the social security system in general, and from the occupational risks insurance scheme in particular, and consequently their exclusion from the facilities, medical care and economic benefits provided by that insurance.¹⁵

C. With regard to the additional obstacles to equality of treatment mentioned in the representation

32. The representation not only alleges a direct legislative violation of the principle of equality of treatment established in Convention No. 19, it also highlights the need to adopt a broader range of concrete measures and policies to allow for effective equality of treatment between national and foreign workers with regard to occupational accidents.

Protection of informal, mobile or casual workers

33. The Committee notes that the Government recognizes that the high level of informality that characterizes the Dominican labour market is a major obstacle to the effective protection of workers against occupational accidents. Because of the very nature of migration flows, foreign workers are often more vulnerable than nationals are to situations of informality which, in turn, affects their equal access to protection against occupational accidents in many ways. In this regard, the Committee also notes the Government's indications concerning the consultations on the development of a national plan for the regularization of migration. These indications demonstrate that the increased vulnerability of foreign workers to labour informality is also largely the result of their precarious immigration status. In fact, having an irregular immigration status cannot only hinder their participation in the social security system, it also prevents them from seeking redress when their rights are not respected, including with regard to occupational accidents. A state of affairs where legislation forces the vast majority of foreign workers into an irregular situation, or keeps them in such a situation, is problematic in view of the obligation of governments to establish conditions that are conducive to the effective implementation of equality of treatment in respect of compensation for occupational accidents.

¹⁵ In this regard, see, for example, the CEACR's observation, adopted in 2010, concerning the application of Convention No. 19 by Thailand.

34. In this regard, the Committee wishes to recall that Convention No. 19 does not provide for a distinction between formal and informal workers. In this respect, the application of the Convention could be much more effective if laws and policies were adopted to help mitigate the particular vulnerability of foreign workers to informality and to achieve greater coherence between employment, social security and migration policies, thus promoting the equality of treatment required by the Convention. The study *Haitian immigrants and the labour market* cited by the Government, indicates that several aspects of the legislation relating to the employment of foreign workers are characterized by their apparent mismatch with the current needs of the Dominican economy and the obstacles that they pose to the employment of numerous foreign workers under regular conditions.¹⁶
35. The Committee also notes that several documents published by the Ministry of Labour and by the National Social Security Council¹⁷ refer specifically to the difficulties of the social security system in general and the occupational accidents insurance scheme in particular in terms of providing adequate coverage for mobile or casual workers. The press release by the Ministry of Labour announcing the publication of the study *Haitian immigrants and the labour market* indicates, for example, that “with regard to the recruitment and registration of immigrant workers, the construction sector has major weaknesses, based on the fact that 66.2 per cent of workers have temporary contracts, making it impossible for them to be registered in the social security system.”¹⁸ This study indicates that “the vast majority of workers in these sectors do not have access to health insurance, life insurance, occupational risks insurance or a pension plan. In the construction sector, as has been said, this situation is structural in nature, as it is linked to the fact that the workers rotate between sites, which leads to job instability, temporary hiring and a system of subcontracting”.¹⁹
36. In this regard, while noting the efforts of the Dominican Council of Social Security concerning the access to health services, the Committee considers that a significant improvement of the inclusion and protection for mobile and casual workers under the occupational risks insurance scheme is necessary to achieve effective, and not only formal, compliance with the Convention. The Committee therefore invites the Government to step up its efforts to tailor its system of occupational risks insurance to the characteristics of the labour market and the challenges posed by temporary employment in sectors such as construction, thus ensuring that Dominican and foreign workers have equal access to compensation for occupational accidents. In this regard, the Committee recalls that international labour standards recognize the need to adapt social security schemes to the conditions of employment of specific categories of workers (such as seasonal workers, part-time workers and so on).

¹⁶ See OMLAD study, op. cit., pp. 166 et seq.

¹⁷ The National Social Security Council’s publication entitled *Memoria. Primer Foro de la Seguridad Social*, 2011 [First social security forum, 2011] takes into account that the issue of including mobile and casual workers has been the subject of debate and has given rise to proposals in the framework of several round-table discussions, including on occupational risks insurance.

¹⁸ Web page of the Ministry of Labour: *Ministry of Labour circulates study entitled “Inmigrantes haitianos y Mercado Laboral”* [Haitian immigrants and the labour market], February 2012.

¹⁹ OMLAD, op. cit., p. 193.

Poor compliance with current legislation on occupational accidents

37. The Committee takes note of the CNTD's allegation that, in sectors that employ large numbers of Haitian workers such as construction, agriculture and the sugar industry, the majority of occupational accidents go unreported. The organization also denounces employers' low contribution levels to occupational risks insurance in these sectors. In its communication of May 2012, the Government refers briefly to the high accident rate in the construction sector and certain initiatives taken by the labour inspectorate in respect of this sector. The Committee notes that this aspect of the representation relates to the low level of compliance with the legislation on occupational accidents that is typical of the sectors that employ large numbers of foreign workers. The Committee recalls that, in the observations of the CEACR, published in 2012, on the application by the Dominican Republic of the Labour Inspection Convention, 1947 (No. 81), and the Safety and Health in Construction Convention, 1988 (No. 167), the CEACR 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".
38. The study *Haitian immigrants and the labour market*, cited in the Government's reply, notes that, in the construction sector, 61.1 per cent of the site managers interviewed indicated that they had never been subjected to inspections by the Ministry of Labour.²⁰ In the banana sector, this percentage rose to 82.3 per cent.²¹ Only 20 per cent of Haitian workers in the construction sector, and 9.9 per cent in the banana sector, state that they have occupational risk insurance. With regard to the reporting of occupational accidents, the Committee notes that the statistics provided by the Occupational Risk Management Service reveal a sharp increase in the number of reports, with some 26,000 occupational accidents and diseases being reported for 2012, compared with 5,534 in 2006. However, at the same time, the percentage of occupational accidents that are reported in the construction sector and in agriculture remains very low (5 per cent and 3 per cent, respectively, of reported accidents), despite the high accident rate that is usually characteristic of such sectors.²²
39. Based on the abovementioned information and statistics, the Committee notes that, in a general context of high informality that has an impact on the whole of the country's workforce, the difficulties encountered by the labour inspectorate in enforcing the legislation on occupational accidents, especially with regard to the reporting of occupational accidents and the payment of contributions for occupational risks insurance, seem to affect more acutely the construction and agriculture sectors, where Haitian workers have a strong presence. The Committee considers that this situation increases the particular vulnerability of such workers to occupational accidents and is a significant obstacle to compliance with the Convention in practice. The Committee therefore invites the Government, as part of its policy of strengthening labour inspection, to prioritize the sectors with the highest occupational accident rate and with the greatest presence of foreign workers, especially construction and agriculture.

²⁰ OMLAD, op.cit., p. 96.

²¹ *ibid.*, p. 148.

²² Statistics available on the web portal of the Occupational Risk Management Service.

Lack of identity documents

40. Lastly, the Committee also notes the Government's statements with regard to the added difficulty posed by the fact that many workers do not possess an identity document from their own country, which creates an additional practical obstacle to their membership in the social security system. The Government indicates that this situation, which also affects part of the Dominican population, is especially prevalent among Haitian workers.²³ In its communication of February 2012, the Government briefly mentions a number of initiatives in this regard, without specifying whether they were aimed only at Dominican citizens who do not have identity documents or whether they were aimed also at Haitians in that situation. The Government also refers, in its communication of May 2012, to a meeting that was held with the Ambassador of the Republic of Haiti on 18 January 2012.
41. The Committee considers that the doubts that may arise with respect to the nationality (Haitian or Dominican) of many people in the Dominican Republic highlight the need for an institutionalized dialogue between the two Governments on this issue. More generally, recalling that Article 4 of the Convention provides that "the Members which ratify this Convention further undertake to afford each other mutual assistance with a view to facilitating the application of the Convention", the Committee considers that the lasting partnership between the States that are bound by this provision of the Convention is of fundamental importance if the various difficulties and challenges posed with regard to the application of the Convention in the Dominican Republic, and identified as part of this representation, are to be resolved. Furthermore, it is of the view that the abovementioned dialogue would be strengthened through the participation of the social partners in both countries.

D. Summary of the Committee's conclusions

42. The Committee considers that, although the Dominican Constitution and Labour Code provide with respect to social security for no distinction on grounds of nationality, sections 3 and 5 of Act No. 87/01 on social security effectively introduce a difference in treatment between national workers and foreign workers by limiting membership in the social security system to foreign workers that have resident status in the country. In so far as they apply to the occupational risks insurance scheme, these provisions violate the principle established by Article 1, paragraph 2, of the Convention, which guarantees, with regard to compensation for occupational accidents, equality of treatment to foreign workers without any condition as to residence. The Committee notes that the Government recognizes that non-resident foreign workers cannot join the occupational risks insurance scheme and therefore requests the Government to amend sections 3 and 5 of Act No. 87/01 to remove the general condition of residence imposed on foreign workers, at least to enable foreign workers to join the occupational risk insurance scheme without a condition of residence.
43. With regard to the development by the Government of a national plan for the regularization of migration, the Committee emphasizes the need for greater coherence between employment, social security and migration policies in order to bring the laws and regulations applicable to labour migration into line with the needs of the Dominican labour market. The Committee considers that a state of affairs where legislation forces the vast majority of foreign workers into an irregular situation, or keeps them in such a situation, is

²³ Only 25 per cent of the Haitian workers in the banana sector who were interviewed said that they had a work permit or workbook. In the construction sector, the declared figure is 16.8 per cent. The majority of these work documents are for the category of temporary work that does not allow the worker to obtain resident status. See OMLAD, op. cit., pp. 57 and 118.

problematic in view of the obligation of governments to establish conditions that are conducive to the effective implementation of equality of treatment in respect of compensation for occupational accidents. Likewise, the Committee considers that enhancing inclusion and protection for mobile and casual workers under the occupational risks insurance scheme is necessary to achieve effective, and not only formal, compliance with the Convention. To this end, the Government may also examine the situation of other groups of workers with a high presence of foreign workers who may be experiencing similar difficulties.

44. The Committee notes that the difficulties encountered by the labour inspectorate in enforcing the legislation on occupational accidents, especially with regard to the reporting of occupational accidents and the payment of contributions for occupational risks insurance, increase the particular vulnerability of Haitian workers to occupational accidents and are a significant obstacle to compliance with the Convention in practice. The Committee therefore requests the Government, as part of its policy of strengthening labour inspection, to prioritize the sectors with the highest occupational accident rate and with the greatest presence of foreign workers, especially construction and agriculture.
45. Lastly, the Committee observes that the fact that a significant number of Haitian workers in the Dominican Republic do not possess an identity document from their own country creates an additional practical obstacle to their membership in the social security system. The Committee notes that this difficulty cannot be resolved in a satisfactory manner without a lasting partnership between the Governments of the Dominican Republic and Haiti. More generally, the Committee considers that the longstanding partnership between the States that are bound by this provision of the Convention is of fundamental importance if the various difficulties and challenges posed with regard to the application of the Convention in the Dominican Republic, and identified as part of this representation, are to be resolved. Furthermore, it is of the view that the abovementioned dialogue would be strengthened through the participation of the social partners in both countries.

IV. The Committee's recommendations

46. *In the light of the conclusions set out above, the Committee recommends the Governing Body to:*
 - (a) *approve the present report, drawing the attention of the Government in particular to the action requested in paragraphs 42–45;*
 - (b) *invite the Government to request technical assistance from the ILO in order to take the requested action;*
 - (c) *invite the Government to fully include the social partners in the implementation of the requested actions;*
 - (d) *invite the Government to provide, in a report to be submitted for examination by the Committee of Experts on the Application of Conventions and Recommendations at its next session, detailed information on the measures adopted to give effect to the above recommendations so that the Committee of Experts can proceed with its examination of the issues raised in connection with the application of the Convention; and*

- (e) make this report publicly available and close the procedure initiated by the representation of the National Confederation of Dominican Workers (CNTD) alleging non-observance by the Dominican Republic of Convention No. 19.***

Geneva, 21 March 2013