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# MONITORING COMPLIANCE WITH INTERNATIONAL LABOUR STANDARDS

The key role of the ILO Committee  
of Experts on the Application of  
Conventions and Recommendations



CENTENARY EDITION  
2019

# **MONITORING COMPLIANCE WITH INTERNATIONAL LABOUR STANDARDS**

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on the Application of Conventions  
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# FOREWORD

The ILO's Centenary has been the occasion of a series of celebrations and events throughout 2019. This study was prepared in this context and is part of a list of Centenary publications which have been aiming at underlying this special year for the Organization and its constituents, as well as shedding light on the ILO's broader activities. This particular publication attempts to look back at some of the achievements of one of the ILO's main bodies within its comprehensive supervisory system of standards, namely the Committee of Experts on the Application of Conventions and Recommendations.

The first part of the study provides a historical perspective and outlines the origins and composition of the Committee of Experts. It pays special attention to the close relationship between the Conference Committee on the Application of Standards and the Committee of Experts and the way the respective functions of the two bodies have evolved over the years. It also provides useful insights on the general methodology used by the Committee of Experts as well as on recent discussions regarding the Committee's mandate.

The second part of the study proposes a selection of 18 cases, for which significant progress has been noticed in the implementation of ratified ILO Conventions, following comments formulated by the Committee of Experts, often in conjunction with other ILO or UN bodies.

It is to be hoped that this publication will contribute to better disseminate the important work and contribution of a key body of the ILO supervisory system and will bear witness to the considerable impact that it has had in recent years.

Corinne Vargha  
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# ACKNOWLEDGEMENTS

This publication follows a request made by the members of the Committee of Experts on the Application of Conventions and Recommendations in 2018 to contribute to the ILO Centenary year through a study highlighting the achievements and successes in the implementation of ratified Conventions by ILO member States recorded by the Committee in the past few decades.

Gratitude and special appreciation must be extended to Eric Gravel, Senior Legal Officer in the International Labour Standards Department of the ILO, for having had the vision to convert this request and subsequently for preparing and coordinating the timely release of this publication. Special thanks must also go to Paul Peters for his key contribution to this publication, in particular with regard to the cases of progress listed in Part II of this study.

Appreciation must also be extended to the colleagues of some Departments of the ILO, namely Fundamental Principles and Rights at Work (FUNDAMENTALS), the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV), as they provided useful comments and feedback on this study.

Finally, Judge Graciela Dixon Caton, current Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, should be warmly thanked for her continuous support of this project.

# PRELIMINARY CONSIDERATIONS

For any institution, to be able to commemorate 100 years of existence has to be considered an important milestone. This is probably even more the case for an international organization such as the ILO that was established in a very particular context, on the ashes of the First World War, therefore in a world in which certain realities or conditions no longer exist or differ profoundly from the ones we are facing today. The ILO's Centenary has been the occasion for celebration and commemoration, as well as forward-looking as the Organization is embarking on its second century. The speed at which the combined forces of technology, demographic and climate change, globalization and migration are transforming the world of work are presenting additional challenges to the national and global institutions embodying today's social contract. Some of these challenges have been laid down and analysed by the Global Commission on the Future of Work in its 2019 Report *Work for a brighter future*.<sup>1</sup> But celebrating the ILO's Centenary also provides an opportunity to take stock of what has been achieved in certain key areas, in particular with regard to the standards-related work of the Organization.

It should be recalled that since its establishment in 1919, the ILO has constantly availed itself of international law, and more precisely international labour standards, as an instrument for the promotion of social justice. But from the very beginning, it has been clear that without effective implementation of such standards, this objective would not be achieved. The Organization therefore took this as its central concern and progressively developed various supervisory bodies to help ensure effective implementation of the instruments adopted. As the promotion of the ratification and application of labour standards as well as their accountable supervision have been fundamental means of achieving the Organization's objectives and principles of advancing decent work and social justice, it is no surprise that these principles can be found, inter alia, in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 ILO Declaration on Social Justice for a Fair Globalization and the newly adopted ILO Centenary Declaration.<sup>2</sup> The supervisory mechanisms of the ILO are multifaceted and anchored in the Organization's standards and principles. While various monitoring mechanisms exist in the context of international and regional organizations, the ILO's integrated system of promoting compliance with labour standards is regarded as unique and particularly comprehensive at the international level.



Within the ILO supervisory system, the Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) is an independent body responsible for conducting the technical examination of the compliance of member States with provisions of ratified Conventions (and Protocols). The CEACR was set up in 1926 and is presently composed of 20 legal experts from different geographical regions, representing different legal systems and cultures. The Committee of Experts undertakes an impartial and technical analysis of how international labour standards are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope and content of the provisions of the Conventions. The CEACR's technical competence and moral authority is well recognized by virtue of its composition, independence and its working methods built on continuing dialogue with governments, taking into account information provided by employers' and workers' organizations.

Seizing the opportunity of the ILO's Centenary reflections on its past, the present study attempts to map out some of the major achievements in terms of the impact of the CEACR's work through its comments in guiding ILO member States to fill gaps in compliance with international labour standards. It is intended to analyse both the institutional development and practical impact of the work of the Committee of Experts over the years, make an assessment of it and, in so far as possible, draw certain lessons for the future. The study therefore proposes to illustrate, based on a selection of examples listed over the past 20 years, the dynamic nature of the Committee's supervisory work.<sup>3</sup> To do so, Part I of the study provides an overview of the composition, mandate and functioning of the Committee of Experts by outlining the major parameters of its action.

Part II, which is more empirical, attempts to take stock of what has been achieved in recent decades by drawing up a non-exhaustive list of cases of progress enumerated in relation to the application of several Conventions in 18 countries. It is divided by subregions and countries and tries to respect an equitable geographical representation and diversity in the subjects covered by the Conventions. It should be stressed that this second part, as it is limited to an analysis of cases of progress relating to certain themes and countries, should not in any way serve to obscure the importance of, nor the fact that, numerous cases of significant progress have occurred over the years with regard to the application of other Conventions and countries.

*Graciela Dixon Caton*  
*on behalf of*  
*the 2019 members of the Committee of Experts*  
*on the Application of Conventions and Recommendations*<sup>4</sup>

# PART I

## The Committee of Experts on the Application of Conventions and Recommendations: Composition and functioning

### 1. Origins and composition<sup>5</sup>

The ILO constitutional provisions relating to supervision of the application of ratified Conventions – the obligation to make annual reports on measures taken to give effect to ratified Conventions and the procedures for the presentation of representations and complaints – have been in place since they were first set out in the 1919 Constitution, which formed Part XIII of the Treaty of Versailles,<sup>6</sup> establishing the League of Nations, the predecessor of the United Nations. The Constitution set out the obligation for member States to submit regular reports on implementation in national law and practice for each of the Conventions that they had ratified.

Article 408 of the Treaty of Versailles (the current article 22 of the Constitution), which introduced the concept of “mutual supervision”, followed a proposal made by what was then described as the British Empire to the Commission on International Labour Legislation, and read as follows:

Each of the Members agrees to make an annual report to the International Labour Office of the measures it has taken to give effect to the provisions of 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. The Director shall lay a summary of these reports before the next meeting of the Conference.<sup>7</sup>

The concept of “mutual supervision” among ILO Members emerged from the work leading to the development of the ILO, based on the precept that ILO Members would all be bound by the same ratified Conventions, thereby preventing unfair competition between countries.<sup>8</sup> Each Member would therefore have an interest in ensuring that the others applied the Conventions that they had each ratified. Although it had originally been proposed that ratification of Conventions would be almost automatic by member States, when the Constitution was adopted the decision as to ratification was left to the discretion of Members, which were nevertheless under the obligation to bring Conventions and Recommendations before the competent authorities within one year of their adoption. However, the provisions concerning the supervisory procedures were still based on the assumption that ratification would be the general rule and objective. The report of the Commission on International Labour Legislation, which drafted the Labour Chapter, emphasized that the supervisory procedures had “been carefully devised in order to avoid the imposition of penalties, except in the last resort, when a State has flagrantly and persistently refused to carry out

its obligations under a Convention". It added that: "... while taking the view that it will in the long run be preferable as well as more effective to rely on the pressure of public international opinion rather than economic measures, [it] nevertheless considers it necessary to retain the latter in the background".<sup>9</sup>

However, the Constitution did not set up a supervisory body with the specific task of examining the reports submitted under Article 408, and it therefore fell to the International Labour Conference (ILC) to supervise the application of standards during the first years. It rapidly became apparent that the Conference could not continue to carry out this task in view of the constantly increasing number of ratifications and reports, quite apart from the adoption of new standards every year.

Indeed, until 1924, the reports submitted by governments were communicated to the ILC, first in full and later in a summarized form, in the Report which the Director-General of the Office submitted to the Conference. The ILC examined them in the course of the general discussion on the Director-General's Report. But as mentioned above, it was soon found that it was not possible by this method to make the maximum use of the means of mutual supervision of the application of Conventions afforded by the then Article 408. Recognition of this gave rise to the need for specific machinery to undertake such an examination.

Therefore, in terms of supervision, the first important development was the establishment in 1926 of both the Conference Committee on the Application of Standards (CAS) and the Committee of Experts on the Application of Conventions (CEAC – later CEACR) through the same Conference resolution.<sup>10</sup> The first resolution adopted by the Conference recommended that "a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408".<sup>11</sup>

The ILC also requested the Governing Body to:

appoint ... a technical Committee of experts ... for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex his summary of the annual reports presented to the Conference under Article 408.<sup>12</sup>

The following extracts from the *Record of Proceedings* of the ILC in 1926<sup>13</sup> provide an insight into the rationale behind the creation of these two bodies:

Further, it may be observed that the Conference and its Committees are essentially deliberative and political bodies, composed of the representatives of various interests, national or occupational, and that in general such bodies are not the best suited for the technical work now under consideration.<sup>14</sup>

The Committee of experts might therefore be, not a committee set up directly by the Conference, but a committee created by the Director, on the instructions of the Conference and with the approval of the Governing Body, to carry out a particular task in view of the technical preparation of one part of the work of the

Conference. The Conference itself would conserve its proper political functions, but it would be advised as to the facts by this technical expert Committee, and it would, either directly, or through one of its own Committees, decide upon its attitude and upon what appropriate action it might take or indicate.<sup>15</sup>

It was thus understood very early on that an effective supervisory system should involve the combination, on the one hand, of a technical examination involving certain guarantees of impartiality and independence and, on the other, an examination by a body of the ILO's supreme political organ, which would therefore be of tripartite composition. The International Labour Conference thus had the foresight in 1926 of complementing the original method of monitoring mutual compliance with treaty obligations based on dialogue with member States and social partners alike with a technical preparatory element, therefore providing for coherent supervision and an enhanced rule of law. Interestingly, for practical reasons, between 1921 and 1925 neither the Conference nor individual Members used the Director-General's summary Report as a basis for further action. As a result, following their establishment in 1926, the CEACR and the CAS were the only effective means of supervising ratified Conventions, as the other supervisory procedures envisaged by the Constitution had not been fully implemented during that period,<sup>16</sup> and the reference was to focus on the review of annual reports, so as to render recourse to the other constitutional procedures (representations and complaints) unnecessary.

At its First Session in May 1927, the Committee of Experts was composed of eight members, and met for three days. It had to examine 180 reports on the application of ratified Conventions from 26 of the ILO's 55 member States. The Conference had by then adopted 23 Conventions and 28 Recommendations, and the number of ratifications of Conventions was 229. During that initial session, it should be recalled that the Organization operated on a vision of harmonizing national labour legislation among member States at relatively comparable levels of development and its initial purview was to supervise the application of a relatively small number of Conventions. Of the 180 reports received for the First Session of the CEACR, 70 gave rise to "observations" by the CEACR, which also made a number of remarks and suggestions on the form and content of the report forms. The following year, the CEACR noted in its report that governments had furnished the information based on its earlier comments.<sup>17</sup>

## Relationship between the CEACR and the CAS in the early years

With respect to the relationship between the CEACR and the CAS, when the two Committees were established, the CAS was to base its examination on the summary of annual reports produced by the Director-General and the report of the CEACR. The CAS initially appointed "Sub-Reporters" to conduct an additional examination of the annual reports, but stopped in 1932 to avoid unnecessary duplication of the work of the CEACR.<sup>18</sup> Instead, the CAS decided to focus on matters of principle or on any facts that would emerge during its discussions.

The CAS indicated early on that the report of the CEACR was the basis of its deliberations, while the CAS's own independent examination was confined to reports received too late to be examined by the Committee of Experts. During that period, the CAS examined all observations made by the CEACR, together with subsequent information received from governments and the views expressed by delegates. Despite this "double examination" of reports, the working methods of the CEACR and the CAS gradually differed. While the CEACR examined reports and other written information provided by the Office, the procedures of the CAS progressively developed around the opportunity given to member States to submit explanations either orally or in writing. Already in 1928, the CAS recognized that the work of the CEACR had rendered useful results and the Governing Body decided to renew the appointment of the CEACR for one year on the understanding that its mandate would be tacitly renewed annually, unless opposition was raised.<sup>19</sup>

Then, in 1939, the CAS commented on the double examination process in its report and stated – in order to urge member States to submit their reports in a timely manner – that this system placed member States on a footing of equality in respect of the supervision of the application of ratified Conventions. It added that the examination of reports by the CEACR and the CAS differed in certain respects: the CEACR consisted of independent experts whose examination was generally limited to a scrutiny of the documents provided by governments while the CAS was a tripartite organ, made up of representatives of governments, workers and employers, who were in a better position to go beyond questions of conformity and, as far as practicable, verify the day-to-day practical application of the Conventions in question.<sup>20</sup> The CAS explained that in this system of mutual supervision and review "... the preparatory work carried out by the Experts plays an important and essential part".<sup>21</sup>

## Post-war period

The CEACR and the CAS could not function between 1940 and 1945. Following the Second World War, the ILO reviewed its role, particularly in relation to standard setting and the supervisory machinery. Thus, the second important development in the supervisory system occurred with amendments to the Constitution which were adopted in 1946. These amendments enlarged the scope of supervision, based on the experience of the work of the CEACR and the CAS in the pre-war years. The reforms recognized the important role of standards in achieving the objectives of the ILO. As the ILC records reflect, the amendments to the ILO Constitution which the Conference adopted at its 29th Session (Montreal, September–October 1946) provided for a considerable extension of the system of reports and information to be supplied by member States in respect of Conventions and Recommendations. During that session, it was discussed that although the pre-war system had offered a rather reliable impression of the extent to which national laws were in conformity with international labour standards, it did not provide a clear picture of the extent to which those laws were effectively

applied. The 1946 amendments thus introduced significant changes to a number of articles of the Constitution including articles 10, 19 and 22, 26–34, 35 and 37. Among them the following changes were of particular interest:

- (i) the obligation of each Member to report on measures taken to submit to the competent national authorities Conventions and Recommendations newly adopted by the ILC;
- (ii) the obligation to submit information and reports on unratified Conventions and on Recommendations when so requested by the Governing Body;
- (iii) the obligation to communicate reports and information under articles 19 and 22 to the representative employers' and workers' organizations of the Member concerned.

After 1947, no further adjustments were made either by the Conference or by the Governing Body to the mandate of the supervisory bodies. However, certain adjustments were made to their working methods by the Governing Body, in particular concerning the number of the members of the CEACR, the classification of Conventions and Recommendations, the report forms and the cycle and schedule of reports. The supervisory bodies themselves have also made continuous adjustments to their working methods over the years (see below, section 3).

## Direct contacts and technical assistance

While the work of the CEACR is essentially a written process, on the occasion of its 40th anniversary in 1967, the Committee put forward a suggestion which led to the introduction the following year of the procedure of direct contacts, which consists of on-the-spot missions visiting the country with a view to developing dialogue with governments and employers' and workers' organizations in order to overcome difficulties in the application of Conventions. This procedure initiated by the CEACR was further developed by the CAS and supported by the Governing Body. Originally intended to address problems relating to the application of ratified Conventions, the direct contacts procedure was extended in 1973 to cover difficulties in fulfilling the constitutional obligations of the submission of Conventions and Recommendations to the competent authorities, the submission of reports and information under articles 19 and 22 and possible obstacles to ratification. This procedure has become commonly used since then and has produced positive results.

In the early 1970s, over 150 Conventions had been adopted. Meanwhile, decolonization, in particular, had not only increased the Organization's membership to 121 Members but had started to alter the couching of international labour standards and their supervision. The introduction of flexibility clauses in Conventions and, more generally, of standards less geared towards predominantly legislative compliance and more towards the sound orientation of policies and institutions needed to realize social justice in newly independent States, increasingly inspired the Committee of Experts and the CAS to invite member States to rely on the gradually expanding technical cooperation activities of the Organization.

## Appointment and membership of the CEACR: Then and now

Prior to the adoption of the 1926 resolution establishing the CEACR, the Chairperson and Reporter of the Committee on Article 408 explained that the method of appointment of the members of the CEACR should be left to the Governing Body, but that they “should essentially be persons chosen on the ground of expert qualifications and on no other ground whatever”.<sup>22</sup> The criteria for appointment to the CEACR experienced continuity, although the number of experts and the geographical balance evolved rapidly in response to the CEACR’s increased workload and the diversification of ILO membership. In 1927 and 1928, the membership of the CEACR consisted of eight experts and a substitute member. The experts were initially appointed for the duration of the CEACR’s two-year trial period,<sup>23</sup> although as from 1934, they were appointed for a renewable three-year period.<sup>24</sup> The number of experts rose to 11 in 1932, with one member from an “extra-European” country. In 1939, the CEACR had 13 members, nine from European countries and four from non-European ones.

In 1945, the Governing Body appointed nine experts for the 13 vacant seats, which was the authorized number prior to the Second World War. Of those, five had been members of the CEACR prior to 1939. Following a request by the CEACR for the reinforcement of its membership, which had dropped to ten, and for experts qualified to examine the application of Conventions in non-metropolitan territories, the Governing Body appointed three additional experts by March 1948, including the first female expert.

In 1951, the CAS recommended that the Governing Body examine the possibility of lengthening the duration of the sessions and of adding once more to the number of experts.<sup>25</sup> As from the beginning of the 1950s, the sessions of the CEACR were lengthened to an average one-and-a-half weeks and its membership rose from 13 to 17 members.

In November 1962, the Governing Body appointed an additional member to ensure broader geographical distribution, with the CEACR’s membership increasing to 18 in 1962 and 19 in 1965. The membership of the CEACR reached its current level of 20 experts in 1979. The issue of the geographical composition of CEACR membership took on greater importance in view of the ILO’s increased membership, and constituents debated the emphasis to be given to personal qualifications versus the need to ensure geographical distribution. Some recalled that “geographical distribution, though important, was not the prime consideration” as “the main requirements for membership were competence, integrity and the ability to make comparative study of the provisions of national legislation and ILO instruments”.<sup>26</sup>

In 2002, the CEACR itself decided to establish a 15-year membership limit for all its members, representing a maximum of four renewals after the first three-year appointment. The experts also decided that the election of their Chairperson for a three-year term would be renewable once.

Today, the 20 members of the Committee are high-level legal experts (judges of the International Court of Justice, of national Supreme Courts or other courts of law, as well as professors of law specialized in labour issues) appointed by the Governing Body for renewable periods of three years. As indicated above, appointments have always been made in a personal capacity of persons who were recognized as impartial and had the required technical competence and independence. From the very beginning, these characteristics were found to be of vital importance in ensuring that the Committee's work enjoyed the highest authority and credibility. The experts are in no sense representatives of governments and this independence has been guaranteed by the fact that they are appointed by the Governing Body on the recommendation of the Director-General, and not by proposal of the governments of the countries of which they are nationals.

## **2. Terms of reference and organization of the Committee's work**

### **2.1 Terms of reference**

The Conference resolution of 1926 which led to the establishment of the Committee of Experts described its purpose as "making the best and fullest use" of the reports on ratified Conventions. Since the constitutional reforms of 1946, and in pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

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

The Committee is also asked to exercise certain functions in relation to instruments adopted under the auspices of other international organizations. In 1956, based on a request by the Secretary-General of the Council of Europe, the Governing Body assigned the CEACR the task of examining country reports on the European Social Security Code to ascertain the conformity of legislation in ratifying countries.<sup>27</sup> The CEACR started this examination following the entry into force of the Code in the 1960s.

On the occasion of its 60th anniversary in 1987, the Committee of Experts recalled the fundamental principles underlying its work and examined its terms of reference and methods of work.<sup>28</sup> The Committee emphasized that its task consisted of pointing out the extent to which the law and practice in each State appeared



to be in conformity with the terms of ratified Conventions and the obligations that the State has undertaken by virtue of the ILO Constitution. It added that:

... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States.<sup>29</sup>

The Committee also recalled that year that, as ILO Conventions are international standards, the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any specific social or economic system.

### ***General methodology and the CEACR's annual report***

The methods of work of the Committee of Experts have evolved over the years and in the context of its general terms of reference. The Committee determines its own methods of work independently. At present, the Committee meets once a year in Geneva for nearly three weeks in November–December and its report is examined at the following session of the International Labour Conference.<sup>30</sup> Its meetings are held in private and its documents and deliberations are confidential. When the Committee deals with instruments or matters related to the competence of other specialized agencies of the United Nations system, representatives of those agencies may be invited to attend the sitting. The Committee assigns to each of its members initial responsibility for a group of Conventions or a subject. The reports and information received early enough by the Office are forwarded to the member concerned before the session. The expert responsible for each group of Conventions or subject may take the initiative of consulting other members. Furthermore, any other expert may ask to be consulted before the preliminary findings are submitted to the Committee in the plenary sitting in the form of draft comments. At this stage, the wording is left at the sole discretion of the expert responsible. All the preliminary findings are then submitted for the consideration of the Committee in the plenary sitting for its approval.

The documentation available to the Committee includes: the information supplied by governments in their reports or to the Conference Committee on the Application of Standards; the relevant legislation, collective agreements and court decisions; information supplied by States on the results of inspections; comments of employers' and workers' organizations; reports of other ILO bodies (such as commissions of inquiry, or the Governing Body Committee on Freedom of Association); and reports of technical cooperation activities.

Although the Committee's conclusions traditionally represent unanimous agreement among its members, decisions can nevertheless be taken by a majority. Where this happens, it is the established practice of the Committee to include in its report the opinions of dissenting members if they so wish, together

with any response by the Committee as a whole. The Committee's report is in the first place submitted to the Governing Body for information and its final findings take the form of:

- (a) *Part I*: A General Report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation.
- (b) *Part II*: Observations concerning particular countries on the application of ratified Conventions, on the application of Conventions in non-metropolitan territories and on the obligation to submit instruments to the competent authorities.
- (c) *Part III*: A General Survey of instruments on which governments have been requested to supply reports under article 19 of the ILO Constitution, which is published in a separate volume.

The annual report of the Committee of Experts is submitted to the plenary session of the Conference in June each year, where it is examined by the CAS, which, as indicated above, is an ILC tripartite standing committee. The CAS discusses the findings in the CEACR report and selects a number of observations for discussion. Governments referred to in these observations are invited to respond to the CAS and provide further details about the matters at hand. The CAS draws up conclusions in which it recommends governments to take specific measures to remedy a problem or to ask the ILO for technical assistance. In the General Report of the CAS certain situations of particular concern are highlighted in special paragraphs.<sup>31</sup>

### ***Observations and direct requests***

In order to conduct its work efficiently, the Committee of Experts has found it necessary in many cases to draw the attention of governments to the need to take action to give effect to certain provisions of Conventions or to supply additional information on given points. Its comments are 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 and are available online.<sup>32</sup>

Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate.

Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also generally used for the examination of

first reports supplied by governments on the application of Conventions in order to initiate a dialogue with a government.

The Committee has always attached great importance to the clarity of the criteria for making a distinction between observations and direct requests, in order to ensure the visibility, transparency and coherence of its work and legal certainty over time. This distinction was the outcome of a long gestation initiated in 1957. That year, the Committee started to address a number of comments directly to governments instead of including them in its report. This distinction between observations and direct requests permitted the Committee to simplify the procedure in case of requests for supplementary information of comments on minor points and reduce the size of its report, but in the process enabled the Committee to gradually clarify issues of secondary importance with governments at earlier stages of their institutional development. The criteria involved careful consideration of both timing and substance. Even though these criteria might appear clear at first sight, their application sometimes called for a delicate balancing. The Committee has needed some room for reasoned discretion in this area, with a view to maintaining dialogue with governments and facilitating effective progress in the application of ratified Conventions.

### ***Special notes (double footnotes)***

In response to requests by the CAS, the Committee of Experts began in 1957 to identify serious and urgent cases requiring governments to provide information to the CAS. These special notes of the CEACR have become familiarly known as “*double footnotes*”. The Committee indicates with such footnotes at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed 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 order to identify cases for which it inserts these footnotes, the Committee uses the following basic criteria:

- 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.<sup>33</sup>

## A new dynamic in improving working methods in recent decades

Consideration of its working methods by the Committee of Experts has been an ongoing process since its establishment. In this process, the Committee has always given due consideration to the views expressed by the tripartite constituents. Regarding its examination of governments' reports and comments of social partners, the Committee has often recalled that it was relying exclusively on written evidence and that there were no oral hearings or scope for oral arguments.

Over the years, the Committee of Experts has sought to deliver a rigorous, consistent and impartial assessment of compliance with ratified Conventions, constantly introducing gradual improvements to produce more user-friendly, precise and concise comments. This has been necessary not only in order to give clear guidance to governments but also to facilitate follow-up action and technical assistance by the Office.

## Subcommittee on working methods

Since the CEACR, within the mandate given to it by the ILC and the Governing Body, has the power to examine and revise its own methods of work, it decided, in 2001, to pay particular attention to drafting its report in such a manner as to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their application in practice. The CEACR's review of its methods was prompted by the discussions in the Governing Body of ILO standards-related activities, as well as the desire to effectively address its growing workload. The following year, in order to guide its reflections on this matter in an efficient and a thorough manner, the Committee decided to create a subcommittee.<sup>34</sup> The subcommittee on working methods, initially composed of a core group and open to any member wishing to participate in it, has as a mandate to examine not only the working methods of the Committee as strictly defined, but also any related subjects, and to make appropriate recommendations to the Committee. The subcommittee therefore reviews the methods of work with the aim of enhancing the CEACR's effectiveness and efficiency, by endeavouring to streamline the content of its report and improving the organization of its work with a view to increasing it in terms of transparency and quality.

The subcommittee met on three occasions between 2002 and 2004. During its sessions in 2005 and 2006, issues relating to its working methods were discussed by the CEACR in the plenary sitting. From 2007 to 2018, the subcommittee met at each of the Committee's sessions.

## Recent developments

In 2013, the Committee of Experts held for the first time an informal information meeting with representatives of governments. During that meeting, the members of the Committee of Experts emphasized once again that the Committee's mandate was defined by the International Labour Conference

and the Governing Body. The members of the Committee of Experts also provided information on a number of aspects related to their work. These included: a succinct history of the Committee and the evolution of its composition and mandate; its role in the context of the ILO supervisory system, with particular emphasis on its relationship with the Conference Committee on the Application of Standards; the sources of information used in carrying out its work and the preparatory work and examination of comments during its plenary sittings. The Committee of Experts added that its efforts to streamline its comments were solely aimed at improving the coherence, quality and visibility of its work, without losing substance.<sup>35</sup>

Another interesting development relating to working methods took place in 2017. Based on the discussion of the subcommittee on working methods that year, the Committee of Experts decided to institute a practice of launching “urgent appeals” in cases corresponding to the following criteria:

- failure to send first reports after ratification for the third consecutive year;
- failure to reply to serious and urgent observations from employers' and workers' organizations for more than two years;
- failure to reply to CEACR repetitions relating to draft legislation when developments have intervened.<sup>36</sup>

In addition, the following year, based on the guidance of the Governing Body, the CEACR continued its recent practice of adopting a single comment to address in a consolidated manner the issues of application arising under various related Conventions for one country. These types of consolidated comments have been adopted in the fields of social security, maritime issues, wages, working time, occupational safety and health, labour inspection and child labour. This has allowed the CEACR to avoid repetitive comments under thematically related Conventions and has helped to ensure greater coherence in the treatment of the related information by country. For the countries concerned, one advantage is that comments are more easily readable and provide a more coherent and holistic analysis by subject of the issues to be addressed.

Finally, it should be recalled that throughout all these years, as the Committee's workload, working methods and responsibilities have evolved, the principles of objectivity, impartiality and independence which animate its work have not changed. It continues to examine the application of Conventions, Protocols and Recommendations, and of related constitutional obligations, in a uniform manner for all States. And as efforts are directed towards improving the visibility of the Committee's work, this could not only facilitate more efficient work in the CAS, but also help the tripartite constituents – in particular governments – to better understand and identify the Committee's requests. This could lead to greater implementation of, and compliance with, international labour standards.

## 2.2 Recent discussions on, and clarifications regarding, the Committee's mandate

Despite the fact that the Committee of Experts carries out an exercise involving a certain degree of interpretation of international standards and that over the years its observations have acquired considerable moral force, it should be stressed that by virtue of article 37 of the ILO Constitution, only the International Court of Justice is competent to make “definitive interpretations” of Conventions. It is therefore more precise to emphasize that the Committee of Experts’ observations constitute assessments of the conformity of the national laws of a member State with the Conventions that it has ratified, and not definitive interpretations. To make such assessments, the CEACR has recalled over the years that under Articles 31 and 32 of the Vienna Convention on the Law of Treaties, resort to preparatory works of an instrument can occur to confirm a good faith interpretation in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose or to determine the meaning when the interpretation: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. In the ILO, reference is made simultaneously to the text of the international labour standard and to its preparatory work. This is respectful of the input made by tripartite constituents during the framing of an instrument and of the unique tripartite structure of the ILO that gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

Tripartite consensus on the ILO supervisory system is therefore an important parameter for the work of the Committee of Experts which, although an independent body, has never functioned in an autonomous manner. Divergences of views between constituents therefore may have an impact on the Committee's work and requires it to pay particular attention to abiding strictly by its mandate and its core principles of independence, objectivity and impartiality.

### ***Recent clarifications***

Following tensions in the tripartite consensus related to certain aspects of the supervisory system that culminated in the early 2010s, the Committee recalled during its session of November 2012 that, since 1947, and during the past 50-plus years, it had regularly expressed its views on its mandate and methods of work. Since 2001, it had done so even more thoroughly through the efforts of its sub-committee on working methods (see section 2.1 above). In its 2013 report, the CEACR made several detailed observations regarding its mandate in the spirit of assisting ILO constituents in their understanding of the CEACR's work.<sup>37</sup> On that occasion, the Committee recalled three elements of particular relevance: (i) it had repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the tripartite Governing Body in their personal capacity precisely because of that impartial and independent status; (ii) it had regularly clarified that, while its terms of reference did not authorize it to give

definitive interpretations of Conventions, in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it had to consider and express its views on the legal scope and meaning of the provisions of these Conventions; and (iii) as from at least the 1950s, it had expressed its views on the meaning of specific ILO instruments in terms that inevitably reflected an interpretive vocabulary.

The Committee further stressed that its mandate derived from three main principles. First, assessment and evaluation of textual meaning was logically integral to the application of ratified Conventions. In this regard, the Committee noted that it needed to bring to the attention of the CAS: (i) any national laws or practices not in conformity with the Conventions, which inevitably required the evaluation and, thus, a certain degree of interpretation, of the national legislation and the text of the Convention; and (ii) in conformity with its working methods, the cases of progress in the application of standards, which also required a degree of interpretation.

Second, the equal treatment and uniformity of the application of Conventions assured predictability. The Committee highlighted in this regard that its approach to examining the meaning of Conventions also prioritized achieving equal treatment for States and uniformity in practical application. This emphasis was essential to maintaining principles of legality, which encouraged governments to accept its views on the application of a Convention and, in this manner, promoted a level of certainty needed for the proper functioning of the ILO system.

Third, the Committee stressed that its composition, that is, independent persons with distinguished backgrounds in the law and direct experience of the different national legal systems to which Conventions were applied, helped to ensure a broad acceptance within the ILO community of its views on the meaning of Conventions. The Committee's independence was importantly a function of its members' occupations, principally as judges from national and international courts and as professors of labour law and human rights law. This independence was also attributable to the means by which members were selected. They were not selected by governments, employers or workers, but rather by the Governing Body upon recommendation of the Director-General. The Committee's combination of independence, experience and expertise continued to be a significant further source of legitimacy within the ILO community.

In its 2013 report, the Committee further recalled that it directed its non-binding opinions and conclusions to governments, social partners and the CAS pursuant to its well-established role in the ILO supervisory structure. While aware that its guidance was taken seriously in certain specific settings, both by domestic courts and international tribunals, the Committee considered that this reflected respect for its independent and impartial nature and for the persuasive value of its non-binding analyses and conclusions. The Committee recalled that those analyses or conclusions could only become authoritative in any "binding" sense if the international tribunal, or instrument, or the domestic court independently established them as such.

The Committee also underscored the substantial individual and collective work it carried out in reviewing the application of Conventions which further benefited from an intensive exchange of views from a diversity of legal, social and cultural backgrounds. Finally, the Committee recalled that its mandate had to, by necessity, be understood within the framework of the ILO Constitution, which firmly anchored the aims and objectives of the Organization as being the elimination of injustice, hardship and privation and the fostering of social justice as the means for ensuring universal and lasting peace.

The Committee finally recalled that its guidance was part of the so-called international law landscape. Like the work of independent supervisory bodies created within other UN organizations addressing human rights and labour rights, the Committee's non-binding opinions or conclusions were intended to guide the actions of ILO member States by virtue of their rationality and persuasiveness, their source of legitimacy and their responsiveness to a set of national realities including the informational input of the social partners. At the same time, the Committee observed that it was only before the ILO supervisory machinery that the social partners could bring forward their concerns relating to the application of Conventions.

Following these detailed observations, the Committee of Experts decided to include in 2014 the following statement regarding its mandate in its report:

The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.<sup>38</sup>

In 2015, the Committee noted that the statement of its mandate (which has been since reiterated in all its yearly reports) was welcomed by the Governing Body and had the support of the tripartite constituents.<sup>39</sup>



## 2.3 Information treated by the Committee (reports submitted by governments and comments of the social partners)

### *Reporting cycle*

As indicated above, article 22 of the ILO Constitution calls on governments of ILO member States to provide reports detailing the steps they have taken in law and practice to apply the ILO Conventions they have ratified. The article also allows the Governing Body to decide in which form and at which time intervals reports on each Convention are requested. While reports on each Convention had to be sent on an annual basis during the early years following the ILO's establishment, the reporting cycle has been gradually extended over time, to decrease the workload of both governments and the CEACR. Since 2012, reports on the eight fundamental and four governance Conventions are due every three years. The reporting cycle for all other Conventions had been five years since 1993, but was extended to six years following a decision of the Governing Body in November 2018. Reports can however also be requested at shorter intervals. For example, the CEACR can request a government to send a report in reply to comments it has made on the government's previous report within a shorter period. All reports due in one year have to reach the Office between 1 June and 1 September, to be reviewed during the CEACR's meeting in November.

Furthermore, the Governing Body in its November 2018 decision expressed its understanding that the Committee of Experts would further review, clarify and, where appropriate, broaden the criteria for "breaking the reporting cycle" with respect to technical Conventions.<sup>40</sup> The Committee thus proceeded with the review of the criteria mentioned above. The Committee indicated that it would review the application of a technical Convention outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

- the seriousness of the problem and its adverse impact on the application of the Convention;
- the persistence of the problem; and
- the relevance 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.

Finally, it is important to stress that, as the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee of Experts and the CAS have, for a number of years, considered that failure by member States to fulfil their obligations in this respect should be given the same level of attention as non-compliance relating to the application of ratified Conventions.

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

In the early years of the supervisory system, both the CEACR and the CAS repeatedly expressed concern at the lack of comments from employers' and workers' organizations based on the question added to the report forms in 1932. It was only in 1953 that the CEACR could note comments received from workers' organizations in two countries. In 1959, it indicated that comments had been received from nine countries.<sup>41</sup>

In the early 1970s, the CEACR began giving special attention to the obligation for Members, under article 23 of the Constitution, to communicate reports to the representative employers' and workers' organizations, by which greater participation of workers and employers was to be promoted. During that period, the convergence of views between the Employers' and Workers' groups on promoting compliance with standards led to further developments in the work of the CEACR. This, combined with the growth of the international trade union movement, contributed to the increased participation of employers' and workers' organizations in the process of the supervision of standards. By the mid-1970s, a series of measures had been taken to strengthen tripartism in ILO activities, including supervision, resulting in important changes in the workload and methods of work of the CEACR. The adoption of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), established the requirement for ratifying States to consult the representatives of employers and workers on certain standards-related matters, including their reports on ratified Conventions.

Until the early 1980s, most comments were submitted together with the governments' reports, while only a few were sent directly to the Organization. By 1986, the CEACR was able to note that there had been a considerable increase in the comments received, from 9 in 1972 to 149 in 1985. The following period witnessed an even greater increase in the number of comments received from employers' and workers' organizations, which rose from 183 in 1990 to 1,004 in 2012 and 1,325 in 2017. A small decrease (due to a smaller number of submissions made on the General Survey) was noted in 2018 with 745 observations received.

In recent years, the CEACR has recalled consistently that the contribution by employers' and workers' organizations was essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in recent years, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. Where the

Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

At its 86th Session (2015), the Committee made the following clarifications on the general approach developed over the years for the treatment of observations from employers' and workers' organizations. The Committee recalled that, in a reporting year, when observations from employers' and workers' organizations are not provided with the government's report, they should be received by the Office by 1 September at the latest, so as to allow the government concerned to have a reasonable time to respond, thereby enabling the Committee to examine, as appropriate, the issues raised at its session the same year. When observations are received after 1 September, they would not be examined in substance in the absence of a reply from the government, apart from exceptional cases. Over the years, the Committee has defined exceptional cases as those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to violations of fundamental human rights or because any delay may cause irreparable harm. In addition, observations referring to legislative proposals or draft laws may also be examined by the Committee in the absence of a reply from the government, where this may be of assistance for the country at the drafting stage.<sup>42</sup>

### ***Reports on unratified Conventions: From technical examination to General Surveys***

Following the 1946 constitutional amendment and a 1948 decision of the Governing Body, the CEACR examined for the first time government reports on unratified Conventions in 1950. The CEACR's analysis and findings, which were submitted to the CAS, took the form of a survey intended to portray a comprehensive picture of the state of the law and practice in all countries on certain important matters falling within the competence of the ILO, with a focus on the reasons preventing or delaying the ratification of Conventions.

The following years, the examination of reports on unratified Conventions and on Recommendations was strengthened and in November 1955, with a view to reinforcing the work of the CAS, the Governing Body approved a proposal by its Committee on Standing Orders and the Application of Conventions and Recommendations, which was supported by the CAS, that the CEACR should undertake, in addition to a technical examination on the application of Conventions, a study of general matters, such as positions on the application of certain Conventions and Recommendations by all governments. Such studies, now known as "General Surveys", were intended to cover the Conventions and Recommendations selected for the submission of reports under article 19 of the Constitution. As the reports requested under article 19 were grouped around one or two central themes each year, it was proposed that the reports provided under

article 22 of the Constitution might also be taken into consideration. This practice was endorsed by both the CAS and the Governing Body so as to allow for a “fuller examination of the situation existing in the various countries in the field covered by these Conventions”.<sup>43</sup> The CEACR carried out its first such examination in 1956 and, as from that year, the CAS has consistently discussed the General Surveys of the CEACR.

Today, these General Surveys allow the Committee of Experts to examine the progress and difficulties reported by governments in applying labour standards, clarify the scope of these standards and occasionally indicate means of overcoming obstacles to their application. In doing so, the General Surveys also provide importance guidance to national legislators as well as to the ILO, on possible action to be taken with regard to the standards. More recently, General Surveys have played a role in informing the recurrent discussions of the International Labour Conference, which periodically review the effectiveness of the Organization’s various means of action, including standards-related action in responding to the diverse realities and needs of member States with respect to each of the strategic objectives of the Decent Work Agenda. Increasingly, they may be expected to inform the work of the Standards Review Mechanism Tripartite Working Group, a recently established body, which is mandated to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

### ***Reports concerning the submission of instruments to the competent authorities***

Under article 19(5)(b), (6)(b) and (7)(b) of the ILO Constitution, member States are required to submit, as a general rule, every instrument within 12 months of its adoption to the authority or authorities, within whose competence the matter lies, to consider the adoption of legislation or other action to implement it. These member States then have to submit a report to the Office, detailing the action they have taken in this regard.

In 1954, the Governing Body approved for the first time a draft memorandum containing details on the extent of the obligation to submit Conventions and Recommendations to the competent authorities. The most recent revision of this memorandum was adopted in 2005. It describes the extent of the obligation and the aims and objectives of the submission, stating that the main aim of submission is to promote measures at the domestic level for the ratification and implementation of the instruments and to bring them to the knowledge of the public. It furthermore clarifies the form of submission, the time limits and other technical aspects.

In its annual report, the CEACR reviews the information related to the submission of instruments and formulates comments on cases of non-compliance with this obligation.

### **3. Synergies between the various supervisory bodies of the ILO**

The supervisory system of the ILO has had to develop over time to meet changing societal realities and challenges. As mentioned above, these various mechanisms have long been cited as among the most advanced and best functioning in the international system, probably because they are the result of a combination of actions by different ILO bodies – the supervisory bodies, the ILC and the Governing Body. While the regular system of supervision focuses on the examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of ratified Conventions and to give effect to unratified Conventions and Recommendations (articles 19, 22, 23 and 35), the special procedures (a representation procedure and a complaint procedure of general application – articles 24 and 26 to 34 – together with a special procedure for freedom of association) are driven by complaint-based mechanisms.

But the different supervisory procedures of the ILO serve a common purpose: the effective observance of international labour standards, particularly in relation to ratified Conventions. The existing connections between the supervisory mechanisms therefore operate in respect of obligations freely assumed by the Organization's member States through the ratification of Conventions, although obligations in respect of unratified instruments are also an important area of attention for the supervisory bodies.

#### **The CEACR and the CAS: Complementary and mutually reinforcing**

As noted above, the Committee of Experts was created at the same time as the Conference Committee on the Application of Standards. While there have at times been differences in approach between the two committees, they have developed a solidly collaborative relationship and each relies on the work of the other. In fact, 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 CAS into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations.

Over the years, both the CAS and the CEACR have regularly examined their working methods with their continual concern to coordinate the operation of the various supervisory procedures so that they would be complementary and mutually reinforcing. Until 1955, the CAS discussed all the cases contained in the CEACR reports. In the mid-1950s, the first decisions were taken to allow the CEACR and the CAS to deal with their increasing workload. A certain division of labour was progressively established between the CAS and the CEACR. At the

beginning, both Committees examined successively all the issues arising out of the annual reports. However, in 1955, the CAS adopted the “principle of selectivity” so that it could concentrate only on cases in which the CEACR had drawn attention to definite discrepancies between the terms of ratified Conventions and national law and practice.<sup>44</sup>

As from the 1990s, two practices enhanced the mutual understanding between the Committee of Experts and the CAS. Since 1993, the Vice-Chairpersons of the CAS<sup>45</sup> have been invited to a special session of the Committee each year, providing them with a platform to express their views, proposals and concerns. Conversely, carrying out a Governing Body decision, the Director-General invites the Chairperson of the Committee of Experts to attend sessions of the Conference Committee on the Application of Standards. This provides the CEACR with insights into how the tripartite CAS addresses its General Report, the cases it has selected for discussion from the Committee of Experts’ report and its General Survey. This practice has been considered useful with the potential to further reinforce the respective roles of both bodies.

In 1994, on the occasion of the ILO’s 75th anniversary, the CEACR recalled developments in the practice of the two Committees, and concluded that the division of functions was “one of the keys to the success of the ILO’s supervisory system in that the complementary nature of the independent examination carried out by the Committee of Experts and the tripartite examination of the Conference Committee on Standards makes it possible to maintain a desirable balance in the treatment of cases”.<sup>46</sup>

More recently, the 2015 report of the Committee of Experts noted that a transparent and continuous dialogue between the CAS and the CEACR proved invaluable for ensuring a proper and balanced functioning of the ILO standards system. The CAS and the CEACR could be regarded as distinct but inextricably linked as their activities are mutually dependent. Then, in its 2019 report, the CEACR recognized that its independent nature helped the fruitful dialogue in which the two bodies had been engaging and that any evolution of the supervisory system should be based on the system’s strengths. International labour standards constituted not only the main source of international labour law but also the foundation of national labour law in many countries throughout the world. International labour standards had managed to exert this influence and maintain their relevance over the years largely thanks to the supervisory body comments linking ratified Conventions to constantly changing national circumstances, and through the integration of these recommendations and comments in numerous decisions reached by national judicial bodies. The Committee of Experts’ comments would not have produced the same results if they were not enhanced by the political impact of discussion at the Conference Committee in a tripartite context. An important condition for maintaining the impact of the experts’ comments was the coherence between the two bodies, based on their complementary mandates and the cooperation they had built over time. In addition, conscious of the synergies between the two bodies, the Committee

of Experts had been referring to the conclusions reached by the CAS in many of its comments.<sup>47</sup> Finally, in its most recent reports, the Committee of Experts has recalled that it placed special emphasis on the conclusions of the CAS, carefully and systematically reviewing their follow-up in its own comments.

### **The CEACR and the complaint-based mechanisms**

As illustrated above, the supervisory mechanisms, whether they form part of the regular system or consist of so-called special procedures, are closely linked. Indeed, the work of the Committee of Experts frequently serves as a basis for that of other supervisory mechanisms.

It is a well-established practice in the supervisory system that the CEACR follows up on the effect given by governments to the recommendations made by tripartite committees (article 24) and Commissions of Inquiry (article 26). The governments concerned are therefore requested to indicate in their reports under article 22 the measures taken on the basis of these recommendations. The related information is then examined by the regular supervisory machinery. As such, it becomes part of the ongoing dialogue between the government, the CEACR and the CAS. Examination of a case by the CEACR and subsequently by the CAS may be suspended in the event of a representation or complaint in relation to the same case.<sup>48</sup> When the Governing Body has decided on the outcome, the CEACR's subsequent examination may include monitoring the follow-up to the recommendations of the body which examined the representation or complaint.

With regard more specifically to the Committee on Freedom of Association (CFA), its procedure provides for the examination of the action taken by governments on its recommendations. Under the CFA rules of procedure, where member States have ratified one or more Conventions on freedom of association, examination of the legislative aspects of the recommendations adopted by the Governing Body is often referred to the CEACR by the Governing Body. The attention of the CEACR is specifically drawn in the concluding paragraph of the CFA's reports to possible discrepancies between national law and practice and the terms of the Convention. However, it is made clear in the procedure that such referral does not prevent the CFA from examining the effect given to its recommendations, particularly in view of the nature and urgency of the issues involved. Since its 236th Report (November 1984), the CFA has highlighted in the introduction to its Report the cases to which the attention of the CEACR has been drawn.<sup>49</sup>

## Synergies between the CEACR and other UN and non-UN monitoring bodies

Apart from other ILO supervisory bodies and mechanisms, the CEACR has also established links with other international monitoring bodies. This mainly concerns the UN treaty bodies, which supervise the application of UN human rights treaties.

Many of the subjects treated by ILO instruments are also relevant to UN human rights treaties. A number of the guarantees contained in these treaties overlap with the obligations under ILO Conventions. This concerns for example the International Covenant on Economic, Social and Cultural Rights, which, *inter alia*, contains guarantees concerning freedom of association and the right to organize, occupational safety and health or fair wages. Other such overlapping provisions are also contained in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of Persons with Disabilities or the International Convention on the Elimination of Racial Discrimination.

Many of the countries which have ratified ILO Conventions have also ratified UN human rights treaties with corresponding provisions. If there is a case of non-compliance with these provisions, the case will often be treated both by the CEACR and one or several UN supervisory bodies. Over the years, this has led to the development of synergies between these bodies, with the UN bodies in many cases quoting comments of the CEACR and urging the respective governments to respond to them. Similarly, the CEACR has also, in many cases, quoted comments made by these supervisory bodies in its reports in order to reinforce its own statements.<sup>50</sup>

There are also a number of regional multilateral treaties which treat issues relevant to ILO standards, such as the European Social Charter or the Social Charter of the Americas. In the case of the European Committee on Social Rights, it has established links with the CEACR for countries that have ratified both treaties.<sup>51</sup>

## Sources of international law applied at the national level

The CEACR, through its comments on compliance with international labour standards, has also exerted some influence on the decisions of domestic or international courts.<sup>52</sup> In numerous countries, ratified international treaties apply automatically at the national level. Their courts are thus able to use international labour standards to decide cases on which national law is inadequate or silent, or to draw on definitions set out in the standards, such as of “forced labour” or “discrimination”. The use of these standards by the highest courts of certain countries, as observed by the CEACR for many years, bears witness to their acceptance and use at the national level. In this way, national and international systems for the regulation of labour are a mutual source of inspiration.



# PART II

## Impact of the Committee of Experts' work and analysis of cases of progress

### 1. The rationale behind identifying a case of progress

In 1964, the CEACR started to record cases of progress in its report, noting that a considerable number of governments had taken account of its past observations and had amended their legislation and/or practice accordingly.<sup>53</sup> Within cases of progress, a distinction between cases of satisfaction and cases of interest was formalized in 1979.<sup>54</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. 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.

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.

At its 80th and 82nd Sessions (2009 and 2011), 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 necessarily 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.<sup>55</sup>

While recording cases of progress has become an essential part of the Committee of Experts' work, the extent to which people, workers and employers alike, have benefited, often in a lasting manner, from the legal and social changes which occur when the national legislation/situation are brought into conformity with international labour standards can be sometimes challenging to measure. Indeed, in practice, not everything can be measured accurately. As experience shows, law and its effective implementation is a complex issue. For the purpose of this publication, as will be illustrated below, it was necessary to make certain choices, steering clear of analysing everything, but emphasizing the diversity, profundity, permanence and progression of the impact of the work carried out by the CEACR.

## 2. Preventive supervision and the issue of causality

The difficulties encountered by the ILO supervisory bodies and in particular the CEACR in helping eliminate divergences between national law and international labour instruments have various origins. Firstly, there may exist difficulties of an economic or social nature preventing the implementation of and compliance with the Conventions ratified by a specific State. These sometimes consist of premature ratifications, with the State marking its adhesion to the principle through its ratification, but not yet having the means to ensure effective compliance with the Convention. Similar problems have also been noted in the past in the case of newly independent States. In other instances, political difficulties may delay the adoption of measures to remove the divergences noted by the Committee. Political issues may range from serious internal problems to the difficulties experienced by the government in obtaining the adoption of the necessary amendments by parliament. These may be combined with difficulties of a legal nature, such as those encountered on occasion by federal States when the measures to be taken lie within the competence of the constituent units of the federation.<sup>56</sup>

But as mentioned above, the impact of the Committee of Experts' work as part of the overall supervisory system cannot be measured solely in the light of the cases of progress enumerated. In this respect, the indirect or a priori impact of the Committee's work should not be overlooked. In practice, the Committee of Experts can exercise considerable preventive supervision. This impact is by its nature difficult to quantify. It consists, for example, of the comparative analysis of draft legislation bringing to light the incompatibility of certain provisions of the draft text with the Convention concerned. Such an examination, even before the entry into force of the law, offers the legislative authorities of a member State the possibility to make the necessary amendments. As a result, the law will probably not be the subject of comments by the Committee of Experts subsequently, unless real problems of application arise.

With regard to preventive supervision, reference should also be made to the direct requests that the CEACR sends out each year to certain governments. These direct requests, in which the Committee generally seeks clarifications from governments and enters into dialogue with them, do not appear in the Committee's report. As a result, the measures taken pursuant to direct requests and their effectiveness will never appear in the figures of cases of progress. Furthermore, the Committee notes each year a number of cases in which it appears, from the first report on the application of a Convention, that new measures of a legislative or other nature have been adopted shortly before or after ratification.

The question may also sometimes arise as to how to establish a causal link between the observations of the Committee of Experts and the measures taken by the governments concerned. The process of supervising application, to be effective, necessarily requires a certain degree of collaboration by member States. The outcome of the Committee's work can be measured on the basis of a whole range of sources of information, including the indications provided by

the governments concerned, those transmitted by employers' and workers' organizations, draft legislation submitted to the Office and requests for technical assistance. In this respect, the information that can be provided by workers' and employers' organizations takes on a certain importance by making it possible for the Committee to keep itself informed of cases in which, for example, the government concerned did not provide the requested information.<sup>57</sup>

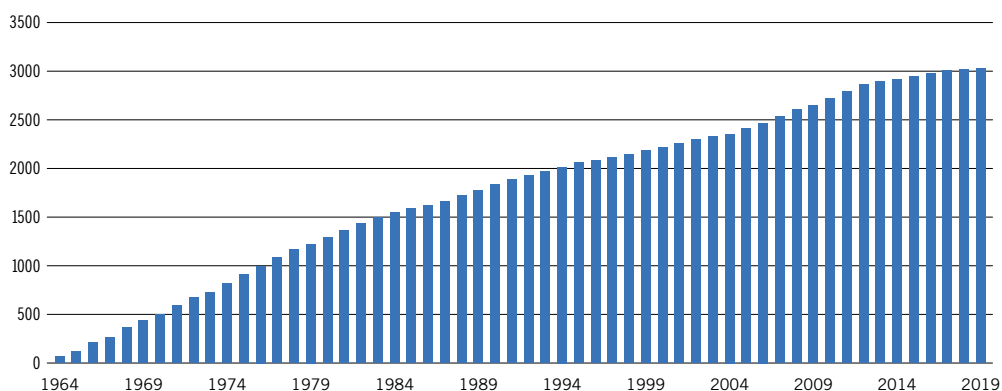
The causal link between an observation by the Committee of Experts and a case of progress can be more difficult to establish where the Committee's comments have not given rise to immediate action and several years have passed before the government concerned took the necessary measures to give effect to those comments. In such cases, it should be recalled that throughout whatever period necessary, the Committee of Experts – sometimes alongside other bodies of the supervisory system – would continue to follow a case, pursuing its examination of the problems of application which had arisen and reiterating its previous comments until it would be able to note a change in line with its observations.

Admittedly, the rise in the number of cases of progress over the years has been linked to the increase in ratifications and the amount of reports submitted. But the cases of progress noted by the CEACR cannot be assessed solely on the basis of figures, which cannot by themselves claim to give a real and detailed picture of the developments in the situation. The analysis must therefore be both quantitative and qualitative.

**The following figures provide a statistical overview regarding the cases of progress recorded by the CEACR.**

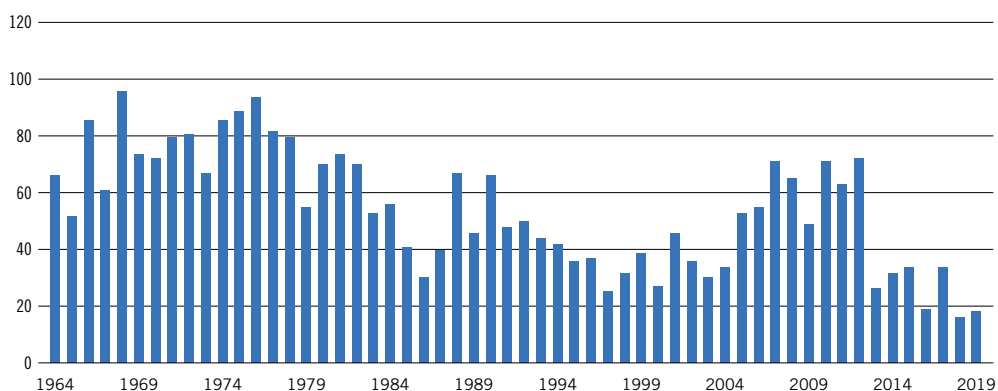
Since 1964, the CEACR has been recording the number of cases in which it was able to express its **satisfaction** following positive measures taken by governments in line with its comments. As of 2019, the total number of these cases had risen to 3,077. This number has been increasing steadily over the years (fig. 1).

**Figure 1**



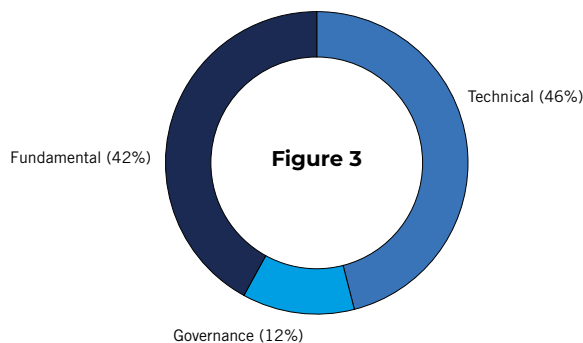
Since 1964, there have been an average of 54 new cases of **satisfaction** per year (fig. 2).

**Figure 2**



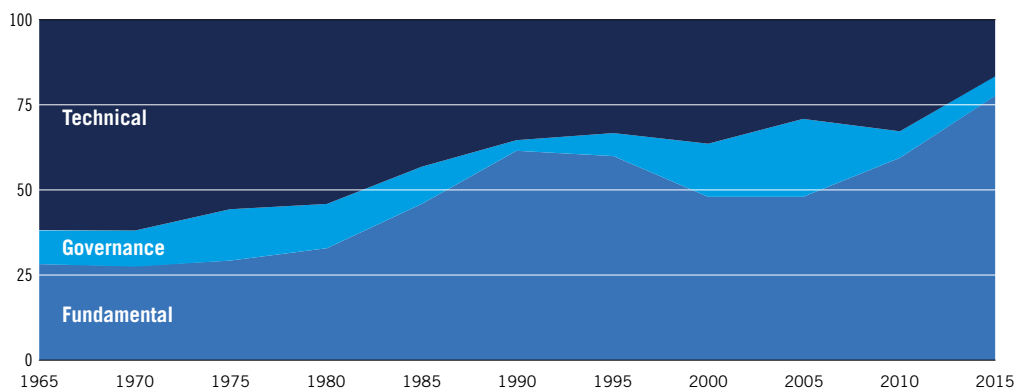
As of 2001, the CEACR also began to record the cases in which it expressed its **interest**. As of 2019, their total number had risen to 4,168, with 219 new cases on average every year.

Regarding the distribution of the cases of **satisfaction** among the different types of Conventions, a fairly even distribution between “fundamental” and “technical” Conventions can be noted. Both types make up about 88 per cent of all cases, leaving the remaining 12 per cent to the “governance” Conventions (fig. 3).



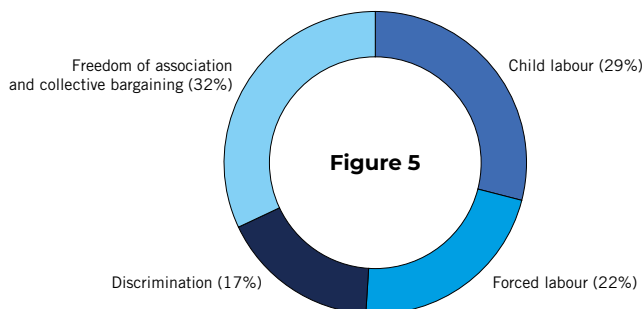
This distribution has however changed over time, as the share of cases on “fundamental” Conventions has steadily risen since the 1980s, only interrupted by a slight decrease at the end of the 1990s (fig. 4).

**Figure 4 (%)**



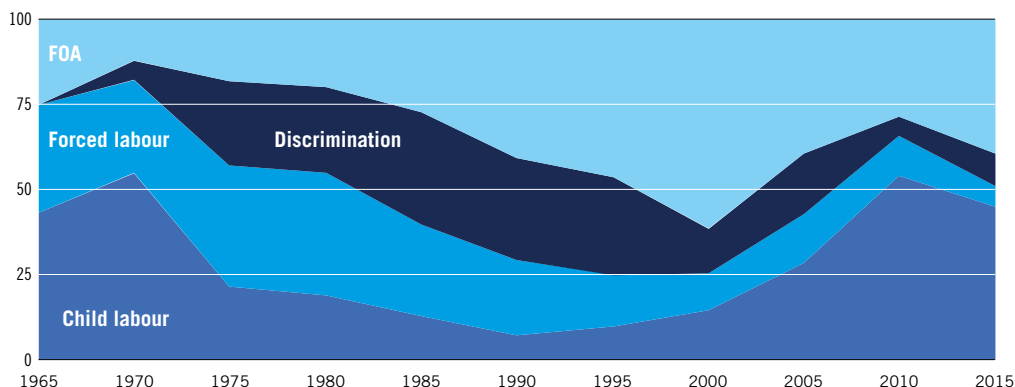
This trend is also reflected in the distribution of cases of **interest**, whose number has only been recorded since 2001, and of which almost 50 per cent concern “fundamental” Conventions, with another 23 per cent related to “governance” and the remaining 29 per cent concerning “technical” Conventions.

Among the cases on “fundamental” Conventions, a fairly even distribution between the four subjects of “child labour”, “forced labour”, “discrimination” and “freedom of association and collective bargaining” can be noted (fig. 5).



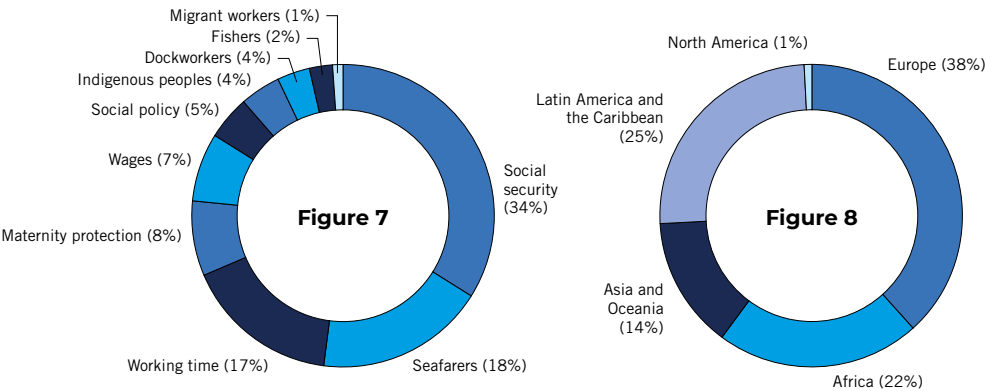
This distribution has however changed several times over the years, that is, while the share of “forced labour” and “discrimination” cases increased in the 1970s, but decreased towards the 2000s, the share of “freedom of association” cases has steadily risen since the end of the 1970s, however with a shorter period of decline between 2000 and 2010. “Child labour” cases, on the other hand, had two peaks, one in the 1970s and one which began in 2000 and still continues today, probably coinciding with the adoption of Conventions Nos 138 and 182 in 1973 and 1999 (fig. 6).

**Figure 6 (%)**



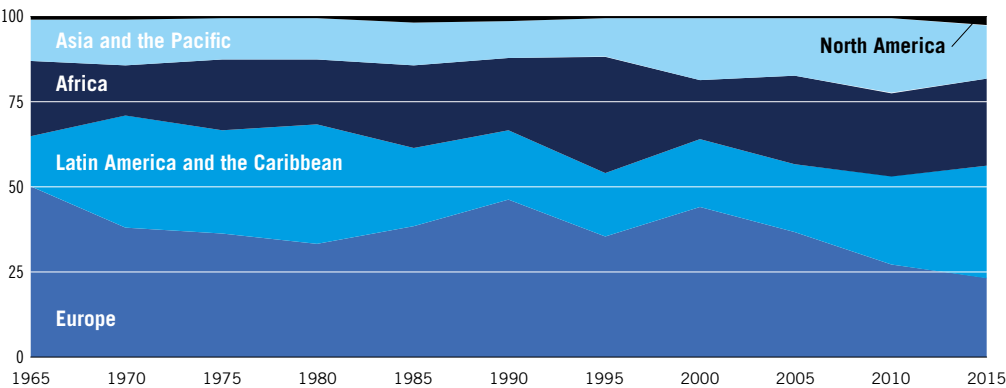
Among the “technical” Conventions, the largest share of cases of **satisfaction** has been related to “social security”, “seafarers” as well as “working time” and, to a slightly lesser extent, “maternity protection” and “wages” (fig. 7).

The regional distribution of cases of **satisfaction** is fairly balanced, although Europe is the region with the most cases (fig. 8).



This distribution has however also changed over time. One noticeable trend is, for example, a decline of cases from Europe over the years (fig. 9).

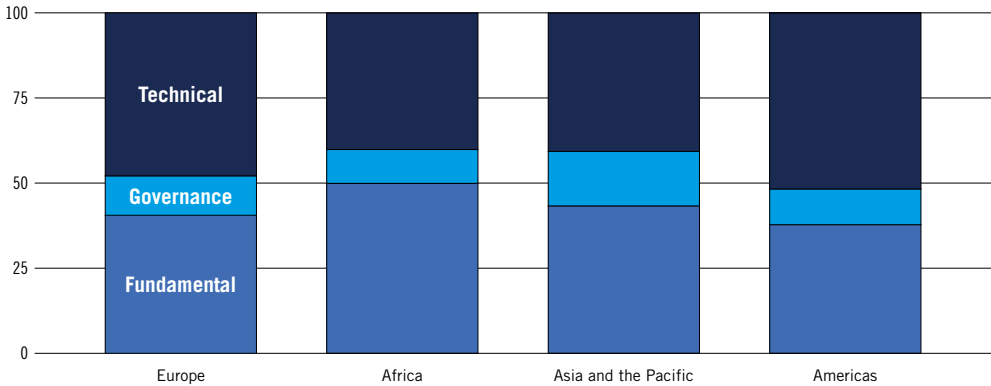
**Figure 9 (%)**





The distribution of cases of *satisfaction* by type among the regions is quite similar (fig. 10).

**Figure 10 (%)**



Finally, it should be noted that the synergies between the CEACR and the other ILO supervisory bodies, especially the CAS, have also been reflected in the record of cases of progress over the years.

### 3. Cases identified

The following section provides a selection of cases of progress presented by subregions and countries. As indicated above, the examples which follow have been selected out of a concern to indicate the most notable cases of progress recorded in the various regions of the world, and quite clearly make no claim to being exhaustive. As it is not possible to list, analyse and quantify everything, it has been necessary to make choices with a view to achieving an equitable geographical representation and diversity in the subjects covered by the Conventions. Furthermore, as mentioned in section 1 of Part II, the expression of satisfaction by the CEACR does not entail that the country in question is in general conformity with the Convention concerned as sometimes other important issues may still not have been addressed adequately.

#### Cases of progress

##### (a) Africa

###### **Eswatini**

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

The case relates to a number of Eswatinian laws, which considerably limited the ability of trade unions to organize and to freely implement their activities. For many years, the CEACR commented on these laws, pointing out their non-conformity with Articles 2, 3 and 10 of Convention No. 87. Following a long-standing dialogue of the CEACR with the Government, in combination with comments of the CAS and the CFA, as well as technical assistance provided by ILO experts, several amendments to these laws were passed between 2010 and 2017, addressing most of the CEACR's comments.<sup>58</sup>

##### Case background

Eswatini has been a Member of the ILO since 1975 and has ratified 33 ILO Conventions, including Convention No. 87.

The case deals with a number of sections in Eswatini's Industrial Relations Act (IRA) as well as other laws and regulations, which the CEACR considered not to be in compliance with Articles 2 and 3 of Convention No. 87.

These laws restricted the ability of trade unions to initiate industrial action, such as a State of Emergency Proclamation, the Public Order Act and the Suppression of Terrorism Act, which enabled the authorities to suspend strikes and other trade union activities, such as demonstrations or boycotts, for reasons of public safety. The CEACR also commented on sections of the IRA which allowed for the referral of labour disputes to lengthy compulsory arbitration procedures, as well as on the mandatory supervision of strike ballots by a national arbitration commission.

Furthermore, the Committee of Experts commented on sections of the IRA which appeared to restrict the right to organize and other trade union rights for prison staff, sanitary services staff and domestic workers.

The CEACR also raised concerns over the possibly intimidating effect of a number of sections of the IRA, which prescribed the civil and criminal accountability of union leaders for damages resulting from industrial action.

Finally, the Committee of Experts referred to provisions which restricted the ability of workers to freely organize their administration and activities, such as laws which allowed for the deregistration of trade unions under certain conditions, as well as statutory restrictions on the nomination of candidates and eligibility for union office.

## Dialogue with the Government

Due to the longevity of the issues mentioned, with some of them dating back to the 1960s and 1970s, the Committee of Experts had, for several decades, formulated observations on them, establishing a long-standing dialogue with the Government. Furthermore, due to the case's urgency, it was also examined by the CAS, which discussed it 15 times since 1996, sometimes on a yearly basis. The CFA has also dealt with several cases related to these issues, such as the excessive use of emergency laws to restrict trade union activities and the deregistration of unions, and recommended to the Government to proceed with the amendment of the laws. These discussions and comments were paralleled by several ILO direct contacts missions to Eswatini, including several high-level missions, to provide technical assistance to the Government in its efforts to resolve these issues.

Over the years, these combined efforts led to several measures taken by the Government to address the CEACR's comments, namely two substantial amendments to the IRA, which were adopted in 1996 and 2000. While these reforms addressed a number of issues previously highlighted by the CEACR, they however also left other issues unresolved and, in some cases, even introduced provisions which raised new concerns for the Committee of Experts.

In 2005, the CAS urged the Government to accept another high-level mission to Eswatini to establish a meaningful framework for social dialogue, and to discuss the discrepancies between the national law and Convention No. 87. At the mission's proposal, the Government and the social partners of Eswatini signed an agreement undertaking to set up a Special Consultative Tripartite Committee to make recommendations to the competent authorities to eliminate these discrepancies. Meanwhile, the Labour Advisory Board (LAB) of the Department of Labour of the Government also set up a special committee to draft amendments to the IRA to address some of the CEACR's comments. This Committee submitted proposals for such amendments in 2008.

## Closing gaps in compliance and way forward

Following further comments of the CEACR and the CAS, which concerned the postponement of the adoption of the LAB's proposed amendments and the apparent inactivity of the Special Consultative Tripartite Committee as well as another high-level mission to the country, a new amendment to the IRA was adopted in 2010. It provided for the right to organize for domestic workers, shortened the compulsory arbitration procedures for labour disputes to 21 days and ensured that a supervision of strike ballots by the national arbitration commission could only occur upon request of a trade union.

Furthermore, the Government reported that it had started discussions to lift certain restrictions on trade union rights for sanitary workers and prison staff and to amend the Public Order Act as well as the sections of the IRA on civil and criminal liability of union leaders. It also stated that the above-mentioned State of Emergency Proclamation had been invalidated by a constitutional amendment adopted in 2006, which was however disputed by the social partners.

The Committee of Experts took note of this amendment with satisfaction but also encouraged the Government to proceed with addressing the other outstanding issues in an observation published in its 2012 report.

In 2014, another amendment to the IRA was adopted, which restricted the prohibition of strikes for sanitary services to the maintenance of a "minimum service" and amended the sections on civil and criminal liability of union leaders with regard to industrial action, in accordance with the comments made by the CEACR. This amendment was noted with satisfaction by the Committee of Experts in its 2015 report. The other proposed amendments were however not adopted as they continued to be discussed in the Special Consultative Tripartite Committee, the LAB as well as the Cabinet.

In 2017, another major legislative reform was adopted, addressing many of the remaining comments of the CEACR. It included new laws, which amended the Public Order Act and the Suppression of Terrorism Act, deleting provisions which risked enabling the unreasonable suppression of industrial action by the authorities. Furthermore, the Legislative Assembly passed a new Correctional Services Act, which fully recognized the right to organize for the members of the Correctional Services and thus to prison staff.

In its 2019 report, the Committee of Experts noted these further changes with satisfaction and commended the Government and the other stakeholders involved for their efforts in pursuing these reforms and for the substantial progress they had achieved, solving many issues, which had been outstanding for a long time. The CEACR also encouraged the Government to pursue its efforts towards ensuring that this new legislation would be fully implemented with a view to guaranteeing conformity with the Convention.

## **Mali**

### **Equal Remuneration Convention, 1951 (No. 100)**

The case relates to a long-standing issue with the 1992 Labour Code of Mali, in particular its provision on equal remuneration, which only referred to equal remuneration for “equal working conditions” and not the broader concept of “equal remuneration for work of equal value” as set out in Article 2(1) of Convention No. 100. Noting this discrepancy, the CEACR, over several years and in many comments published in its reports, engaged in a dialogue with the Government, asking it to amend the relevant provision to fully reflect the requirements of Article 2(1). Following these comments, a reform process was eventually initiated in the country, which led to the amendment of the Labour Code, incorporating the “equal value” principle.<sup>59</sup>

### **Case background**

Mali has been a Member of the ILO since 1960 and has ratified 34 ILO Conventions, including Convention No. 100.

In 1992, a new Labour Code was enacted in the country. Section L.95 of this Code guaranteed equal remuneration of workers, regardless of sex, for “equal conditions of work, qualifications and output”. Noting this information, the CEACR however recalled that the principle of equal remuneration for work of equal value required by Article 2(1) of Convention No. 100 was broader than the mere equal pay for “equal conditions of work” set forth by the Code, as it not only compared the remuneration between similar types of work but also between types of work, whose conditions might be different, but whose value is equal.

Noting this discrepancy, the Committee of Experts, in a direct request of 1993, asked the Government to re-examine its legislation in view of this principle.

### **Dialogue with the Government**

In its reply to the comments of the CEACR, the Government indicated in 1994 that it did not consider section L.95 to infringe Article 2(1) of the Convention as this provision ensured that there was no gap between the wage rates of men and women workers unless the output of men was superior to that of women workers. In another direct request of 1995, the Committee of Experts however reiterated that, in view of how section L.95 was phrased, referring only to “equal conditions of work”, it did not ensure that workers performing work of equal value would be remunerated equally, and that the principle of the Convention was not fully implemented. The Committee reiterated these comments in its following reports in 1997, 1999 and 2000.

In its 2001 report, the Government acknowledged the “equal value” principle, and reported that the application of the latter was indeed guaranteed in Mali, as it was contained in several collective agreements and also reflected in the law. Upon the CEACR's request in its 2002 report to supply examples of such collective

agreements or legal provisions, the Government, in its following reports, was however not able to provide any concrete examples. The Committee of Experts, in its reports of 2002, 2003, 2005, 2006, 2007 and 2008 was thus again bound to repeat its previous comments and asked the Government to report on concrete measures taken to ensure the implementation of the principle of equal pay for work of equal value.

Following these ongoing comments of the CEACR, the Government, in its 2008 report, announced that a review of the existing Labour Code had taken place and that new legislative proposals, to bring the Code into conformity with the Convention, had been put forward. It did not however elaborate on the exact content of these proposals. The Committee of Experts, in its 2009 report, expressed its hope that this reform process would encompass an amendment of section L.95 to incorporate the “equal value” principle, and asked the Government to provide more detailed information on the legislative proposals.

In its 2010 and 2014 reports, the Government confirmed that the legislative reform was indeed aimed at an amendment of section L.95 but did not report any concrete progress on the adoption of a new law which would ensure the incorporation of the “equal value” principle. The CEACR again repeated its previous comments in two more direct requests of 2011 and 2015, urging the Government to continue the reform and align section L.95 of the Labour Code with Article 2(1) of Convention No. 100.

The dialogue with the Government was further expanded in 2016, when the UN Committee on the Elimination of Discrimination against Women, in its concluding observations, joined the Committee of Experts and asked the Government to amend its law to ensure the implementation of the “equal value” principle.

### **Closing gaps in compliance and way forward**

In 2017, an amendment to the Labour Code, which modified section L.95, was finally adopted. In an observation published in its 2018 report, the CEACR noted with satisfaction that the new section L.95 contained a definition of the term “remuneration”, which corresponded to that of the Convention, and fully reflected the principle of equal remuneration for men and women for work of equal value since it provided that “any employer is required to ensure, for the same work or work of equal value, equal remuneration for employees, whatever their origin, sex, age, status or disability”. It also provided that “occupational categories and classifications and criteria for occupational promotion must be common to workers of both sexes” and that “job classification methods must be based on objective considerations”. The Committee of Experts therefore asked the Government to keep it informed of the application in practice of this new law and encouraged it to take all necessary measures to ensure the full implementation of the principle of equal pay for work of equal value for all workers in Mali.

## **Namibia**

### **Worst Forms of Child Labour Convention, 1999 (No. 182)**

The case relates to gaps in the Namibian law regarding the implementation of Article 3(b) and(c) of Convention No. 182, concerning the prohibition of the use, procuring or offering of children for prostitution, pornography or any kind of illicit activities. After a number of comments of the CEACR, in which it urged the Government to address these issues and achieve compliance with the Convention, as well as similar comments of the UN Committee on the Rights of the Child, a new Child Care and Protection Act was adopted in 2015, which fully addressed the identified gaps.<sup>60</sup>

### **Case background**

Namibia has been a Member of the ILO since 1978 and has ratified 15 ILO Conventions, including, in 2000, Convention No. 182.

After having received the first report of the Government on the Convention's implementation, the Committee of Experts asked for more information on the implementation of Article 3(b), concerning the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, as well as Article 3(c), regarding the use, procuring or offering of a child for illicit activities, in two direct requests addressed to the Government in 2004 and 2006.

After having received the Government's reply, the CEACR, in another direct request of 2008, noted that the Namibian Immoral Practices Act of 1980 contained a section which prohibited the use or offering of children for prostitution by their parents or guardians, and another section which punished the procurement of any female for prostitution. It noted that Article 3(b) of the Convention had not been fully implemented as the law did not punish the use, offering or procuring of children other than girls for prostitution by persons who are not the children's guardians or parents.

Concerning child pornography, the Committee of Experts noted that the Immoral Practices Act only punished those committing "indecent or immoral acts" with children under 16 years by persons who are more than three years older than the child and who are not married to him or her. In this regard, the CEACR recalled that the Convention prohibits the use, procuring or offering of all children under 18 years for pornography, irrespective of the offender's age and his or her relation with the child. The Committee of Experts also requested a definition of the term "indecent or immoral act", to ensure that it encompassed pornography.

Concerning Article 3(c) of the Convention, the CEACR noted that it had not been fully implemented, as the relevant legislation did not appear to prohibit the use, procuring or offering of a child for all illicit activities, in particular for the production and trafficking of drugs, one of the main criminal activities in which children were involved in the country.

The CEACR thus asked the Government to take measures to fully prohibit the use, procuring or offering of boys and girls for prostitution, pornography and illicit acts like drug trafficking and to provide information on the measures taken in this regard.

### **Dialogue with the Government**

Following these comments, the Government initiated legislative reforms and informed the CEACR of a number of measures taken in this regard. In a direct request of 2010, the Committee of Experts took note of the Government's statement that a new Combating of the Abuse of Drugs Bill had been introduced to the National Assembly, which prohibited the trafficking, sale and possession of drugs. The CEACR noted, however, that the Government's report did not indicate if the Bill contained provisions on the prohibition of the use, procuring or offering of children for these activities.

The CEACR further took note of the Government's statement that a draft Child Care and Protection Bill, prohibiting the use, procuring or offering of children for prostitution, pornography or any kind of illicit activity, had been prepared and submitted for adoption to the National Assembly. The Committee thus urged the Government to complete the adoption of this Bill in the near future.

In its following report on Convention No. 182, the Government was however not able to report substantial progress on the adoption of the above-mentioned laws, especially the Child Care and Protection Bill. The Committee of Experts furthermore took note of the Government's 2011 report to the UN Committee on the Rights of the Child, in which the Government had stated that 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.

The CEACR formulated an observation in its 2012 report, in which it urged the Government to proceed with the adoption of the Child Care and Protection Bill and to take all necessary measures to fully implement the Convention. The CEACR was furthermore joined by the Committee on the Rights of the Child, which, in its 2012 report, acknowledged the pertaining issue of sexual and other exploitation and abuse of children in Namibia and urged the Government to address these problems and follow the recommendations of the ILO Committee of Experts.

### **Closing gaps in compliance and way forward**

After the Government in its 2012 report was not in a position to report any progress on the reforms, in 2014, it indicated that the new Child Care and Protection Act (CCP Act) had been adopted by the Namibian National Assembly.

This Act contained provisions prohibiting the use, procuring or offering of a child for the purpose of commercial sexual exploitation and for the purpose of production or trafficking of drugs and imposed a fine or imprisonment on any person contravening this prohibition.



In its 2016 report, the Committee of Experts took note with satisfaction of the adoption of the CCP Act and commended the Government for addressing its previous comments. It encouraged the Government to ensure the effective implementation of the new Act and to provide information on its application in practice in its following reports, as well as to continue addressing remaining issues concerning the worst forms of child labour in the country.

## **(b) Arab States**

### **Qatar**

#### **Forced Labour Convention, 1930 (No. 29)**

The case relates to widespread incidents of forced labour of migrant workers in Qatar. These practices were largely due to a sponsorship system which prohibited migrant workers from leaving the country or changing their employment without their employer's permission, as well as other abusive practices, such as the confiscation of workers' passports by employers or the withholding of wages. They also concerned a lack of enforcement of legislation against forced labour, due to an insufficient access of migrants to complaint mechanisms and lawsuits as well as an insufficient labour inspection system and a lack of imposition of dissuasive penalties on abusive employers. After noting reports of international workers' organizations alleging these problems, the CEACR and the CAS urged the Government to address them. Furthermore, complaint-based procedures, first through a representation under article 24 and then a formal complaint under article 26 of the ILO Constitution, were lodged against Qatar, following which the ILO Governing Body decided to send a high-level tripartite mission to the country to assess the problem. The mission confirmed the allegations made in the complaints, which prompted the Governing Body and the CEACR to renew their previous comments, urging the Government to address the issue. As a follow-up to these calls, a number of legislative reforms and other measures were adopted by the Government, which abolished the sponsorship system and introduced various protections for migrant workers against abusive practices. Noting these developments, the Governing Body decided to close the article 26 complaint and agreed to the conclusion of a comprehensive technical cooperation programme between the ILO and Qatar to support the ongoing reform measures. With the support of ILO technical advisory services, a number of milestones have been reached since then. The programme has adopted a twin-track approach firstly on strengthening the legal framework, and secondly on its application and enforcement, including effectively raising awareness about those transformations among workers, employers and the general public.<sup>61</sup>

## **Case background**

Qatar has been a Member of the ILO since 1972 and has ratified six ILO Conventions, including Convention No. 29.

Qatar is a high-income economy, backed by one of the world's largest reserves of natural gas and oil. Like other countries in the Gulf, Qatar has turned to migrant labour to help support its rapid development. The country therefore has a large population of migrant workers, many of whom are employed in construction.

In a communication to the ILO Governing Body dated 16 January 2013, the International Trade Union Confederation (ITUC) and the International Federation of Building and Wood Workers (BWI), made a representation under article 24 of the ILO Constitution, alleging non-observance by Qatar of the rights of migrant workers in the country under Convention No. 29.

They referred to the fact that the recruitment of migrant workers and their employment were governed by Law No. 4 of 2009 regulating a sponsorship or *kafala* system. Under this system, migrant workers who had obtained a visa needed a sponsor, who had to do all the necessary paperwork to obtain the residence permit. The law then forbade workers to change their sponsoring employer without his or her consent. Workers also could not leave the country temporarily or permanently unless they had an exit permit issued by the sponsor. Workers who left their job without permission could be reported to the authorities as having absconded and could be detained and face fines, deportation or criminal charges. Furthermore, while workers could issue a complaint to the Labour Ministry against an employer's refusal to grant an exit permit, the Ministry almost never overturned the employer's decision, rendering this mechanism ineffective.

In addition, the complainants alleged that there existed widespread practices of employers confiscating the passports of workers upon their arrival, which also prevented them from freely leaving the country. They alleged that although this practice was illegal under Qatari law, these laws were not properly enforced and therefore not respected by employers. Furthermore, they stated that high recruitment fees prior to departure and travel fees left many workers in debt and in need of keeping their jobs in Qatar regardless of the conditions of employment.

The complainants also reported the existence of other abusive labour practices towards migrants such as the non-payment of wages for several months, the provision of accommodation with poor sanitation and no electricity, and hazardous working conditions which often resulted in injury or even death. In addition, they alleged that employers often failed to provide residence visas for their workers, despite being required to do so by law. This practice of leaving workers "undocumented" restricted their freedom of movement as they were at risk of being detained, and prevented them from obtaining basic medical or banking services. The complainants also indicated that migrant workers were often offered a substantially different contract from what was promised in the country of origin or that the contract they had concluded was altered.

The complainants indicated that, by restricting the possibility for migrant workers to leave the country or change employer, they were effectively prevented from freeing themselves from abusive labour practices, which in many cases resulted in them becoming victims of forced labour.

In addition, the complainant organizations alleged that in most cases no or insufficiently dissuasive penalties were imposed on employers violating forced labour laws. Due to a lack of labour inspections, the burden to make complaints was placed on the workers, who often lacked the necessary information on such mechanisms. The workers also faced language barriers and often did not have any income or legal accommodation throughout the complaint procedure or court process, which made the pursuit of a remedy more difficult. As a result, only very few successful complaints and court cases had been filed against abusive employers.

In March 2013, the representation submitted by the ITUC and the BWI was declared admissible by the ILO Governing Body and an ad hoc tripartite committee was set up to examine it.

These developments were noted by the CEACR, which, pending this examination, decided to defer its consideration of the issue of forced labour of migrant workers in Qatar until the publication of the recommendations made by the ad hoc committee.

## Dialogue with the Government

In its reply to these allegations, the Government did not agree that there was widespread existence of forced labour in the country, recalling that the national law guaranteed all workers the freedom to conclude or end employment contracts and to leave work at any time.

With reference to the *kafala* system, the Government stated that this system did not lead to objectionable practices, and that it safeguarded the balance between employers' rights and the rights of migrant workers.

It also stated that it paid special attention to meeting its obligations towards migrant workers and endeavoured to combat all forms of forced or compulsory labour by coordinating with the embassies of the labour-exporting countries to follow up on the situation of migrant workers and to resolve any individual infringements by enterprises. The Government further indicated that it had concluded many bilateral agreements with sending countries, which prescribed the terms to be included in the consolidated labour contracts and prescribed better conditions than the ones specified in the legislation.

With regard to the confiscation of passports, the Government indicated that this practice had occurred in the past, but no longer took place as employers committing such acts would be held legally accountable and would be subject to administrative penalties.

Regarding the delaying or non-payment of wages, it did not deny that such cases occurred but claimed that they had diminished due to the measures taken by the Government.

Regarding the lack of complaint mechanisms, the Government stated that it allowed migrant workers to make complaints and that although the number of

complaints received had declined, the Ministry was undertaking measures to facilitate the process.

Noting these comments, the ad hoc committee, in its recommendations published in 2014, nevertheless concluded that many of the allegations of the ITUC and the BWI were credible and that forced labour of migrant workers was still an issue in the country. It therefore asked the Government to review the functioning of the *kafala* system to ensure that it did not place migrant workers in a situation of increased vulnerability. It also recommended that the Government ensure reasonable access to justice for migrant workers and that adequate penalties were applied for violations relating to legislation against forced labour.

These recommendations were approved by the ILO Governing Body in March 2014. Shortly after, at the ILC in June 2014, several delegates at the Conference lodged a formal complaint on the same issue against Qatar under article 26 of the ILO Constitution. This complaint was declared receivable by the Governing Body in November 2014.

In 2015, the CEACR noted the indication of the Government that a bill had been drafted to repeal the *kafala* system. It also indicated stepped-up efforts to ensure that workers' passports would not be withheld, as well as the facilitation of the access of workers to complaint procedures and the strengthening of the labour inspection service. Taking note of this information, the Committee of Experts nevertheless considered that most of the legislation and practices allowing for the exploitation of migrants workers were still in place in the country and urged the Government to take concrete and timely measures to address them.

In June 2015, the case was discussed by the CAS. In its conclusions, the CAS equally urged the Government to abolish the *kafala* system and replace it with a work permit that would allow the worker to change employer and leave the country. It also asked the Government to work with sending countries to ensure that recruitment fees were not charged to workers and to ensure that contracts signed in the sending countries were not altered in Qatar. Furthermore, it urged the Government to vigorously enforce the legal provisions on passport confiscation, to facilitate access to the justice system for migrant workers and to hire additional labour inspectors.

At the Governing Body in November 2015, the Government submitted a report in reply to the article 26 complaint. In this report, it indicated the adoption of a new law to alter the *kafala* system, which allowed workers to change their employer without their employer's consent after five years or upon the expiration of their contract. It also removed the requirement for workers to obtain their employer's consent to leave Qatar but still required them to obtain an exit permit from the authorities. Noting this information, the Governing Body requested the Government to receive a high-level tripartite visit to assess the impact of all of these measures, including the impact of the newly adopted law.

This mission was carried out shortly after, in March 2016. The mission report, while acknowledging the above-mentioned measures taken by the Government,

confirmed most of the allegations made in the complaint, such as an abusive use of the *kafala* system, the widespread confiscation of passports, the alteration of contracts after arrival, expensive recruitment fees, the withholding of wages, and widespread hazardous and exploitative working conditions, as well as a lack of enforcement of anti-forced labour laws and an inadequate access of migrant workers to justice. At its session in March 2016, the Governing Body acknowledged this report and urged the Government to follow up on the issues identified by the mission.

In its 2016 report, the CEACR noted the outcome of the high-level mission, as well as further reports submitted to it by the ITUC and other social partners. It also noted the Government's reply to these reports. From this information, it concluded that the legislative changes adopted in 2015 did not fully abolish the abusive *kafala* system, as the law still tied workers to employers for up to five years and workers continued to be prevented from freely leaving the country, as the law still allowed employers to object to the approval of exit visas, following which workers had to go through lengthy appeal procedures.

Regarding the issues of recruitment fees, contract substitution, withholding of wages, exploitative labour conditions and passport confiscation, the CEACR noted the Government's indication that it had adopted various measures to tackle these problems. These included the signing of additional agreements with labour-sending countries, the improvement of the access of workers to their contracts and visa information and information on their rights, the implementation of a "wage protection system" and the intensification of labour inspections. It however also noted indications of the high-level mission report and the ITUC that, in spite of these measures, the abusive practices were still widespread and that many of them were only implemented for large companies, not the many small ones through which migrant workers were subcontracted and which employed most of the migrant workforce.

Regarding the issue of the access of migrants to the courts and to other complaint mechanisms, the CEACR noted the Government's indication that a number of awareness-raising measures for migrants had been undertaken and support services, helping workers to submit their complaints, had been set up. It however also noted the indication in the report of the high-level mission that, despite these measures, most of the migrants, especially those in small enterprises, were not aware of the mechanisms and did not have access to them.

In view of these outstanding issues, the CEACR reiterated its previous comments, urging the Government to adopt timely and effective measures to address all of the issues highlighted by the mission report and the ITUC.

### **Closing gaps in compliance and way forward**

Following these new comments, the Government, in October 2017, sent a communication to the ILO Governing Body in which it indicated a range of additional measures that had been taken.

It, *inter alia*, indicated the adoption of a new law in 2017, which made it compulsory for both workers and employers to submit a dispute over the employment relationships to the Labour Ministry for settlement. If the settlement was not successful, it was referred to a specialized dispute resolution committee created for this purpose, which issued a binding decision within a period not exceeding three weeks. Against this decision, an appeal to the court was possible. The Government also indicated the adoption of a second law, providing specific protections for migrant domestic workers, who had been especially vulnerable to forced labour practices.

Regarding the change of employer, the Government announced that it had removed the constraints previously imposed on migrant workers in switching employer and confirmed that a change was now possible for a worker upon submitting a simple online notification to the Government. Furthermore, regarding the difficulties for migrants to leave the country, the Government indicated the adoption of another law. This new law explicitly provided for the right of workers to return to their home countries upon notifying their employers. The only reasons for a rejection of the departure were the existence of claims against the worker, an open court proceeding against him or her, or a criminal sentence imposed on the worker. The new law furthermore introduced a grievance committee, to which migrant workers could appeal in case their departure was denied and which had to be decided within three days. Against the grievance committee's decision another appeal to the Ministry was possible, which had to be decided within 48 hours. The Government furthermore indicated additional awareness-raising campaigns about these mechanisms.

In addition, the Government also indicated a range of other measures aimed at protecting migrant workers against abusive practices, such as the extension of its wage protection system to small companies, an improvement of systems to detect and prevent occupational health and safety issues or a better protection against abusive recruitment fees and contract alteration.

Noting this information as well as reports from social partners and other international actors, according to which, due to the Government's measures, the forced labour situation had considerably improved in the country, the Governing Body decided in October 2017 to close the complaint procedure under article 26 and agree to a comprehensive three-year technical cooperation programme to support the ongoing labour reform measures. This programme would report annually to the Governing Body until 2020. Through this initiative, the Government of Qatar expressed a commitment to align its laws and practices with international labour standards and fundamental principles and rights at work, including by implementing related comments of the ILO supervisory bodies, in particular those of the CEACR, which had initiated this whole process. An ILO Project Office was subsequently established in Qatar's capital, Doha, in April 2018, which is supporting the Government's labour reform agenda. Since the start of the technical cooperation programme, the ILO has been collaborating with the Ministry of Administrative Development, Labour and Social Affairs (ADLSA),

as well as other ministries in the Government, including the Ministry of Interior, the Ministry of Public Health and the Ministry of Justice. A number of labour reforms were introduced, three of which marking the end of the sponsorship system in 2020:

- Law No. 13 of 2018 suppressed the exit visa for workers covered by the Labour Law, with a possible exception to be granted by the Ministry of Administrative Development, Labour and Social Affairs upon the request of an employer with respect to no more than 5 per cent of their workforce and based on a justification based on the nature of their work;
- Extending the coverage of Law No. 13 of 2018, a Ministerial Decision suppressing exit permits for workers under the jurisdiction of the Ministry of Interior including domestic workers was adopted in October 2019 and should enter into force in January 2020;
- A draft Law granting labour mobility to migrant workers was endorsed by the Council of Ministers in October 2019 and should enter into force in January 2020.

The CEACR will continue its examination of these developments and its dialogue with the Qatari authorities in order to ensure continued progress and full compliance with the Convention.

### **(c) Central and South Asia**

#### **Nepal**

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

The case relates to a declaration of a state of emergency issued by the Nepalese King in 2005, following which many rights of workers' and employers' organizations were suspended, trade union activities were interrupted and trade unionists were arbitrarily arrested. These events impeded the proper functioning of tripartite consultations between the Government and the social partners, conflicting with Convention No. 144, which requires such consultations. Following comments of the CEACR, the CAS and the CFA, urging the Government to reinstate a proper system of tripartite consultations in Nepal, as well as several ILO technical assistance missions to the country, a new interim Constitution was adopted, which enshrined the principle of tripartite consultations in one of its articles. Furthermore, in the following years, the Government was able to report the reinstatement of proper institutions for tripartite dialogue and the holding of regular tripartite consultations on a range of subjects. In 2015, the interim Constitution was replaced by a new Constitution, which upholds the previously suspended rights of workers and employers and their organizations.<sup>62</sup>

#### **Case background**

Nepal has been a Member of the ILO since 1966 and has ratified 11 ILO Conventions, including Convention No. 144.

In 2005, the Committee of Experts noted the Government's report on the implementation of Convention No. 144 in which it confirmed that, by ratifying the Convention, it had accepted tripartite cooperation as a basis for the formulation of laws and policies and decision-making regarding the application of international labour standards. The Government affirmed the Convention's full implementation and referred to various measures taken to apply it, like the creation of an institutional mechanism for tripartite consultations, as well as the undertaking of tripartite cooperation on various issues such as occupational safety and health, child and forced labour or HIV/AIDS.

In June of the same year, the application of Convention No. 144 by Nepal was however the subject of a discussion in the CAS. During the discussion, representatives of Nepalese workers' and employers' organizations provided information according to which the King of Nepal had assumed direct executive powers in February 2005 and had declared a state of emergency. In the aftermath of this decision, a number of constitutional rights, including freedom of association and the right to organize as well as the right to freedom of expression and assembly, were suspended and hundreds of citizens were arbitrarily detained, including nearly two dozen trade union activists. Furthermore, trade union offices were monitored, searched and at times closed down, union meetings were forbidden and rallies were banned, while the registration of several union organizations was refused.

Noting this information, the CAS expressed its deepest concern at the situation in the country and invited the Government to take all appropriate measures to promote tripartite dialogue on international labour standards in the country. It also suggested to the Government to avail itself of ILO technical assistance to facilitate and promote social dialogue in Nepal.

### **Dialogue with the Government**

Following this discussion, the Committee of Experts, in its 2006 report, associated itself with the conclusions of the CAS and expressed its deep concern at the lack of respect for fundamental rights in the country and its impact on the exercise of tripartite consultations. It also urged the Government to ensure that the principle of tripartite consultations under Convention No. 144 was respected in law and in practice and recalled that the ILO was available to provide technical assistance to the Government in this respect.

Following a complaint lodged in 2005, the case was also examined by the CFA, which, in its conclusions published in March 2006, equally urged the Government to refrain from any undue interference in trade union affairs and to issue appropriate instructions to the relevant authorities to ensure that acts of interference in trade union internal affairs did not occur.

Following these comments, the Committee of Experts, in an observation published in its 2007 report, noted an improvement of the situation due to a number of measures taken by the Government to address the comments. It, *inter alia*, noted the Government's indication that many acts and regulations were in the process of being amended to address the changed political context. It also



noted that an interim constitutional statute had been adopted which re-enacted some of the constitutional guarantees which had been suspended. Finally, the Government also indicated that it had requested both workers' and employers' organizations to come together and make recommendations on reforms to improve the situation. However, while welcoming these measures, the Committee of Experts also noted reports of Nepalese social partners, which indicated that the situation in the country was still giving rise to concern as to the full respect of the rights of workers and employers and the principle of tripartite consultations.

Following these comments, the Government accepted to receive a technical assistance mission of the ILO, which was carried out in April 2007. The mission, which focused on social dialogue, brought together the Government and the social partners and provided an opportunity for identifying the practical obstacles to the effective implementation of Convention No. 144 in Nepal.

### Closing gaps in compliance and way forward

In an observation published in its 2009 report, the CEACR noted with interest that a new interim Constitution had come into force in Nepal. Its article 154 established a National Labour Commission as a new institutional mechanism for tripartite consultations. It also noted that a corresponding Labour Commission Act had been drafted to implement article 154. Furthermore, it noted the Government's indication that it was consulting with representatives of the social partners at various levels while preparing reports to the ILO and that 79 such consultations had been conducted during the reporting period.

In another observation published in its 2013 report, the Committee of Experts noted the Government's further indication that it had been promoting social dialogue on a bipartite and tripartite basis wherever and whenever possible and that tripartism had been firmly institutionalized in the country, with all the major policy decisions and legislative initiatives being the result of tripartite consultations and consensus. The Government further indicated that all committees established under the Ministry of Labour and Employment which were related to labour, industrial relations, occupational safety and health and child labour, were tripartite in their composition. The CEACR further noted that a National Labour and Employment Conference was held in July 2012 and was organized with technical and financial support from the ILO Nepal Office. The conference concluded with the endorsement of a declaration, referring to the development and promotion of good labour relations and the creation of a trusted tripartite environment.

Welcoming this information, the Committee of Experts commended the Government for the progress it had achieved in the implementation of Convention No. 144 and asked it to keep it informed of any additional measures taken with regard to promoting tripartite consultations in the country.

In 2015, a new Constitution was adopted in Nepal, which replaced the previous interim one and which upholds all of the fundamental guarantees relevant to the proper functioning of tripartite consultations, including freedom of association and the right to organize, freedom of expression or freedom of assembly.

## **Pakistan**

### **Minimum Age Convention, 1973 (No. 138)**

The case relates to gaps in the Pakistani legislation, which did not provide for the prescription of a minimum working age of 14 years as well as a minimum age of 18 years for hazardous working activities, in combination with a list determining these hazardous activities. Noting that the lack of the prescription of such minimum ages conflicted with Articles 2 and 3 of Convention No. 138, the CEACR urged the Government to bring its laws into conformity with the Convention. Following these comments and comments from other international bodies as well as ongoing consultations between the Pakistani Government and ILO experts, new laws prescribing a minimum working age and a list of hazardous working activities were adopted in two of the five provinces of Pakistan, while similar draft laws are being debated in the remaining provinces.<sup>63</sup>

### **Case background**

Pakistan has been a Member of the ILO since 1947 and has ratified 36 ILO Conventions, including Convention No. 138.

According to article 11(3) of the Constitution of Pakistan, no child below the age of 14 years shall be engaged in any hazardous employment.

This Constitutional guarantee was implemented by sections 2 and 3 of the Pakistani Employment of Children Act of 1991, which prohibited the employment of children under 14 years of age in night work and a number of hazardous occupations listed in the law's Schedule. Other types of hazardous work not to be performed by children under 14 years were also listed in the Employment of Children Rules of 1995.

In 2010, in a request addressed directly to the Government, the CEACR noted that, at the time of the ratification of Convention No. 138, Pakistan had specified 14 years as the applicable minimum working age. The Committee of Experts therefore reminded the Government that according to Article 2 of the Convention, any employment of children under 14 years had to be prohibited in the country, not just certain types of hazardous work as prescribed by the Employment of Children Act.

It furthermore recalled that according to Article 3 of the Convention, the minimum age for admission to any type of hazardous work must be 18 years. The Committee thus referred to the fact that the national law did not prohibit the performance of hazardous working activities for children aged between 14 and 17 years. While pointing to this gap in the implementation of Convention No. 138, the Committee of Experts however also noted the Government's indication that it had elaborated a draft Employment and Service Conditions Act, which would prohibit the employment of any child below 14 years and ban a number of hazardous working processes for children under 18 years. The Committee thus urged the Government to take the necessary measures to ensure the adoption of this Act and in general to ensure the full implementation of Articles 2 and 3 of the Convention.

## Dialogue with the Government

After having received the Government's 2010 report on Convention No. 138, the CEACR noted that it contained no information on further progress made regarding the adoption of the draft Employment and Service Conditions Act or any other laws on minimum working ages. In an observation published in its 2011 report and repeated in its 2012 report, the Committee of Experts urged the Government to address its previous comments and to proceed with the adoption of the draft Act. The CEACR was furthermore joined by the UN Committee on the Rights of the Child which, in its 2009 report, also indicated concerns regarding the low and variable minimum ages in the national law.

In reply to these comments, the Government, in its 2013 report to the CEACR, indicated that, following a constitutional amendment, the power to legislate on labour matters had been transferred to the provincial level. The CEACR further noted that, following this amendment, Pakistan had participated in an ILO technical assistance programme. This programme resulted in the development of action plans, by each of the provincial governments, to address the comments of the Committee of Experts, including the adoption of legislation establishing a minimum working age and prohibiting the employment of children under 18 in hazardous work. The Government indicated that the provinces, in coordination with the federal Government, had drafted a Prohibition of Employment of Children Act, to prohibit the employment of children below the age of 14 and the employment of persons under 18 years in hazardous types of work. The Government further indicated that these drafts would soon be introduced to the provincial legislative assemblies. The Committee furthermore noted information from the ILO's International Programme on the Elimination of Child Labour (ILO-IPEC) that, as of October 2012, the drafting of lists of prohibited hazardous child labour activities had been initiated in all of the provinces.

Noting this information, the CEACR, in an observation published in its 2014 report, again urged the Government to take the necessary measures to ensure that the draft Act prohibiting the employment of persons under 14 and under 18 for hazardous types of work, as well as the legislation determining the prohibited types of hazardous work, would soon be adopted in each province.

## Closing gaps in compliance and way forward

In 2015 and 2016, in two of the five provinces of Pakistan – Khyber Pakhtunkhwa and Punjab – laws were adopted, which contained lists of types of hazardous work prohibited to young persons under 18 years of age in accordance with the comments of the CEACR. These lists were determined in consultation with the representative workers' and employers' organizations and discussed at the level of Provincial Tripartite Consultative Committee, as required by the Convention. Furthermore, the new laws specified a minimum age for admission to work of 14 years in Khyber Pakhtunkhwa and 15 years in Punjab.

In its 2018 report, the Committee of Experts noted these legislative changes with satisfaction. It also noted the Government's indication that in the remaining three provinces of Pakistan – Islamabad Capital Territory, Balochistan and Sindh – draft laws providing for a minimum working age of at least 14 years and a list of hazardous working activities had been proposed. It therefore asked the Government to take the necessary measures to ensure the adoption of these draft laws in all remaining provinces. The CEACR also asked the Government to ensure the effective implementation of these laws and in general to take all appropriate measures to eradicate child labour, in particular its worst forms, in all of Pakistan.

### **Uzbekistan**

#### **Worst Forms of Child Labour Convention, 1999 (No. 182)**

The case relates to the widespread use of forced labour of schoolchildren by local Uzbek authorities for the national cotton harvest, conflicting with ILO Convention No. 182 on the worst forms of child labour. After having raised this issue with the Uzbek Government, the CEACR, joined by the CAS and several other UN supervisory bodies, engaged in a dialogue with the Government, urging it to address the problem and eradicate this practice. While initially downplaying the issue, the Government eventually accepted the implementation of several national and international monitoring missions to assess the number of affected children and established a Decent Work Country Programme with the ILO, through which it undertook a number of measures to tackle the issue, which drastically reduced the number of children forced to work in the cotton harvest in the country.<sup>64</sup>

#### **Case background**

Uzbekistan has been a Member of the ILO since 1992 and has ratified 14 ILO Conventions, including Convention No. 182.

Forced labour as well as the employment of persons under 18 years in hazardous working conditions is prohibited by the Uzbek Constitution and the Penal Code. Furthermore, according to a Decree signed by the Uzbek Prime Minister in 2008, any kind of child labour specifically in the harvesting of cotton is forbidden.

However, despite these laws, as of 2008, the CEACR began receiving reports from the International Organization of Employers (IOE) as well as the International Trade Union Confederation (ITUC) and other trade union federations about the widespread use of forced child labour in the national cotton harvest in at least 12 of Uzbekistan's 13 regions. According to these reports, up to 1.5 million schoolchildren were forced by the local authorities to leave their schools and harvest cotton for up to three months per year. The reports further indicated that this involvement was not the result of family poverty, but state-sponsored mobilization to benefit the Government, that forced labour involved children as young as 9 years of age and that these children were required to work every day, including weekends, with the work being hazardous, involving carrying heavy loads, the application of

pesticides and took place in harsh weather conditions, with accidents reportedly resulting in injuries and deaths.

Together with the reports of the IOE and the ITUC, the Committee of Experts also noted observations made by the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee, which confirmed these allegations and urged the Government to take all necessary measures to ensure that the involvement of school-aged children in cotton harvesting was in full compliance with the international labour standards on children. The CEACR also noted a 2010 publication of the United Nations Children's Fund (UNICEF) equally mentioning growing concerns over the seasonal mobilization of children for the cotton harvest in Uzbekistan as well as the 2009 UN Universal Periodic Review on Uzbekistan, which also discussed this issue.

In an observation published in its 2010 report, the CEACR reminded the Government that by virtue of Article 3(a) and (d) of Convention No. 182, forced labour and hazardous work were considered as the worst forms of child labour and that, by virtue of Article 1, member States were required to take immediate and effective measures to secure the prohibition and elimination of such acts, as a matter of urgency. The Committee of Experts also recalled that by virtue of Article 7(1) of the Convention, ratifying countries were required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention. Concluding that the widespread use of forced and hazardous labour of minors in the cotton harvest constituted a clear violation of the Convention, the CEACR urged the Government to take effective and time-bound measures to eradicate it.

### Dialogue with the Government

The case was selected by the CAS for discussion in 2010. In the discussion, the Government of Uzbekistan referred to a number of measures taken to ensure the enforcement of the national laws against forced and child labour, including the implementation of a national action plan for the application of ILO Conventions Nos 138 and 182. The Government however downplayed the statements made by the social partners and the UN supervisory bodies, stating that the coercion of large numbers of children to participate in the cotton harvest did not exist. The CAS, noting the numerous reports detailing the problem as well as the broad consensus among UN bodies over the issue, concluded that forced child labour in the cotton harvest remained a problem of grave concern in practice and urged the Government to take the necessary measures against it. It also encouraged the Government to accept a high-level ILO tripartite observer mission with full timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182.

In its 2010 report to the CEACR, the Government however repeated its previous statement and indicated that almost all of the cotton produced in the country

was done on private cotton farms, and that the well-developed education system prevents the exaction of forced labour from children. It also referred to a number of measures taken against child labour under the national action plan but did not indicate any concrete results regarding these measures. The Government was also not prepared to accept the request for a high-level observation mission. Taking note of these statements, the Committee of Experts, in its 2011 report, reaffirmed its previous comments that forced child labour in cotton harvesting remained a problem and urged the Government to take concrete and timely measures to tackle the issue as well as to accept the high-level observer mission to enable an independent assessment of the problem.

During the 2011 Conference, the case was again discussed by the CAS, which expressed regret over the lack of cooperation from the Government. It also repeated its request for a high-level monitoring mission. These comments were repeated by the CEACR in an observation published in its 2012 report, in which the Committee of Experts also took note of new reports by the ITUC according to which cotton fields in the country had been strictly patrolled by police and security personnel in an attempt to prevent independent monitoring of the situation.

The renewed request for a monitoring mission was again not accepted by the Government. However, in its 2012 report to the CEACR, the Government indicated the adoption of a new Decree, which approved additional measures for the implementation of Convention No. 182, including measures to maintain effective monitoring of child labour in agriculture and measures to strengthen the monitoring of the attendance of pupils as well as steps to establish personal responsibility of heads of educational institutions concerning their full attendance.

In its 2013 report, the CEACR noted that, according to various sources, in 2012, as a result of these new measures there had been a decline in the number of children working in the cotton harvest. The Committee of Experts nevertheless concluded that the problem was still widespread and therefore repeated its previous observations and urged the Government to accept an ILO monitoring mission.

### **Closing gaps in compliance and way forward**

In 2013, another discussion of the case took place in the CAS. This time, however, the existence of the problem was fully recognized by the Government. The Government also indicated its willingness to engage in broad technical cooperation with the ILO to tackle the issue and to accept the monitoring of the 2013 cotton harvest with ILO technical assistance. As a follow-up, a round-table discussion organized by the Government with the ILO, the United Nations Development Programme (UNDP), UNICEF, the European Commission and the representatives of national and international workers' and employers' organizations took place, during which the implementation of a monitoring mission, composed of both ILO and national monitors, was agreed.

The mission's participants monitored the 2013 cotton harvest, undertaking inspection visits all across the country. In its 2014 report, the CEACR noted with interest

that the mission was met with good and productive collaboration and cooperation on the part of the authorities and that, although several cases of forced child labour were detected, the mission report concluded that it appeared that forced child labour was no longer used on a systematic basis in the 2013 cotton harvest. The Committee of Experts also took note of the Government's statement that relevant follow-up measures to reintegrate children into educational institutions had been taken in child labour cases detected by the mission. The Government further indicated its willingness to cooperate with the ILO on a wider basis within the framework of a Decent Work Country Programme. The CEACR welcomed this significant progress made towards the full application of the Convention and urged the Government to pursue and strengthen its efforts in this regard.

In its 2015 report, the CEACR noted further monitoring efforts from the Government that took place during the 2014 cotton harvest, as well as measures undertaken jointly with the national social partners to implement ILO Conventions, including systematic education and awareness-raising seminars on the worst forms of child labour. It also noted with interest the development and adoption of a Decent Work Country Programme, which was concluded between the Government, the social partners and the ILO in 2014 and which, as one of its priorities, aimed at ensuring that conditions of work and employment in agriculture, including in the cotton-growing industry, were in conformity with ILO Conventions Nos 138 and 182. The Committee of Experts further took note of international monitoring missions during the 2014 cotton harvest according to which while a few cases of children picking cotton had still been detected, 91 per cent of students were present in the visited educational institutions and several directors of professional colleges and heads of farms were held administratively responsible for forcing children to work.

In its following reports in 2016 and 2017, the CEACR took further note of reports of the IOE and the ITUC that a rapid development in the country towards a complete eradication of child labour was taking place. It also noted the reports of subsequent national and international monitoring missions to the country which indicated that the Uzbek authorities had taken a range of measures to reduce the incidence of child labour and make it socially unacceptable. The Committee of Experts therefore commended the Government for its efforts and urged it to maintain these measures and keep them under review so as to ensure the complete eradication of child labour in the country.

#### **(d) East Asia**

##### **Republic of Korea**

##### **Labour Inspection Convention, 1947 (No. 81)**

The case relates to comments from the Korean social partners which alleged a number of shortcomings of the labour inspection service of the Republic of Korea, with regard to the Government's obligations under Convention No. 81. These issues related to a lack of training of inspectors, insufficient collaboration between the inspection service and the social partners, an under-representation of women among the inspection staff and an insufficient number of inspections due to an insufficient overall number of inspectors. Following several comments of the CEACR and the CAS asking the Government to address these issues and to ensure a proper functioning of its labour inspection service in line with the Convention, the Government adopted a number of measures, responding to the issues which had been highlighted.<sup>65</sup>

#### **Case background**

The Republic of Korea has been a Member of the ILO since 1991 and has ratified 29 ILO Conventions, including Convention No. 81.

In an observation published in its 2000 report, the CEACR noted comments from the Korea Employers' Federation (KEF) according to which the function of the labour inspection services to provide technical information and advice, prescribed by Article 3 of Convention No. 81, needed to be reinforced in the country as there was a lack of specific training or educational programmes for inspectors. The KEF furthermore alleged that the requirement to ensure collaboration between the labour inspectorate and employers' and workers' organizations under Article 5 of the Convention was not properly met.

Along with the KEF, the Committee of Experts also noted comments from the Federation of Korean Trade Unions (FKTU), pointing to the low proportion of women in the labour inspection staff, which only accounted for 12 per cent of all inspectors. In view of Article 8 of the Convention which prescribes that women and men shall be eligible for appointment to the inspection staff and considering that women accounted for 41 per cent of Korean employees, the FKTU thus stressed the need for the Government to make further efforts to increase the number of female inspectors.

Noting these reports, the CEACR asked the Government to express its views on the comments of the KEF and the FKTU.

#### **Dialogue with the Government**

In its reply to the KEF's comments, the Government indicated that inspectors received training courses on the provision of technical advice and information to workers and employers on an annual basis. The Committee of Experts however also noted that the provision of such technical advice was included in the



regulation on duties of labour inspectors. In an observation published in its 2004 report, it thus asked the Government to provide more information on the way inspectors were trained and how this training helped them to give such advice.

Regarding the KEF's comments on tripartite coordination between the labour inspection services and the social partners, the Government indicated that an Industrial Safety and Health Policy Deliberation Committee (ISHPDC) had been set up, which was a tripartite body and which had deliberated and coordinated major policy issues in the area of industrial safety and health. The CEACR asked the Government to provide more information on the work of the ISHPDC.

Regarding the FKTU's comments, the Government explained that the number of women inspectors had been on the rise and had increased by 8.3 per cent between 1999 and 2001. It also stated that the Ministry of Labour had already requested an increase in the number of female inspection staff at regional labour offices. The Committee of Experts thus expressed its hope that the Government would, in the following years, provide more information on progress made in this respect.

Dialogue with the Government was further enhanced when the case was included on the list of individual cases discussed by the CAS in June 2004. During the discussion, the Government reaffirmed that, since the ratification of Convention No. 81, it had made the utmost efforts to ensure that the Korean labour inspection service operated in line with the principles and provisions of the Convention. The Employer members of the CAS however urged the Government to provide detailed information on the increase in the number of women inspectors in the inspection services, as well as on the promotion of collaboration between the inspection services and the social partners. The Worker members also placed emphasis on the question of gender representation in the inspectorate but, more generally, referred to a general shortage of labour inspectors in the country, which prevented the service from conducting a sufficient number of inspections. They furthermore indicated that the huge workload imposed on inspectors prevented them from receiving sufficient training. In its conclusions, the CAS urged the Government to ensure compliance with all Articles of Convention No. 81, recalling the importance of proper training of inspectors, the collaboration of inspectors with social partners and the need to increase the number of female inspectors.

### **Closing gaps in compliance and way forward**

In 2005 the Government did not send a new report on Convention No. 81 and the CEACR was bound to repeat its previous comments; however, in its 2006 report, the Government indicated a number of measures taken in response to the comments formulated by the CAS and the CEACR.

In its 2007 report, the Committee of Experts thus noted with satisfaction that new training programmes for labour inspectors had been conducted in 2005, covering the law on individual labour relations, collective industrial relations, methods of investigation and the prevention of labour disputes.

It also noted with interest that a bill to revise the Industrial Safety and Health Act, which regulated the ISHPDC, had been drafted, which ensured a more efficient operation and more professional deliberation of this committee as well as a better involvement of external health and safety experts in its work.

Finally, the CEACR also noted the Government's indication that it had planned steps to increase the recruitment of women labour inspectors and that the share of female inspectors had already risen to 17.6 per cent.

In its following report published in 2008, the Committee of Experts further noted with satisfaction a steady progress made by the Government in increasing the share of female inspectors, which had further risen to 22 per cent. It also noted with interest that 375 new inspectors had been appointed, which prompted a significant increase in the number of inspections.

In its 2011, 2012 and 2015 reports, the CEACR noted a further increase in the number of inspections. While also noting that some compliance issues with regard to the Republic of Korea's obligations under Convention No. 81 remained, it commended the Government for its progress made so far and encouraged it to address all remaining issues in view of achieving full compliance with the Convention.

### **Malaysia**

#### **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)**

The case relates to long-standing issues with a Malaysian law on employment injury benefits for workers, which grouped foreign workers, working for up to five years in the country, into a different scheme than national workers, providing for far lower benefits than the scheme for national workers. Recalling that this different treatment of foreign and national workers constituted a violation of the equal treatment principle under Article 1(1) of Convention No. 19, the CEACR as well as the CAS for many years urged the Government to amend its legislation to bring it into line with the Convention. While the Government initially showed reluctance to make changes to the schemes, these comments eventually led to the initiation of a reform process in the country and finally, with the help of ILO technical experts, to the drafting and adoption of new laws extending the employment injury scheme of national workers to foreigners.<sup>66</sup>

### **Case background**

Malaysia has been an ILO Member since 1957 and has ratified five ILO Conventions, including Convention No. 19.

Since 1993, the national legislation applicable to Peninsula Malaysia and the state of Sarawak 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 only provided for a one-time lump-sum

payment. Furthermore, the WCS did not grant invalidity pensions in case of permanent total invalidity and the WCS benefit in case of permanent partial disability represented only 6.5 per cent of the ESS benefit.

After noting this discrepancy, the CEACR, in its 1996 report, recalled that the unequal treatment of foreigners with regard to payments for industrial accidents conflicted with the principle of equality of treatment between nationals and non-nationals with regard to compensation for industrial accidents under Article 1(1) of Convention No. 19. It therefore asked the Government to amend the law in order to guarantee the same treatment for foreign and national workers.

### Dialogue with the Government

After the publishing of the CEACR's comments, the case was picked up by the CAS, which discussed it in 1997 and 1998. In its conclusions, the CAS also concluded that the level of benefits granted under the ESS was significantly higher than the one guaranteed by the WCS. It therefore insisted that foreign workers be granted the same protection as Malaysian nationals and asked the Government to amend its law accordingly. Furthermore, as a follow-up, an ILO high-level technical advisory mission visited the country in May 1998 to examine ways of giving effect to the conclusions of the CAS.

In its 1998 report to the CEACR, the Government stated that it was planning to review the coverage of foreign workers under the ESS and to propose amendments to the Social Security Act of 1969. In the following years, the Government was however not able to report any progress made in adopting such amendments and only repeated its intention to review schemes. The CEACR was thus bound to repeat its previous comments.

In its 2003 report, the Government indicated that it had undertaken studies to review the two schemes and that these studies had found that in general terms there was equity in the protection, as the WCS had features that were superior and not available under the ESS, such as the payment of transport costs of injured workers to their home country. The Government furthermore referred to the great practical difficulty of extending the ESS to foreigners due to the difficulty of obtaining accurate, vital information about beneficiaries residing abroad. Noting this information, the CEACR nevertheless recalled that the payments granted to national workers under the ESS were far higher than those under the WCS and that this situation constituted unequal treatment of foreign workers under Article 1(1) of the Convention. In its 2004 report, the Committee of Experts therefore repeated its previous comments and asked the Government to change the law accordingly.

In its 2009 and 2011 reports, the CEACR was bound to repeat its previous comments, as the Government did not change its position and reiterated that it considered both schemes to be equal.

In 2011, the case was again discussed by the CAS. It urged the Government to take immediate steps to bring national law and practice into conformity with

Article 1(1) 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 Article 1(2) and (4) of the Convention.

As a response, the Government indicated in its 2011 report that a technical committee within the Ministry of Human Resources would, with the participation of all stakeholders, pursue the formulation of the right mechanism and system to administer the issue. In doing so, it would consider the three options of extending ESS coverage to foreign workers, the creation of a special scheme for foreign workers under the ESS, and raising the level of the benefit provided by the WCS. Furthermore, an ILO mission visited the country in October 2011 to support the Government with these efforts. Noting this information, the CEACR in its 2012 report expressed the hope that the new technical committee would soon be able to make concrete proposals on amendments to the law and urged the Government to continue with the planned legislative reforms.

While the Government, in its 2012, 2013 and 2014 reports, was not able to indicate any progress, in its 2015 report, it informed the Committee of Experts that it had decided to extend the ESS to foreign workers, subject to certain modifications to ensure the administrative practicability of the scheme. The CEACR, in its 2016 report, noted this information with interest and urged the Government to proceed with the reform.

In its 2016 and 2017 reports, the Government was however again not able to report any substantial progress on the adoption of the planned changes to the ESS. The case was therefore again discussed by the CAS in 2017 and 2018. The CAS repeated its earlier comments from 2011, urging the Government to finally proceed with the adoption of the announced extension of the ESS and to align its law and practice with Convention No. 19. It also asked the Government to continue to avail itself of ILO technical assistance to proceed with the reform.

The CEACR, in its 2017 and 2018 reports, endorsed the conclusions of the CAS and once again called upon the Government to take immediate, pragmatic and effective steps to ensure compliance with Convention No. 19.

### **Work in progress and way forward**

In reply to these comments, the Government, in its 2018 report, indicated that, while it was taking serious efforts to shift the protection of foreign workers from the WCS to the ESS, it had taken concrete actions and developed a timetable to achieve the extension of the ESS to foreigners. To ensure a smooth extension, it indicated that a transition period had been envisaged in order to establish implementation mechanisms, databases, road maps and engagement sessions with stakeholders and social partners. It also indicated that the transition period was planned to last a maximum of three years. Finally, the Government also accepted an ILO direct contacts mission to help implement these changes.

The CEACR, in its 2019 report, welcomed these statements and expressed the hope that the Government would take advantage of the direct contacts mission to implement its comments and the conclusions of the CAS and to finally achieve full compliance with Convention No. 19.

Following these further comments, several laws were adopted in Malaysia in early 2019, which repealed previous legislation on employment injury schemes and allowed for the transfer of foreign workers to the employment injury schemes of national workers. Although the Government has taken some positive measures, especially in recent months, the CEACR will undoubtedly continue its examination of the case and its dialogue with the Malaysian authorities until all issues have been resolved in order to ensure full compliance with Convention No. 19.

### **Myanmar**

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

The case relates to a number of Myanmar laws which inhibited the free establishment and organization of workers' and employers' organizations and imposed a trade union monopoly, in violation of freedom of association and the right to organize under ILO Convention No. 87. For several decades, the CEACR as well as the CAS had commented on these issues and urged the Government to bring the national law into conformity with the Convention. In 2011 and 2012, the Government of Myanmar, in consultation with ILO technical experts, drafted and adopted a number of laws repealing the trade union monopoly and the restrictions on the registration of employers' and workers' organizations. Following these legislative changes, the establishment and registration of numerous independent trade unions and employers' organizations in Myanmar have been reported.<sup>67</sup>

### **Case background**

Myanmar has been a Member of the ILO since 1948 and has ratified 24 ILO Conventions, including Convention No. 87.

For many decades, a number of laws were in force in Myanmar which were considered by the CEACR to seriously impair the exercise of freedom of association and other rights under Articles 2, 3, 5 and 6 of Convention No. 87, by imposing a trade union monopoly and prohibiting the establishment of any independent trade unions and employers' organizations.

Among the laws highlighted by the CEACR was a 1964 law, which established a compulsory system for the organization and representation of workers and imposed a single trade union, and the 1926 Trade Union Act, which prescribed a minimum membership requirement of 50 per cent of workers for trade unions to be legally recognized. Other problematic laws were a 1988 Order, which outlawed any organizations the establishment of which had not been authorized

by the Ministry of Home Affairs, and a 1908 law, which criminalized membership or participation in any “illegal organization”. Finally, the CEACR also highlighted a 1988 Order, which prohibited any gathering of five or more people with the intention of “creating a disturbance or committing a crime” and the 1929 Trade Disputes Act, which empowered the President to refer trade disputes to courts of inquiry or to industrial courts.

### **Dialogue with the Government**

In view of the persistent gaps in compliance with Convention No. 87, the CEACR, for over 50 years, published observations in its reports in which it urged the Government to align the national legislation with the Convention by guaranteeing workers’ and employers’ organizations the right to freely establish and organize their administration and activities. Due to the urgency of the issue, the case was also picked up by the CAS, which, since 1987, discussed it 19 times and, in its conclusions, equally urged the Government to amend the above-mentioned laws. As a follow-up to these discussions and comments, the Government was offered technical assistance by ILO experts to tackle the issue, which it accepted on several occasions.

Nevertheless, despite these efforts, the Government, in its replies to the comments of the CEACR and the CAS, for a long time downplayed the issue and indicated that it did not consider the legislation to prevent workers and employers from establishing independent associations. It was however not able to provide any evidence of any such association operating legally in the country and only referred to a number of welfare organizations for workers, which the CEACR did not consider to be acting as trade unions. On the other hand, the Committee of Experts noted that independent trade unions, which were established in Myanmar, such as the Federation of Trade Unions of Burma (FTUB), were forced to operate clandestinely and their members were often imprisoned for exercising their union activities.

Following further comments of the CEACR and the CAS highlighting these issues, the Government announced in 1989 that it had started drafting a new Constitution which would make express provision for freedom of association and the right to organize. It furthermore announced various amendments to some of the laws highlighted by the Committee of Experts. However, despite these announcements, the Government, in the following years, was not able to report any progress on these legislative reforms. The CEACR and the CAS thus had to repeat their previous comments and urged the Government to follow up on the announced amendments.

In 2003, the dialogue with the Government took another turn when a complaint was lodged against Myanmar before the CFA, concerning both the lack of a legislative framework guaranteeing freedom of association, as well as the continued persecution and imprisonment of leaders of independent trade unions. In its recommendations, published in 2008, the CFA joined the CEACR and the CAS and asked the Government to amend the above-mentioned laws and protect the rights of workers and employers.

In the meantime, the Government had announced in 2005 the first reconvening of the National Convention to draft the new Constitution, which had started sessions on 20 May 2004 and had conducted clarifications and deliberations, dealing with basic principles, such as the forming of workers' and employers' organizations, which would provide a framework for drafting detailed legal provisions. The Committee of Experts, in its 2006 report, thus urged the Government to continue this process and communicate any further steps taken towards the adoption of the Constitution.

At the beginning of 2008, the drafting of the Constitution was finally completed and its text was approved by referendum. The Constitution guaranteed all workers and employers the right to organise and worker and employer organisations the right to freely organise their administration and activities. As a consequence, a legislative framework on trade union rights was established and the initial steps for the establishment of trade unions at the basic level were taken. In the following period, basic workers' organizations were formed in 11 industrial zones. Furthermore, the legislative assembly began to review and revise the provisions of the 1964 Law on the trade union monopoly, the 1929 Trade Disputes Act, the 1926 Trade Union Act and the other laws limiting trade unions and employer rights, to bring them into conformity with the new Constitution.

While noting these reforms, the Committee of Experts, in its 2009 report, nevertheless observed that, apart from the establishment of unions at the most basic levels, the national law still did not provide a legal basis for the exercise of freedom of association in Myanmar. Regarding the new Constitution, it furthermore referred to a broad exclusionary clause in its section 354 which subjected the exercise of freedom of association and the right to organize to "the laws enacted for State security" and the maintenance of public order, which the CEACR considered as continuing to enable violations of freedom of association in law and practice. It also regretted the exclusion of the social partners and civil society from any meaningful consultation in the reform process. The Committee of Experts thus urged the Government to finally adopt the necessary measures to ensure the full guarantee of the rights of workers and employers under Convention No. 87 by the Constitution as well as the national law and practice. A request along the same lines was made by the CAS, which again discussed the case in 2009, 2010 and 2011.

### **Work in progress and way forward**

In its 2013 report, the CEACR noted with satisfaction that, following another technical assistance mission of the ILO to the country, a new Labour Organizations Law (LOL) was adopted in 2011 and came into force in 2012. The Law contained provisions on the establishment of workers' and employers' organizations as well as their functions, duties, rights and responsibilities and provided for the repeal of the 1926 Trade Union Act and the 1964 Law, which imposed the trade union monopoly. It also noted the Government's indication that 2,761 basic labour organizations, 146 township labour organizations, 22 region or state labour organizations,

eight labour federations and one labour confederation as well as 26 basic employers' organizations had been registered under the new law.

The CEACR furthermore noted with satisfaction that other laws had been adopted, which repealed the two 1988 Orders on unlawful assembly and on the forming of organizations, as well as the 1929 Trade Disputes Act.

While the CEACR commended the Government for the progress it had made, it however also noted a few remaining gaps in the LOL and the other new laws as well as a number of problems with their implementation in practice, which impeded the achievement of full compliance with Convention No. 87. It thus continued to encourage the Government to work on the full implementation of the Convention in new observations published in its 2015, 2016, 2017 and 2019 reports.

In 2018, the CAS discussed the case another time, commending the Government for the progress made so far but also urging it to close remaining gaps in compliance.

### ***(e) Europe and European overseas territories***

#### **French Polynesia**

#### **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**

The case relates to gaps in the labour law applicable to French Polynesia with regard to the implementation of Article 1 of Convention No. 111. It mainly concerned a too narrow scope of the provisions on the prohibition of discrimination, which did not cover all aspects of employment and also did not adequately address sexual harassment. It also concerned the list of prohibited grounds of discrimination in the law, which did not include all of the grounds required by the Convention. After noting these gaps, the CEACR, in several direct requests, urged the Government to adopt legislative reforms to respond to these shortcomings. Following these comments, the Legislative Assembly of French Polynesia adopted an amendment to the labour law, which addressed most of the gaps identified by the Committee of Experts.<sup>68</sup>

### **Case background**

French Polynesia is an overseas collectivity of France, which itself has been a Member of the ILO since 1919. France has ratified 127 ILO Conventions, the second largest ratification rate among ILO member States, including Convention No. 111, which it has declared applicable to French Polynesia.

In a 2008 request addressed directly to the Government, the CEACR noted that, while under the penal law applicable to French Polynesia, certain forms of sexual harassment were prohibited, the applicable labour law did not contain any protection against sexual harassment at the workplace, specifically its most important forms, quid pro quo and hostile working environment harassment. Noting this



information, the Committee of Experts underlined that, in order to ensure an effective protection of workers against sexual harassment at the workplace, it must not only be addressed in the penal law, but provisions on the protection against sexual harassment should also be included in the labour legislation.

Recalling its general observation of 2002 on this issue, the CEACR reiterated that sexual harassment is a form of discrimination based on sex prohibited under Article 1(1)(a) of Convention No. 111. The Committee of Experts thus asked the Government to indicate the measures taken in law and practice to prohibit, prevent and punish sexual harassment in employment and to indicate whether it planned to include provisions on this matter in the labour legislation.

### Dialogue with the Government

In another direct request of 2013, the Committee of Experts noted the Government's information that, although the applicable Penal Code had been amended, adding new offences related to sexual harassment, another 2011 amendment to the applicable labour law had not addressed harassment at work. The CEACR concluded that the labour law, unlike the Penal Code, still did not contain any provisions concerning sexual harassment. In this respect, the Committee of Experts noted however that, according to the Government's report, draft legislation concerning sexual harassment was being drawn up and was due to be adopted by the Assembly of French Polynesia. The CEACR requested the Government to keep it informed on the adoption of this law and to take the necessary steps to prevent and prohibit sexual harassment at work.

The Committee of Experts further noted that according to the newly amended labour law, discrimination at the workplace was only prohibited regarding "an offer of employment, recruitment or an employment relationship". In this regard, the CEACR highlighted that the protection against discrimination in accordance with Article 1 of Convention No. 111 must cover all aspects of employment and occupation, including access to vocational training, access to employment and to various occupations, and also terms and conditions of employment. Furthermore, the Committee of Experts noted that the list of prohibited grounds of discrimination in the law did not cover all of the grounds listed in Article 1(1)(a) of the Convention, missing "colour" and "social origin". It also noted that the list, while missing the ground of "race", referred to "membership or non-membership of an ethnic group". In this regard, the CEACR recalled that even though discrimination against an ethnic group constitutes racial discrimination, the notion of racial discrimination under the Convention was much broader. In light of these gaps in the implementation of the Convention, the CEACR asked the Government to extend the scope of these provisions to encompass all aspects of employment and all prohibited grounds listed by Article 1(1)(a).

## Closing gaps in compliance and way forward

In an observation published in its 2017 report, the CEACR noted with satisfaction the adoption of a new Law in French Polynesia in 2013, which amended the applicable labour law. With regard to its previous comments, it noted that this law introduced new provisions to the Labour Code, which, both for the private and the public sector, expanded the list of prohibited grounds of discrimination at the workplace, adding the new grounds of “membership or non-membership of a nation or race” and “physical appearance”. The Committee of Experts concluded that these new grounds covered the concepts of “race” and “colour” required by Convention No. 111. It noted however that despite these legislative changes, the ground of “social origin” in the Convention was still missing from the list of prohibited grounds.

In addition, with regard to the scope of the anti-discrimination provisions, the Committee of Experts noted with satisfaction that the law now contained a non-exhaustive list of aspects of employment covered by the protection, namely dismissal, remuneration, incentives or distribution of shares, training, classification, reclassification, assignment, qualifications, promotion, transfer and contract renewal, and access to internship or a training course in an enterprise. It also noted that the section now referred explicitly to direct and indirect discriminatory measures.

With regard to sexual harassment, the CEACR noted with satisfaction that the new law introduced provisions on sexual harassment both to the labour law covering the private sector as well as the one for the public sector. It further noted that these provisions defined and prohibited both quid pro quo and hostile working environments and provided for the protection of victims and witnesses against any form of reprisal (sanctions, dismissal, direct or indirect discriminatory measures) and also for disciplinary sanctions against persons who commit harassment. Finally, it noted that the provisions also required the employer to take measures to prevent and address sexual or psychological harassment, including the establishment of a procedure for reporting harassment and awareness-raising actions.

In view of all of these changes, the Committee of Experts concluded that, with the exception of the inclusion of “social origin” as a prohibited ground of discrimination, all of the gaps in the law concerning the implementation of Convention No. 111, which it had previously identified, had now been addressed and asked the Government to keep it informed of the application in practice of these new laws. It also encouraged it to proceed with its reforms in order to achieve full compliance with the Convention.

## Georgia

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

The case relates to a number of provisions in Georgia's 2006 Labour Code, which the CEACR considered not to be in conformity with Articles 3 and 10 of Convention No. 87. Following comments from the CEACR and other international bodies as well as ongoing consultations between the Georgian Government and ILO experts, an amendment to the Labour Code was adopted in 2013, which addressed the comments of the Committee of Experts.<sup>69</sup>

#### Case background

Georgia has been a Member of the ILO since 1993 and has ratified 17 Conventions, including Convention No. 87.

In 2006, the Georgian legislature adopted a new Labour Code, which, inter alia, repealed the previous laws on collective agreements and on collective labour disputes. This reform addressed some issues previously highlighted by the CEACR, such as requirements on pre-announcements of strike lengths and excessive strike balloting requirements. The new Code however also contained a number of provisions, which raised concerns of the CEACR with regard to their compatibility with Articles 3 and 10 of Convention No. 87.

These issues were at first addressed by the Committee of Experts in 2007, in a direct request to the Georgian Government.

One provision highlighted by the CEACR was section 49(5) of the Code, which stated that, after a warning strike, social partners shall participate in amicable settlement procedures pursuant to the Labour Code. Furthermore, section 48(5) of the Code stated that if an agreement had not been reached within 14 days or if a party had avoided participating in the amicable settlement the other party was entitled to submit the dispute to the court or arbitration, creating the risk of a dispute being resolved by an arbitrator, against the will of one of the social partners.

In this regard, the Committee of Experts highlighted that a provision which permits either party to unilaterally submit a dispute for compulsory arbitration effectively undermines the right of workers to have recourse to industrial action. It thus stated that recourse to arbitration should be limited to situations for which a strike prohibition can be allowed, that is, only for "essential services", for public servants exercising state authority and for acute emergencies.

Furthermore, the CEACR commented on section 51(4) and (5) of the Code, which stated that a strike by employees informed about the termination of their contract before the labour dispute arises was illegal and that, if the right to strike arose before the termination of the time-based contract, the strike was considered illegal after the expiration of the term of the contract. The Committee of Experts considered these provisions to infringe the right to industrial action of

the workers concerned, especially because they limited the workers' ability to go on sympathy and protest strikes, which, as indicated by the Government, were considered legal under the national legislation. Finally, the CEACR also referred to section 49(8) of the Code, which was violating trade union rights.

### Dialogue with the Government

In its first reply to the direct request, the Government acknowledged some of the concerns of the Committee of Experts and announced the drafting of new amendments to the Labour Code, though without mentioning concrete proposals. On other issues, it however indicated that it did not see any need for an amendment of the above-mentioned sections.

In particular, regarding the provisions on arbitration, the Government highlighted that, despite section 48(5), a strike could be declared regardless of whether an appeal to court or arbitration had been filed and that recourse to the arbitration was not compulsory. While it confirmed the CEACR's notion that a referral of a case to arbitration against one party's will became possible after the 14-day period had expired, it still did not consider the amendment of the provision necessary. The Government also dismissed the necessity to amend section 51(4) and (5) of the Code.

Furthermore, while acknowledging that the maximum duration requirement in section 49(8) limited the right to strike, it referred to the possibility of workers to initiate a new strike after the 90-day period. This was however not considered sufficient by the Committee of Experts, which referred to the organizational burden of unions to initiate new strikes every 90 days.

After analysing the Government's replies, the Committee of Experts formulated another direct request on these issues in 2008 and then an observation in 2010 and 2012, urging the Government to amend the laws it had highlighted.

These ongoing comments of the CEACR, in conjunction with efforts of other ILO bodies, prompted the initiation of a reform process in the country.

After a discussion before the CAS during the 2009 Conference on a parallel case concerning Convention No. 98, the Government agreed to initiate national tripartite consultations to examine possible amendments to the labour law. Shortly after, a memorandum was signed between the Georgian Ministry of Health, Labour and Social Affairs as well as the national workers' and employers' federations, GTUC and GEA, to institutionalize social dialogue in the country. As a follow-up, the social partners started to regularly hold sessions to discuss issues concerning the labour legislation with an emphasis on the issues of compliance with Convention No. 87. Then, in November 2009, a Decree was issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, and declared the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and observations of the CEACR and to propose the necessary amendments.

Meanwhile, over the course of 2009, the ILO started to provide technical assistance to the Georgian tripartite constituents to advance the process of review of the labour legislation. Furthermore, in October 2009, an ILO tripartite round table was held in Tbilisi, which discussed the current status of national labour legislation, the application of Conventions Nos 87 and 98 and the promotion of tripartism in Georgia.

In 2010, the dialogue with the Government was further enhanced, when the CEACR was joined by the European Committee on Social Rights, which, in its 2010 conclusions on Article 6-3 and 6-4 of the European Social Charter, expressed concerns similar to the ones of the CEACR regarding infringements of the right to strike.

### **Closing gaps in compliance and way forward**

All of these efforts led to the discussion of concrete legislative proposals and the drafting of amendments to the Georgian Labour Code, backed by the ongoing technical assistance of ILO experts. As a result, the Labour Code was amended in June 2013.

In its 2015 report, the CEACR took note with satisfaction of the substantial changes made to the Labour Code, which had addressed the issues it had highlighted.

The Committee of Experts, *inter alia*, noted that the new section 48(8) now stated that disputes of social partners could only be referred to arbitration upon mutual consent of both parties. Furthermore the amendment also lifted all limits on strike duration and led to the deletion of section 51(4) and (5).

Despite the substantial progress noted by the CEACR, it however also noted a few other issues it had highlighted which had not been fully addressed by the 2013 reform. This mainly concerned sections 50(1) and 51(2) of the Labour Code as well as Order No. 01-43/N of 2013, which allow for the prohibition of industrial action or if the activity “cannot be suspended due to the type of technological process”, and which determines the list of services connected with the life, safety and health to include those that do not constitute essential services in the strict sense of the term.

In its 2017 report on Convention No. 87, the Georgian Government did however state that amendments to these provisions were being discussed with the relevant state institutions and social partners, and that the results of the discussions would be submitted to the Tripartite Social Partnership Commission for decision. The CEACR thus asked the Government to keep it informed of the outcome of these discussions and of any further legislative amendments adopted as a result.

**Republic of Moldova**  
**Discrimination (Employment and Occupation) Convention, 1958**  
**(No. 111)**

The case relates to a Moldovan law against discrimination at work, which did not include all of the prohibited grounds of discrimination required by ILO Convention No. 111. Following a number of direct requests and observations, in which the CEACR urged the Government to ensure that all prohibited grounds listed in the Convention were explicitly mentioned in the law, the Government amended its Labour Code, adding the prohibited grounds of “race”, “political opinion” and “social origin” and, in another amendment a few years later, the ground of “colour”.<sup>70</sup>

### Case background

The Republic of Moldova has been a Member of the ILO since 1992 and has ratified 42 ILO Conventions, including Convention No. 111.

The Moldovan Labour Code of 1997 prohibited discrimination in employment, in accordance with Convention No. 111. However, among the prohibited grounds of discrimination listed in the Code, not all of the grounds required by Article 1(1)(a) of the Convention were included, namely the grounds of “race”, “colour”, “political opinion” and “social origin”.

In a direct request of 2000, the CEACR noted this gap and requested the Government to inform it of any measures taken or envisaged to extend the protection against discrimination to the grounds provided for in Convention No. 111.

### Dialogue with the Government

While reporting no further progress in its 2002 report, the Government, in its 2005 report, indicated the adoption of a new Labour Code in 2003, which contained several provisions in line with the Convention, including, under section 8(1), the prohibition of any direct or indirect form of discrimination. The list of the prohibited grounds of discrimination attached to these provisions also encompassed “race”, “political opinion” and “social origin”. The only ground missing from the list in Article 1(1)(a) of Convention No. 111 was thus “colour”. In an observation published in its 2006 report, the Committee of Experts, while noting these legislative changes with interest, recommended the Government further amend the law by also adding this ground to the list.

In its 2006 and 2009 reports to the CEACR, the Government did not report any changes to the law and stated that it considered the ground of “colour” to be covered by a provision of the Labour Code which prohibits discrimination based on “other criteria which are not linked to the professional qualifications of the workers”. The CEACR, taking note of this information, however recalled the importance of including explicit references to all the grounds enumerated in Article 1(1)(a) of the Convention in the legislation in order to fully protect workers

against such types of discrimination. In observations published in its 2007 and 2010 reports, it once again urged the Government to further amend the law, in line with its previous comments.

In reply to the Committee's comments, the Government indicated in its 2010 report that the submission of a new draft law to Parliament had taken place and that it would amend the Labour Code, by, inter alia, adding "skin colour" to the list of prohibited grounds of discrimination. The CEACR, in its 2011 report, welcomed these developments and urged the Government to proceed with the adoption of the new law.

### Closing gaps in compliance and way forward

In its 2015 report, the CEACR noted with satisfaction the adoption of a law amending the Labour Code, which added "skin colour" to the list of prohibited grounds. It further noted with interest the adoption of another law in 2012, which generally aimed at preventing and combating discrimination and ensuring equality of all persons in the country and which also prohibited discrimination based on all the grounds listed in Article 1(1)(a) of the Convention. Assessing that the list in Article 1(1)(a) had now been fully implemented, the Committee of Experts commended the Government for these reforms and asked it to keep it informed of their application in practice.

### *(f) Latin America and the Caribbean*

#### **Argentina**

#### **Worst Forms of Child Labour Convention, 1999 (No. 182)**

The case relates to shortcomings by Argentina in the implementation of ILO Convention No. 182, which were identified by the CEACR concerning the lack of adoption of a detailed list of hazardous working activities prohibited for minors as well as the lack of an explicit penalization of the use of minors for prostitution in Argentina's Penal Code. After urging the Government to address these shortcomings, the CEACR engaged in a constructive dialogue with the Government, joined by the UN Committee on the Rights of the Child, which ultimately led to the adoption of a number of amendments to the respective laws, establishing the list of hazardous activities and penalizing child prostitution.<sup>71</sup>

### Case background

Argentina has been a Member of the ILO since 1919 and has ratified 81 ILO Conventions, including Convention No. 182.

Under the Argentinian laws on work contracts and on the employment of young people, the employment of minors under 18 years of age in activities that are difficult, hazardous or unhealthy is prohibited. However, in a direct request addressed to the Government in 2005, the CEACR noted that these laws and their

implementing regulations did not foresee a detailed and exhaustive list of the types of work that would fall under the category of “hazardous”, “difficult” or “unhealthy”.

Against this background, the Committee of Expert recalled that, under Article 4(1) of Convention No. 182, the types of hazardous work must be determined by national laws or regulations or by the competent authority, after consultation with the social partners and taking into consideration relevant international standards, including Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The CEACR thus asked the Government to add such a detailed list of hazardous activities to its legislation, taking into consideration Recommendation No. 190.

Furthermore, the CEACR noted that section 125 bis of the Penal Code on sexual exploitation of minors only criminalized people offering minors under 18 years for prostitution but not clients using these minors for prostitution, as required by Article 3(b) of the Convention. The Committee of Experts requested the Government to indicate in which manner the Argentinian legislation enabled the prosecution and punishment of such acts.

### **Dialogue with the Government**

Following the comments of the CEACR, the Government indicated that a draft decree regulating the types of work which are hazardous to children had been prepared and that the activities included in Paragraph 3 of Recommendation No. 190 had been taken into consideration. The Committee of Experts, in a direct request of 2007, noted this information and expressed its hope that the draft decree would be adopted as soon as possible.

It further noted that the Government had not provided information on any measures taken to amend section 125 bis of the Penal Code or otherwise ensure the prohibition of the use of a child for the purpose of prostitution, in accordance with Article 3(b) of the Convention. The CEACR thus repeated its previous comments on this issue.

As it did not receive any information on progress made on these reforms the following year, the CEACR again repeated its comments in an observation published in its 2011 report, urging the Government to align its legislation with the Convention. In doing so, it was also joined by the UN Committee on the Rights of the Child, which, in its 2010 conclusions, followed the same line as the CEACR and asked the Government to ensure the full implementation of Convention No. 182.

### **Closing gaps in compliance and way forward**

In its 2014 report, the Argentinian Government indicated that a draft of the new Decree listing the hazardous activities had been approved by the Cabinet of Ministers and only required the President’s approval. In its 2018 report, the CEACR noted with satisfaction that the Decree had finally been adopted and that it covered all of the working activities listed in Paragraph 3 of Recommendation No. 190, in line with the Committee’s previous comments.



Furthermore, concerning the issue of child prostitution, the Committee of Experts, in its 2015 report, had noted with interest the adoption of Act No. 26.482, which modified the Penal Code to include a prohibition of the offering, promotion and commercialization of minors for prostitution thus also penalizing clients using minors for prostitution, as had been requested by the Committee of Experts.

While the CEACR noted in its 2018 report that child prostitution and other worst forms of child labour continued to exist in the country, it acknowledged that these legislative changes represented an important step forward and expressed its hope that the Government would continue its constructive dialogue with the ILO supervisory system and ensure the effective implementation of the newly adopted laws.

### **Costa Rica**

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

The case relates to persistent gaps in the enforcement of the Costa Rican laws against anti-union discrimination. These issues led to many cases of unionists not being sufficiently protected against discriminatory dismissals and other acts of harassment, which the Committee of Experts considered to infringe their rights under Articles 1 and 2 of Convention No. 98. Following comments from the CEACR and other international bodies, as well as ongoing consultations between the Costa Rican Government and ILO experts, a new law was finally adopted in 2016, which introduced various measures to drastically reduce the length of proceedings of anti-union discrimination cases and to improve the enforcement of court rulings issued in this regard.<sup>72</sup>

### **Case background**

Costa Rica rejoined the ILO in 1944, after having been a Member from 1920 to 1927. It has ratified 51 ILO Conventions, including Convention No. 98.

Costa Rican trade unions have, for many years, complained about frequent cases of anti-union harassment, especially in the private sector, where the unionization rate was already low and where the few existing unions often faced discriminatory treatment from employers. Over the years, many such cases have been dealt with by the CFA, which, on many occasions, urged the Government to improve the legal protection of unionists against such acts.

In 1993, following comments of the CEACR, the Costa Rican legislature adopted new laws prohibiting anti-union discrimination and establishing punishable offences for committing such acts. However, shortly thereafter, shortcomings in the implementation of these laws were reported by national and international trade unions.

The unions' reports alleged that the slowness of procedures in cases of anti-union discrimination could translate into a period of four to eight years before obtaining

a final court ruling. The trade unions furthermore complained that, even after a final ruling on a reinstatement order had been obtained, no legal mechanism obliged employers to comply with this order.

The Committee of Experts, taking note of these reports, stated in an observation published in its 1997 report that the insufficient legal protection of unionists against acts of discrimination and harassment in the country was not in compliance with Articles 1 and 2 of Convention No. 98. It thus asked the Government to respond to these allegations and to propose concrete measures to address these issues.

### Dialogue with the Government

In its response to the comments of the CEACR, the Government acknowledged the existence of problems with regard to the length of the procedures and showed its willingness to tackle the issue. It also referred to concrete measures taken, especially with regard to lengthy administrative procedures, which slowed down the overall proceedings.

Taking note of these efforts, the Committee of Experts nevertheless formulated a new observation in its 1999 report, noting that the average length of proceedings was still too long and their implementation not sufficiently effective. It repeated this observation for several years in its following reports.

Due to the urgency of the issue, the case was also picked up by the CAS, which discussed it in 1999, 2002, 2004 and 2006. In its conclusions, the CAS acknowledged the Government's willingness to tackle the problem and took note of the measures it had taken, but also urged it to strengthen these efforts in order to progress on all pending issues.

Both the CEACR and the CAS offered the Government to avail itself of ILO technical assistance to address the issue, which the Government accepted. Over the course of the following years, several technical assistance missions, as well as a high-level assistance mission, were carried out by the ILO to support the Costa Rican Government and social partners in their efforts to address the gaps in compliance with Convention No. 98.

In response to these comments, the Government initiated a reform process and, in consultation with the social partners, submitted a bill to the Legislative Assembly in November 1998, which addressed anti-union discrimination in various ways. It, *inter alia*, foresaw the implementation of a 14-day long expeditious court procedure for the reinstatement or compensation of workers dismissed on unjustified grounds. However, although the bill enjoyed support of the social partners, its adoption was delayed for several years and eventually abandoned.

In 2005, the Government submitted a new bill to the Legislative Assembly which it had drafted in consultation with the judicial authorities and with the support of ILO technical experts. The bill addressed the problem of judicial delays by revising and simplifying previous judicial procedures as well as introducing a special

process for the protection of workers affiliated to trade unions and providing protection against acts of anti-union discrimination. Despite support from the social partners, the Government did not however succeed in adopting the draft law and the bill was held off in consultations in the Legislative Assembly.

Meanwhile, in search of other ways to tackle the issue, the Government encouraged the use of alternative dispute settlement procedures to resolve union harassment cases and to this end put in place an arbitration body, which decreased the number of anti-union discrimination cases reaching the courts. It also initiated training programmes for labour judges, a greater computerization of proceedings and other measures to decrease the average length of labour court proceedings, which reduced the labour courts' case backlogs.

In view of the still unresolved issue, the dialogue with the Government was further enhanced in 2006, when the CFA, which had already been dealing with numerous individual cases of discrimination of Costa Rican unionists, received two general complaints on the slowness of anti-union discrimination proceedings from Costa Rican trade unions and the ITUC. In its recommendations on these cases, published in 2007 and 2010, the CFA equally urged the Government to proceed with the announced legislative reforms to tackle the pending problems.

Furthermore, in 2008, the CEACR was also joined by the UN Committee on Economic, Social and Cultural Rights, which urged the Government to strengthen its efforts to address anti-union harassment, which it repeated in its 2016 report.

Meanwhile the CEACR continued recalling its previous comments and urged the Government to proceed with the adoption of the proposed reform bill in observations published in its 2007, 2009, 2010, 2012 and 2013 reports. These comments were then again picked up by the CAS, which rediscussed the case in 2009 and 2010.

All of these comments prompted the Government to intensify its efforts to pass the announced reform bill and to start consultations with all stakeholders involved to seek consensus for the law. The bill was finally approved by the Legislative Assembly in September 2012. Shortly after, it was however vetoed by the executive authorities on the ground of its unconstitutionality. The Committee of Experts thus again repeated its previous comments in its 2013 and 2014 reports, urging the Government to proceed with the bill's adoption.

### **Closing gaps in compliance and way forward**

Following the veto, further consultations on the bill were held and new amendments to it were agreed. The new law was finally adopted in January 2016 and entered into force in July 2017. It focused on improving the enforcement of anti-union discrimination laws through the introduction of new expeditious court proceedings for all discrimination cases, including the possibility of issuing interim rulings to suspend the effects of the challenged acts and allow for the provisional reinstatement of a worker. The law also foresaw special burdens of proof for the employer when there is no agreement on certain aspects, such as the reasons for

the termination of the contract, as well as the reorganization and specialization of labour courts, the provision of free legal assistance and various types of trade union immunity provisions intended to increase the effectiveness of protection against anti-union discrimination.

The CEACR therefore noted with satisfaction in 2017 the adoption of the new law and asked the Government to provide information on its impact in practice. It also expressed its hope that these legislative changes would pave the way for reducing the length of anti-union discrimination proceedings as well as improving the implementation of rulings issued in these proceedings.

### **Grenada**

#### **Equal Remuneration Convention, 1951 (No. 100)**

The case relates to a provision in the 2002 Minimum Wage Order of Grenada, which prescribed a different minimum wage rate for male and female agricultural workers. Recalling that this provision was not in conformity with Article 2(1) of ILO Convention No. 100, which prohibits any distinction in the determination of wages based on gender, the CEACR urged the Government to amend the law. Following these comments, an agreement between the social partners of Grenada was reached, which supported the position of the Committee of Experts. As a response, a reform process was initiated by the Government, which finally led to an amendment of the Order establishing equal minimum wage rates for all agricultural workers regardless of their gender.<sup>73</sup>

### **Case background**

Grenada has been a Member of the ILO since 1979 and has ratified 34 ILO Conventions, including Convention No. 100.

In a request addressed directly to the Government in 2004, the CEACR noted that the previously adopted Minimum Wage Order of Grenada, which set forth minimum wages for male and female workers working in the areas of agriculture, catering, construction, domestic employment, industry, security and shops, set the minimum wage for male agricultural workers at \$5.00 per hour while setting the wage for female agricultural workers at \$4.75. Recalling that Article 2(1) of Convention No. 100 prohibits any distinction in the determination of wages based on gender, the Committee thus noted that the Order conflicted with the Convention and asked the Government to amend it accordingly.

### **Dialogue with the Government**

While the Government did not send a reply to the CEACR's comments in 2004 and 2005, it indicated in its 2006 report that, although it was true that the Order provided for different rates for men and women, it also, in another section, stated that men and women who perform the same tasks shall receive the same wage. Noting this information, the Committee of Experts however reaffirmed that the

Order expressly established different wage rates based on sex for agricultural workers and that these provisions should be removed from the law in order to achieve full compliance with the Convention. This position was repeated by the Committee in an observation published in its 2007 report.

In its 2008 report, the Committee of Expert furthermore noted that both the Grenada Employers' Federation and the Grenada Trade Union Council had agreed with the CEACR's comments and that the Department of Labour of the Government had therefore proposed an amendment to the law.

### **Closing gaps in compliance and way forward**

While the Government, in 2009 and 2011, did not provide any further information on the adoption of the new law, in its 2012 report it indicated that the Minimum Wage Order had been replaced by a new Order, which came into force in January 2011. It furthermore indicated that this new Order provided for a uniform minimum wage for agricultural workers, regardless of their gender.

In an observation, published in its 2013 report, the Committee of Experts took note of this legislative change with satisfaction, noting that the reform had addressed its previous comments by removing the different minimum wage rates for male and female agricultural workers. It also asked the Government to keep it informed of the application in practice of the new law and any other changes made to it.

## **Peru**

### **Forced Labour Convention, 1930 (No. 29)**

The case relates to the Peruvian Penal Code, which, while containing penal offences on human trafficking and a few other types of compulsory labour, did not contain specific provisions criminalizing forced labour in all its forms, as required by Article 25 of ILO Convention No. 29. After having highlighted this gap, the Committee of Experts urged the Government to adopt new legislation, which would introduce such penal offences. Following these comments, the Government, with the assistance of ILO technical experts, initiated a reform process which led to the drafting and adoption of an amendment to the Peruvian Penal Code. This amendment added various new offences, addressing forced labour in all its different forms.<sup>74</sup>

### **Case background**

Peru has been a Member of the ILO since 1919 and has ratified 76 ILO Conventions, including Convention No. 29.

For many years, Peru has dealt with various forms of forced labour existing in the country. This, inter alia, concerned debt bondage inflicted on indigenous peoples in agriculture, stock raising and forestry, situations of forced labour in the illegal gold-mining sector, trafficking in persons or the exploitation of women in

domestic service. For a number of years, the Committee of Experts examined the steps taken by the Government to address these issues.

After taking note of the Government's replies to various requests it had addressed to it, the CEACR, in 2009, noted that the Peruvian law did not contain any legislation addressing the issue of forced labour in an integral manner and that the State would therefore have to update the criminal, labour and civil legislation on this subject. In an observation published in its 2009 report, the Committee of Experts underlined that, in order to reduce forced labour, it was essential that the perpetrators of such practices were punished by sufficiently dissuasive penalties, and that according to Article 25 of Convention No. 29, the implementation and strict enforcement of such penal offences with dissuasive penalties was required. It thus urged the Government to adopt legislation specifically criminalizing forced labour in all its forms.

### Dialogue with the Government

In 2007, the Peruvian Government established a National Committee to Combat Forced Labour (CNLCTF) and approved a National Plan to Combat Forced Labour (PNLCTF), the objective of which was to address structural issues and take coordinated measures to resolve situations of forced labour. One of the objectives of the National Plan was to align the national legislation with international standards in order to create a legal basis for action to combat forced labour. In its 2009 report, the CEACR urged the Government to follow through with this Plan and adopt appropriate penal sanctions.

In its 2010 report, the Government however indicated that although a legislative proposal was being studied, which would be introduced to the Congress, no new penal offences on forced labour had been adopted. The Government also indicated that other provisions of the national legislation were already addressing forced labour, such as section 168 of the Penal Code, which provided for a sentence of imprisonment for any person who forced or threatened another person to work without receiving the corresponding remuneration, and section 153 which criminalized trafficking in persons and defined its constituent elements.

Taking note of this information, the Committee of Experts, in an observation published in its 2011 report, recalled that Convention No. 29 establishes a broader concept of forced labour than trafficking in persons or work without remuneration and that, in view of the principle of the strict interpretation of penal law, the introduction of legislation criminalizing forced labour in all its forms was crucial. It therefore expressed its hope that the Government would, within the implementation of the PNLCTF and with the support of the CNLCTF, continue its efforts to adopt the announced legislative proposal.

In the following years, the Government availed itself of ILO technical assistance and welcomed ILO technical experts to the country, providing it with support for various measures to combat forced labour, including the elaboration of new penal offences.

After reporting no progress on the drafting of a new penal law in its 2012 report, the Government, in its 2013 report, stated that a subcommittee of the CNLCTF had drafted a proposed amendment to the Penal Code, which would introduce new offences concerning forced labour, taking into account the CEACR's comments. It indicated the upcoming submission of this draft to the National Human Rights Council, which would then introduce the bill to Congress. The Committee of Experts, in its 2014 report, took note of this information, and urged the Government to proceed with the adoption process.

### **Closing gaps in compliance and way forward**

After consultations over the proposed draft law had continued for several years, the Peruvian Government finally adopted the amendment to the Penal Code in February 2017 through Legislative Decree No. 1323. This law introduced a new provision to the Code, which criminalizes “forced labour”, defining it as “subjecting or obliging a person, by whatever means or against his/her will, to perform work or service, whether paid or not”, and provides for penalties of imprisonment of up to 12 years (which could reach 25 years in case a victim dies), as well as another provision criminalizing “slavery and other forms of labour and sexual exploitation”. Furthermore, the Consolidating and Disseminating Efforts to Combat Forced Labour in Brazil and Peru project, a trilateral technical cooperation initiative funded by the US Department of Labor (USDOL), and implemented by the ILO in Brazil and Peru (2013–15), contributed to this result through technical assistance on the formulation of the forced labour penal type and the development of technical and regulatory discussions within the framework of the CNLCTF. The CNLCTF involved the participation of different government actors, workers' and employers' organizations and civil society.

In its 2018 report, the CEACR noted with satisfaction the adoption of the new law, confirming that these amendments to the Penal Code met the requirement for penal offences for forced labour under Article 25 of Convention No. 29. It also requested the Government to keep it informed of the law's implementation in practice and encouraged the Government to continue its efforts towards the full eradication of all forms of forced labour in the country.

**(g) North America****Canada****Asbestos Convention, 1986 (No. 162)**

The case relates to Articles 3 and 10 of Convention No. 162, according to which ratifying States shall ensure the strictest possible protection of workers against asbestos and, as far as practicable, prohibit the use of the substance. On various occasions in its reports, the CEACR noted comments of Canadian trade unions that, while Canada continued to be one of the largest producers of asbestos, up-to-date scientific studies and guidance of both national research institutes, the ILO and the WHO indicated that a complete ban of asbestos in Canada was scientifically recommended and would be feasible without important economic consequences. The Committee of Experts, supported by the CAS, therefore invited the Government to engage in consultations with social partners with a view to updating national laws on asbestos in line with current scientific standards, in accordance with Convention No. 162. Following these comments, the Government engaged in a legislative reform process, which led to the adoption of new laws banning most production and use of asbestos in the country.<sup>75</sup>

**Case background**

Canada has been a Member of the ILO since 1919 and has ratified 36 ILO Conventions, including Convention No. 162.

In an observation published in its 2011 report, the CEACR noted that Canada was among the main producers of asbestos in the world. It also recalled that according to Article 3 of Convention No. 162, ratifying States shall take measures for the prevention, control of and protection of workers against asbestos and, according to Article 10, they shall, where technically practicable, prohibit asbestos and replace it with less harmful substances.

In this regard, it further noted comments of the Canadian Labour Congress (CLC), the most representative Canadian trade union federation, according to which there existed a compelling body of evidence showing that the most efficient way to eliminate asbestos-related diseases was to stop producing and using it. The CLC further referred to guidance published by the ILO and the WHO which recommended banning asbestos, such as the National Programme for the Elimination of Asbestos-Related Diseases (NPEAD), a programme specifically designed by the ILO and the WHO for countries with a high asbestos production and usage, which envisages the replacement of asbestos by other materials or products or the use of alternative technology. The CLC also indicated that, if planned properly, job losses due to an asbestos prohibition could be effectively offset by developing a positive employment transition process that is linked to the prohibition of asbestos and the promotion of alternative technology.



Noting that, in light of the comments formulated by the CLC, the prohibition and replacement of asbestos in Canada seemed “technically practicable” under Articles 3 and 10 of the Convention, the Committee of Experts requested the Government to provide information on measures taken with a view to revising current regulations on the use of asbestos.

### Dialogue with the Government

The comments of the CEACR drew the attention of the CAS, which discussed the case during the 2011 Conference. In its conclusions, the CAS highlighted the importance of adopting the strictest standards 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, being one of the main producers of asbestos. It also invited the Government to engage in consultations with the employers’ and workers’ organizations on the application of Articles 3 and 10 of the Convention, in particular taking into account the evolution of scientific studies and technology since the adoption of the Convention, as well as the findings concerning the dangers of exposure to asbestos of the ILO, the WHO and other recognized organizations.

Following these comments, the CEACR, in its 2012 report, noted information provided by the Government that a number of legislative and other measures had been taken in several Canadian provinces to strengthen the protection of workers against asbestos, taking into account the most up-to-date scientific data and technical knowledge. The Government further stated that, in all Canadian provincial jurisdictions as well as at the federal level, reviews of occupational safety and health laws and regulations regarding asbestos had been undertaken, in consultation with representatives of workers and employers, in accordance with Article 4 of Convention No. 162. It also indicated that due to the already existing federal and provincial laws and regulations, the use of asbestos in the country was very limited and in many cases prohibited. The Government therefore maintained that relevant laws and regulations in the country were in conformity with the Convention.

The Committee of Experts however also noted statements of the CLC and other trade unions which considered that the state of scientific and technical information pointed to a need for a total ban of asbestos and that the Government had not taken due account of this information.

In view of these comments, and recalling that, according to Convention No. 162, Canada was required to adopt the strictest standards for the protection of workers’ health against exposure to asbestos, the CEACR recalled its previous comments requesting the Government to continue its consultations with the national social partners to discuss the revision of national standards on asbestos in view of up-to-date scientific studies.

In response to the CEACR's comments, the Government, in its 2012 report, stated that since November 2011, no asbestos production had taken place in the country. It further indicated that consultations with the social partners regarding the possible review of the federal laws on asbestos were taking place. Welcoming this information, the CEACR, in an observation published in its 2013 report, encouraged the Government to continue these consultations and the ongoing reform process and to inform it of any legislative changes resulting from this process.

### **Closing gaps in compliance and way forward**

In its 2018 report, the Committee of Experts noted with interest that, in December 2016, the Government had published a Notice of intent to develop regulations that would prohibit all future activities with respect to asbestos and products containing asbestos. The Notice received comments from three industry associations, eight labour organizations and non-governmental organizations, and six regional stakeholders. It further noted that subsequently, a consultation document describing the proposed regulatory approach had been published in April 2017, and that the responses received to the document would be considered in the development of the proposed regulations, the adoption of which was planned for 2018. The CEACR welcomed this initiative and requested the Government to provide it with a copy of the new regulations, once adopted.

Shortly after the Committee had formulated its comments, a new law banning most of the production and use of asbestos in Canada was adopted by the Canadian legislature, which took effect in October 2018. This new legislation, as well as all other positive measures taken so far by the Canadian Government within the context of its ongoing constructive dialogue with the CEACR and the CAS, will be reassessed by the CEACR in its next regular examination of the application of Convention No. 162 by Canada.

# CONCLUSION

The brief historical background laid out in Part I of this study provides ample evidence that international labour standards have been and remain a major instrument for the Organization in its objective of promoting social justice and that standards-related activities are an indispensable tool for giving effect to the concept of decent work. Based on its Constitution, the ILO has deployed a series of means, all of which are intended in one manner or another to increase the effectiveness of its action in the field of standards. The Committee of Experts on the Application of Conventions and Recommendations is, in this respect, the oldest of the ILO's supervisory mechanisms, together with the CAS, for the achievement of compliance and the effective implementation of international labour standards.

The considerable number of cases of progress noted by the CEACR since it started recording them in 1964 provides an impressive illustration of the efforts made by governments to ensure that their national law and practice are in conformity with the ILO Conventions they have ratified. The 18 cases selected in Part II of this study were meant to highlight major achievements in this regard, even if in some of these cases, certain issues remain unresolved and further progress can still be achieved. From these specific examples, it could be argued that the ILO, through the joint action of its various bodies, has been able to counter the criticisms of inertia levelled on some occasions at international or multilateral organizations with the intention of reducing the significance of their action to mere declarations of principles, without any real practical impact. Contrary to the critique that international legal monitoring bodies often receive, the CEACR, within the comprehensive ILO supervisory system, has demonstrated that relentless supervision through constructive dialogue on the application of standards can have real, practical and tangible effects in domestic jurisdictions, and thus on the daily lives of working men and women. In this regard, if the success or failure of the ILO's supervisory system were to be measured in terms of the results obtained and their permanence, the number of cases of progress recorded by the CEACR can serve to demonstrate that the supervisory system has largely fulfilled its functions in recent decades.

But as outlined throughout the study, the success of the Committee of Experts is due in large part to the synergy that exists with the other components of the ILO's supervisory system, such as the CAS, the CFA and the special supervisory bodies set up under Articles 24 and 26. As noted above, the positive results achieved must indeed be placed within the context of the ILO's mechanisms as a whole, in which there is a balance between technical instances, whose members are

selected for their independence and legal expertise, and representative tripartite bodies, which are composed of Government, Workers' and Employers' delegates.

By their very nature, the ILO's supervisory mechanisms cannot be static in their conception or functioning. Their effectiveness is drawn from their capacity to confront the difficulties which arise, adapt and develop new approaches and draw the greatest advantage from the tripartite nature of an Organization that is universal in its vocation. This dynamic of adaptation will continue for as long as the ILO's tripartite constituents show the will to enhance and strengthen the Organization's standards-related work.

In its 2019 report to the Conference, the Committee of Experts highlighted the fact that several targets in the 2030 Agenda for Sustainable Development had the potential to simultaneously benefit from and raise the profile of the standards supervisory work in the ILO's second century. For instance, Sustainable Development Goal (SDG) 8.7 targets the end of forced labour and child labour and so is aligned with some of the most widely – and for Convention No. 182 nearly universally – ratified fundamental Conventions. The same holds true for standards related to the promotion of full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and of equal pay for work of equal value – targeted in SDG 8.5. The relevance of the Committee of Experts' comments in relation to the application of standards on equal opportunity and treatment and employment policy is also evident in relation to SDG 10.

But at the same time, as the CEACR recalled in its latest report, it would appear that such reassurances of the contemporary relevance of international labour law and its supervision do not warrant complacency. In this context, the supervisory bodies will need to remain vigilant of the challenges to the effective supervision and implementation of international labour standards ahead. Some of these relate to the rapid transformations in the world of work itself and the commensurate attention international supervision will have to pay to the timely valuation of new and complex problems. Over and above the diverging scenarios regarding the future of work (that is, whether jobs will be destroyed or created and labour standards lowered or enhanced), one of the main challenges to which technological progress will give rise is to identify how, in this transitional context, assistance can be provided to enterprises and workers to help them adapt to new jobs (both physically and in terms of skills) as this will likely be an ongoing and dynamic process throughout a person's working life.

Against this background, it should be recalled that the ILO was for a long time the only international organization to maintain that the concept of economic development necessarily had to include a social dimension. The first Director-General of the ILO, Albert Thomas, wanted social concerns to prevail over economic interests. The current Director-General, Guy Ryder, has given new impetus to this debate by affirming with force that in today's world, in view of the economic, social, technological and environmental transformations caused by all aspects of globalization, the ILO's mandate to strive for a better future for all in

the world of work requires it, in its quest for social justice, to continue to reach out to all, but in particular to the most vulnerable. This vision has been reflected in “*the human-centred approach for the future of work*” contained in the recently adopted ILO Centenary Declaration.<sup>76</sup> In this context, supervisory functions such as monitoring compliance with international labour standards and helping member States meet their international obligations to improve the working lives of women and men will continue to be a relevant and useful means towards fulfilling that vision.

# NOTES

1. ILO: *Work for a brighter future*, Report of the Global Commission on the Future of Work, Geneva, 2019.
2. All these key documents are available through the NORMLEX database at: [www.ilo.org/normlex](http://www.ilo.org/normlex).
3. As similar studies were undertaken in 1977 (see ILO: *L'impact des conventions et recommandations internationales du travail*, Geneva, 1977), and 2003 (see ILO: *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact*, Geneva, 2003) on the impact of the CEACR's work, the present study will confine itself to the work of the Committee of Experts since the early 2000s.
4. See Appendix I for the names and a brief CV of the 2019 members of the CEACR.
5. This section is partially based on a paper which had been prepared for the informal tripartite consultations of 19 September 2012 as a follow-up to the discussions which had taken place in the CAS in 2012. The paper provided a synopsis of the background to the establishment and role of the CEACR in the ILO supervisory system and is called *The ILO supervisory system: A factual and historical information note*.
6. ILO: *Official Bulletin*, Vol. 1, Apr. 1919–Aug. 1920, pp. 332–345.
7. *ibid.*
8. There are numerous references to the concept of “mutual supervision” in the reports of the Governing Body, International Labour Conference, CEACR and CAS. See for example: ILO: *Report of the Director, International Labour Conference, 14th Session, 1930, Appendix to the Second Part*, p. 288; ILO: *Record of Proceedings, International Labour Conference, 19th Session, 1935, Appendix V*, p. 750; *Governing Body, 49th Session, June 1930*, p. 479; *Governing Body, 73rd Session, October 1935, Appendix X*, p. 480.
9. ILO: *Official Bulletin*, Vol. 1, Apr. 1919–Aug. 1920, p. 266. *The reference to economic sanctions in the 1919 Constitution was deleted when the Constitution was amended in 1946.*
10. ILO: Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles [current article 22 of the ILO Constitution], *Record of Proceedings, International Labour Conference, Eighth Session, 1926, Vol. I, Appendix VII*, p. 429; *in accordance with the resolution, the two committees were named, respectively, “Committee of the Conference” and “Committee of Experts”.*
11. *ibid.*
12. *ibid.*
13. *ibid.*, pp. 239–240.
14. *ibid.*, Appendix V, p. 396.
15. *ibid.*, Appendix V, p. 398.
16. *ibid.*, Appendix VII, p. 429.
17. ILO: *Record of Proceedings, International Labour Conference, 11th Session, 1928, Vol. II*, p. 458.
18. ILO: *Record of Proceedings, International Labour Conference, 16th Session, 1932, Appendix V*, p. 671.
19. ILO: *Minutes, Governing Body, 42nd Session, October 1928*, p. 546.
20. ILO: *Record of Proceedings, International Labour Conference, 25th Session, 1939, Appendix V*, p. 414.
21. *ibid.*
22. ILO: *Record of Proceedings, International Labour Conference, Eighth Session, 1926, p. 239. The Office indicated that the members of the CEACR should “possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing, and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation.”*

23. ILO: *Minutes*, Governing Body, 33rd Session, October 1926, pp. 384–386; and 34th Session, January 1927, pp. 59 and 67–68.
24. ILO: *Minutes*, Governing Body, 68th Session, September 1934, p. 292.
25. ILO: *Record of Proceedings*, International Labour Conference, 34th Session, 1951, Appendix VI, para. 23.
26. ILO: *Minutes*, Governing Body, 159th Session (June–July 1964), Statement by the Employers' group, p. 49.
27. When asked for its views by the Governing Body, the CEACR welcomed the suggestion, considering that its examinations in this respect could "promote uniformity in the interpretation" of identical obligations. The Governing Body approved the procedure in 1956. ILO: *Minutes*, Governing Body, 132nd Session, June 1956, p. 32 and Appendix XI, pp. 79–80.
28. ILO: *CEACR General Report, Report III (Part 4A)*, International Labour Conference, 73rd Session, 1987, pp. 7–19, paras 9–49.
29. *ibid.*, para. 20.
30. In 1996, the dates of the CEACR's sessions were moved from February–March to November–December.
31. ILO: *The Committee on the Application of Standards of the International Labour Conference – A dynamic and impact built on decades of dialogue and persuasion* (Geneva, 2011).
32. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 108th Session, 2019, para. 70.
33. *ibid.*, para. 77.
34. ILO: *ibid.*, 90th Session, 2002, p. 14, para. 24.
35. ILO: *ibid.*, 103rd Session, 2014, para. 30.
36. ILO: *ibid.*, 107th Session, 2018, paras 9–10.
37. ILO: *ibid.*, 102nd Session, 2013, paras 26–35.
38. ILO: *ibid.*, 103rd Session, 2014 and subsequent years.
39. ILO: *ibid.*, 104th Session, 2015, para. 24.
40. Governing Body, 334th Session, October–November 2018, GB.334/INS/5.
41. ILO: *CEACR General Report, Report III (Part I)*, International Labour Conference, 43rd Session, 1959, para. 25. In one case, when an observation from a workers' organization had been sent directly to the Office, the CEACR asked for the observation to be sent to the government concerned for comments and for that practice to be followed in future cases.
42. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 105th Session, 2016, paras 58–63.
43. ILO: *Record of Proceedings*, International Labour Conference, 38th Session, 1955, Appendix V, p. 590.
44. ILO: *ibid.*, Appendix V, p. 583, paras 6–7.
45. The CAS is composed of Government, Employers' and Workers' delegates. It elects a Chairperson, who is always a Government delegate, and two Vice-Chairpersons, a Workers' and an Employers' delegate. The three Chairpersons agree on the conclusions of the Committee. The Committee also elects a "Reporter", who presents the outcome of the discussions in the CAS to the plenary of the International Labour Conference.
46. ILO: *CEACR General Report, Report III (Part 4A)*, International Labour Conference, 81st Session, 1994, para. 39.
47. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 108th Session, 2019, paras 24–26.
48. Governing Body, 301st Session, March 2008, GB.301/LILS/6(Rev.), para. 69.
49. ILO: *Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, sixth edition (Geneva, 2018).
50. A good example of such collaboration was the recent case on the application of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), by Uzbekistan, which is treated in more detail in Part II of this publication. In this case, the CEACR was joined by the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee in commenting on mass-scale incidents of forced labour of children in the country's cotton harvest.

51. See, for instance, the case of Georgia which is also treated in Part II of this publication.
52. See, for example, ITC-ILO: *International Labour Law and Domestic Law: A training manual for judges, lawyers and legal educators* (edited by X. Beaudonnet), first edition, Part 1, chapter 2 (ITC Publications, 2010).
53. ILO: Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 16.
54. ILO: Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 122.
55. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 101st Session, 2012, paras 59–60.
56. Such issues were already discussed in N. Valticos: *Droit international du travail*, second edition (Paris, Dalloz), 1983, pp. 575–576.
57. *ibid.*, p. 601.
58. See observations and direct requests of the CEACR on Eswatini (formerly Swaziland), published in 1990–91, 1993, 1995–2000, 2006–07 and 2018.
59. See observations and direct requests of the CEACR on Mali published in 1993–95, 1997, 1999–2003, 2005–11, 2014–15 and 2018.
60. See observations and direct requests of the CEACR on Namibia published in 2004, 2006, 2008, 2010, 2012–13 and 2016.
61. See observations and direct requests of the CEACR on Qatar published in 2012, 2014–15 and 2017.
62. See observations and direct requests of the CEACR on Nepal published in 2005–07, 2009, 2011, 2013–14 and 2016.
63. See observations and direct requests of the CEACR on Pakistan published in 2010–12, 2014 and 2018.
64. See observations and direct requests of the CEACR on Uzbekistan published in 2010–11 and 2013–17.
65. See observations and direct requests of the CEACR on the Republic of Korea published in 2000, 2004, 2006–08, 2011–12 and 2015.
66. See observations and direct requests of the CEACR on Malaysia published in 2001–04, 2007, 2009 and 2011–19.
67. See observations and direct requests of the CEACR on Myanmar published in 1990, 1992–93, 1995–98, 2000, 2002–04, 2006–11, 2013, 2015 and 2017–19.
68. See observations and direct requests of the CEACR on French Polynesia published in 2006, 2008, 2011–13, 2017 and 2019.
69. See observations and direct requests of the CEACR on Georgia published in 2006–08, 2010, 2012, 2015 and 2018.
70. See observations and direct requests of the CEACR on the Republic of Moldova published in 2000, 2003, 2006–07, 2010–11, 2015 and 2017.
71. See observations and direct requests of the CEACR on Argentina published in 2005, 2007, 2009, 2011, 2015 and 2018.
72. See observations and direct requests of the CEACR on Costa Rica published in 1995–96, 1999, 2000, 2002, 2004–07, 2009–10, 2012–14 and 2017.
73. See observations and direct requests of the CEACR on Grenada published in 2004–08, 2010, 2012–13 and 2018.
74. See observations and direct requests of the CEACR on Peru published in 2009, 2011, 2013–14 and 2018.
75. See observations and direct requests of the CEACR on Canada published in 2011–13 and 2018.
76. ILO Centenary Declaration, adopted by the International Labour Conference, 108th Session, Geneva, 2019.



# BIBLIOGRAPHY

Most of the documents used for this study have been produced by the ILO. In the study, it was appropriate in the first place to highlight the work of the Committee of Experts on the Application of Conventions and Recommendations. The yearly reports of the CEACR have therefore been used as the principal source for the study. These reports are available on the International Labour Standards Department website: [www.ilo.org/normes](http://www.ilo.org/normes)

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

Annual report containing:

*General Report:* comments on compliance by member States with reporting obligations, cases of progress and the relationship between international labour standards and the multilateral system (Report III (Part 1A)).

*Observations:* comments on the application of Conventions in ratifying States (Report III (Part 1A)).

*General Survey:* examination of law and practice in a particular subject area in member States that have or have not ratified the relevant Conventions (Report III (Part 1B)).

Secondly, the study required the use of the work from the various bodies of the ILO standards system:

- **Report of the Conference Committee on the Application of Standards**

Report containing:

*General Report*

*Examination of individual cases*

Published separately as the *Record of Proceedings* of the Conference Committee on the Application of Standards of the International Labour Conference.

- **Report of the Committee on Freedom of Association**

Published three times a year as a Governing Body document and in the ILO *Official Bulletin*.

- **Reports of committees established to examine representations (article 24)**

Published in Governing Body documents.

- **Reports of Commissions of Inquiry (article 26)**

Published in Governing Body documents and in the ILO *Official Bulletin*.

- **Record of Proceedings of the International Labour Conference**

Published annually from 1919 to 2014 and again in 2019.

All of the above are available in the NORMLEX database at: [www.ilo.org/normlex](http://www.ilo.org/normlex)

## Internet resources used for the study

- **NORMLEX** is a trilingual database (English, French and Spanish) which brings together information on international labour standards (such as information on ratifications, reporting requirements, comments of the ILO supervisory bodies, etc.), as well as on national labour and social security legislation. It has been designed to provide full and easily usable information on these subjects.
- **NATLEX** is a trilingual database (English, French and Spanish – as well as numerous texts in the original language) on labour, social security and human rights law. It includes nearly 90,000 legislative texts from 196 countries and over 160 territories, provinces and other entities.

These databases are accessible through the international labour standards website at: [www.ilo.org/normes](http://www.ilo.org/normes)

Preparation of the study also required reference to the reports of technical assistance or other missions carried out by ILO officials. The information that they contain is regularly reported in the work of the CEACR and of the CAS. However, the mission reports are internal working documents and their dissemination is subject to the Office's discretion.

Finally, a number of publications by the ILO International Labour Standards Department, or by other authors who have written on international labour law, have been used in the study, with particular reference to the following:

- *The ILO supervisory system: A factual and historical information note*, Information paper prepared in the context of the Informal Tripartite Consultations (19–20 February 2013) (Geneva, ILO).
- *Handbook of procedures relating to international labour Conventions and Recommendations*, Centenary edition (Geneva, ILO).
- *Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, sixth edition (Geneva, ILO, 2018).
- Internal arrangements for the treatment of information received on the application of ratified Conventions and instructions for the preparation of draft comments for submission to the Committee of Experts on the Application of Conventions and Recommendations (NORMES/2019) (Geneva, ILO, 2019).
- *Report of the Global Commission on the Future of Work – Work for a brighter future* (Geneva, ILO, 2019).
- *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, International Labour Standards Department, Centenary edition (Geneva, ILO, 2019).
- *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact* (Geneva, ILO, 2003).
- *The Committee on Freedom of Association: Its impact over 50 years* (Geneva, ILO, 2001).
- *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, ILO, 2011).

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- "The Committee of Experts on the Application of Conventions and Recommendations: Progress achieved in national labour legislation", in *International Labour Review* (2006, Vol. 145, No. 3).
- "International labour standards: Recent developments in complementarity between the international and national supervisory systems", in *International Labour Review* (2008, Vol. 147, No. 4).
- *Protecting labour rights as human rights: Present and future of international supervision*, Proceedings of the International Colloquium on the 80th Anniversary of the ILO CEACR, Geneva, 24–25 November 2006, ILO.
- *Research Handbook on Transnational Labour Law* (Edward Elgar Publishing, 2015).

# APPENDIX I

## Current members of the Committee of Experts on the Application of Conventions and Recommendations

**Mr Shinichi AGO** (Japan) – Professor of Law, Ritsumeikan University, Kyoto; former Professor of International Economic Laws and Dean of the Faculty of Law at Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; Judge, Asian Development Bank Administrative Tribunal.

**Ms Lia ATHANASSIOU** (Greece) – Full Professor of Maritime and Commercial Law at the National and Kapodistrian University of Athens (Faculty of Law); elected member of the Deanship Council of the Faculty of Law and Director of the Postgraduate Programme on Business and Maritime Law; President of the Organizing Committee of the International Conference on Maritime Law held in Piraeus (Greece) every three years; Ph.D. from the University of Paris I-Sorbonne; authorization by the same university to supervise academic research; LL.M. Aix-Marseille III; LL.M. Paris II Assas; visiting scholar at Harvard Law School and Fulbright Scholar (2007–08); member of legislative committees on various commercial law issues. She has lectured and made academic research in several foreign institutions in France, Italy, Malta, United Kingdom, United States, among others. She has published extensively on maritime, competition, industrial property, company, European and transport law (eight books and more than 60 papers and contributions in collective works in Greek, English and French); practising lawyer and arbitrator specializing in European, commercial and maritime law.

**Ms Leila AZOURI** (Lebanon) – Doctor of Law; Professor of Labour Law at the Faculty of Law at Sagesse University, Beirut; Director of Research at the Doctoral School of Law of the Lebanese University; former Director of the Faculty of Law of the Lebanese University until 2016; member of the Executive Bureau of the National Commission for Lebanese Women; Chairperson of the national commission responsible for the preparation of the reports submitted by the Government of Lebanon to the UN Committee on the Elimination of Discrimination against Women (CEDAW) until 2017; legal expert for the Arab Women Organization; member of the “ILO Policy Advisory Committee on Fair Migration” in the Middle East.

**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; former member of the National Council of Justice of Brazil; Professor at the Instituto de Ensino Superior de Brasília; Professor at the National School for Labour Judges.

**Mr James J. BRUDNEY** (United States) – Professor of Law, Fordham University School of Law, New York; 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 Professor of Law, The Ohio State University Moritz College of Law; former Chief Counsel and Staff Director of the United States Senate Subcommittee on Labor; former attorney in private practice; and former law clerk to the United States Supreme Court.

**Mr Halton CHEADLE** (South Africa) – Professor Emeritus at the University of Cape Town; former Special Adviser to the 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 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); currently Judge of the Inter-American Development Bank Administrative Tribunal; Arbitrator at the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of the Panamanian Chamber of Construction, as well as for the Conciliation and Arbitration Center of the Panamanian Chamber of Commerce; and legal adviser and international consultant.

**Mr Rachid FILALI MEKNASSI** (Morocco) – Doctor of Law; former Professor at the University Mohammed V of Rabat; member of the Higher Council of Education, Training and Scientific Research; consultant with national and international public bodies, including the World Bank, the United Nations Development Programme (UNDP), the Food and Agriculture Organization of the United Nations (FAO) and UNICEF; National Coordinator of the ILO project "Sustainable Development through the Global Compact" (2005–08).

**Mr Abdul G. KOROMA** (Sierra Leone) – Judge at the International Court of Justice (1994–2012); former President of the Henry Dunant Centre for Humanitarian Dialogue in Geneva; former member and Chairman of the International Law Commission; former Ambassador and Permanent Representative of Sierra Leone to the United Nations (New York) and former Ambassador Plenipotentiary to the European Union, Organisation of African Unity (OAU) and many countries.

**Mr Alain LACABARATS** (France) – Judge at the Court of Cassation; former President of the Civil Chamber of the Court of Cassation; former President of the Social Chamber of the Court of Cassation; member of the Higher Council of the Judiciary; member of the European Network of Councils for the Judiciary and the Consultative Council of European Judges (Council of Europe); former Vice-President of the Paris Regional Court; former President of the Paris Appellate Court Chamber; former lecturer at several French universities and author of many publications.

**Ms Elena E. 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 (2011–16); member of the European Committee of Social Rights; member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities (non-paid basis).

**Ms Karon MONAGHAN** (United Kingdom) – Queen's Counsel; Deputy High Court Judge; former Judge of the Employment Tribunal (2000–08); practising lawyer with Matrix Chambers, specializing in discrimination and equality law, human rights law, European Union law, public law and employment law; advisory positions include Special Adviser to the House of Commons Business, Innovation and Skills Committee for the inquiry on women in the workplace (2013–14); Honorary Visiting Professor, Faculty of Laws, University College London.

**Mr Vitit MUNTARBHORN** (Thailand) – Professor Emeritus of Law, Chulalongkorn University, Thailand; former United Nations University Fellow at the Refugee Studies Programme, Oxford University; former United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; former United Nations Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea; former Chairperson of the United Nations Coordination Committee of Special Procedures; Chairperson of the United Nations Commission of Inquiry on the Ivory Coast (2011); former member, Advisory Board, United Nations Human Security Fund; Commissioner of the United Nations Commission of Inquiry on the Syrian Arab Republic (2012–16); recipient of the 2004 UNESCO Prize for Human Rights Education; former United Nations Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity; member of UNESCO Board on Global Education Monitoring Report.

**Ms Rosemary OWENS** (Australia) – Professor Emerita of Law, Adelaide Law School, University of Adelaide; former Dame Roma Mitchell Professor of Law (2008–15); former Dean of Law (2007–11); Officer of the Order of Australia; Fellow of the Australian Academy of Law (and Director (2014–16)); former editor and currently member of the editorial board of the *Australian Journal of Labour Law*; member of the scientific and editorial board of the *Révue de droit comparé du travail et de la sécurité sociale*; member of the Australian Labour Law Association (and former member of its National Executive); International Reader for the Australian Research Council; Chairperson of the South Australian Government's Ministerial Advisory Committee on Work–Life Balance (2010–13); Chairperson and member of the Board of Management of the Working Women's Centre (SA) (1990–2014).

**Ms Mónica PINTO** (Argentina) – Professor of International Law and Human Rights Law and former Dean at the University of Buenos Aires Law School; Associate member of the Institut de droit international; President of the World Bank Administrative Tribunal; Judge at the Inter-American Development Bank Administrative Tribunal; member of the ICSID Panel of Conciliators and Arbitrators; Vice-President of the Advisory Committee on Nominations for the International Criminal Court; member of the International Advisory Board of the American Law Institute for the Fourth Restatement on Foreign Relations; appeared before different human rights bodies, arbitral tribunals and the International Court of Justice as a counsel and as an expert, and is currently serving as an arbitrator; served in different capacities as a human rights expert for the UN; Visiting Professor of Law at Columbia Law School, University of Paris I and II, University of Rouen; taught at The Hague Academy of International Law; author of various books and numerous articles.

**Mr Paul-Gérard POUGOUÉ** (Cameroon) – Professor of Law (*agrégé*), Professor Emeritus, Yaoundé University; guest or associate professor at several universities and at the Hague Academy of International Law; on several occasions, President of the jury for the *agrégation* competition (private law and criminal sciences section) of the African and Malagasy Council for Higher Education (CAMES); former member of the Scientific Council of the L'Agence universitaire de la Francophonie (AUF) (1993–2001); former member (2002–12) of the Council of the International Order of Academic Palms of CAMES (2002–12); 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; Founder and Director of the review *Juridis Périodique*; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC); Chairperson of the Scientific Board of the Labour Administration Regional African Centre (CRADAT); Chairperson of the Scientific Board of the Catholic University of Central Africa (UCAC).

**Mr Raymond RANJEVA** (Madagascar) – President of the Madagascar National Academy of Arts, Letters and Sciences; former member (1991–2009), Vice-President (2003–06) and Senior Judge (2006–09) of the International Court of Justice (ICJ); President of the Chamber formed by the ICJ to deal with the Benin–Niger frontier dispute (2005); Bachelor's Degree in Law, University of Madagascar, Antananarivo (1965); 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; former Professor at the University of Madagascar (1981–91) and other institutions; former First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former 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 of the International Chamber of Commerce; 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 the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice-Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe.

**Ms Kamala SANKARAN** (India) – Professor, Faculty of Law, University of Delhi and currently Vice Chancellor, Tamil Nadu National Law University, Tiruchirappalli; Former Dean, Legal Affairs, University of Delhi; member, Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation; member, Task Force to Review Labour Laws, National Commission for Enterprises in the Unorganised and Informal Sector, Government of India; member, International Advisory Board, *International Journal of Comparative Labour Law and Industrial Relations*; Fellow, Stellenbosch Institute of Advanced Study, South Africa (2009 and 2011); Visiting South Asian Research Fellow, School of Interdisciplinary Area Studies, Oxford University (2010); Fulbright Postdoctoral Research Scholar, Georgetown University Law Center, Washington, DC (2001).

**Ms Deborah THOMAS-FELIX** (Trinidad and Tobago) – President of the Industrial Court of Trinidad and Tobago since 2011; Judge of the United Nations Appeals Tribunal since 2014; former President and Second Vice-President of the United Nations Appeals Tribunal; former Chairperson of the Trinidad and Tobago Securities and Exchange Commission; former Chairperson of the Caribbean Group of Securities Regulators; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; Hubert Humphrey Fulbright Fellow; Georgetown University Leadership Seminar Fellow; and Commonwealth Institute of Judicial Education Fellow.

**Mr Bernd WAAS** (Germany) – Professor of Labour Law and Civil Law at the University of Frankfurt; Coordinator and member of the European Labour Law Network; Coordinator of the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE); President of the German Society for Labour and Social Security Law; member of the Executive Committee of the International Society for Labour and Social Security Law (ISLSSL); member of the Advisory Committee of the Labour Law Research Network (LLRN).



# APPENDIX II

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

- **Mr Jules GAUTIER** (France): 1933–36
- **Mr Paul TSCHOFFEN** (Belgium): 1927–32; 1937–38; 1940; 1945–61
- **Mr Georges SCELLE** (France): 1939
- **Mr Ramaswami MUDALIAR** (India): 1962–69
- **Mr Enrique GARCÍA SAYÁN** (Peru): 1970–75
- **Sir Adetokunbo ADEMOLA** (Nigeria): 1976–86
- **Mr José María RUDA** (Argentina): 1988–94
- **Sir William DOUGLAS** (Barbados): 1987; 1995–2001
- **Ms Robyn A. LAYTON** (Australia): 2002–07
- **Ms Janice BELLACE** (United States): 2008–09
- **Mr Yozo YOKOTA** (Japan): 2010–12
- **Mr Abdul KOROMA** (Sierra Leone): 2013–18
- **Ms Graciela DIXON CATON** (Panama): 2019–

# APPENDIX III

## Cases regarding ILO member States for which the CEACR has expressed its satisfaction since 2009 on specific Conventions

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2019	Africa	Cabo Verde	C.182
		Côte d'Ivoire	C.138
		Democratic Republic of the Congo	C.111
		Eswatini	C.87
		Guinea	C.29
		Morocco	C.105, C.182
		Mozambique	C.138, C.182
		Niger	C.182
	Americas	Ecuador	C.138
		El Salvador	C.182
	Arab States	Iraq	C.100
	Asia and the Pacific	Malaysia	C.182
		Viet Nam	C.29
	Europe	Albania	C.138
		Poland	C.87, C.98
2018	Africa	Benin	C.105
		Cabo Verde	C.155
		Liberia	C.87
		Mali	C.100
		Uganda	C.182
	Americas	Argentina	C.182
		Chile	C.138
		El Salvador	C.144
		Guatemala	C.98
		Mexico	C.87
		Peru	C.29
		Trinidad and Tobago	C.138, C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2018	Asia and the Pacific	China – Macau Special Administrative Region	C.182
		Lao People's Democratic Republic	C.138
		Pakistan	C.29, C.105, C.138
	Europe	Belarus	C.29
		Belgium	C.138
		Bosnia and Herzegovina	C.138
		Ireland	C.98
		Italy	C.137
		Sweden	C.168
		The former Yugoslav Republic of Macedonia	C.182
		Turkey	C.138
2017	Africa	Angola	C.138, C.182
		Liberia	C.111
		Niger	C.98, C.154
		Seychelles	C.182
		Zambia	C.138
	Americas	Bahamas	C.182
		Canada	C.87, C.160
		Chile	C.87, C.98
		Costa Rica	C.87, C.98
		Cuba	C.87, C.98
		Paraguay	C.138
		United States	C.147
		Uruguay	C.73
	Asia and the Pacific	Australia	C.87
		Kiribati	C.87, C.98
		Philippines	C.17
	Europe	Albania	C.87
		Belarus	C.111
		Belgium	C.155
		Bosnia and Herzegovina	C.87
		France – French Polynesia	C.111
		France – New Caledonia	C.111
		Ireland	C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2017	Europe	Republic of Moldova	C.111
		Spain	C.81
		Switzerland	C.102, C.182
2016	Africa	Kenya	C.138
		Madagascar	C.127
		Mozambique	C.87, C.98
		Namibia	C.182
		Swaziland	C.87
	Americas	Barbados	C.135
		Brazil	C.155
		Cuba	C.81
		Ecuador	C.87
		Mexico	C.182
		Panama	C.107
		Peru	C.87
	Arab States	Kuwait	C.138
	Asia and the Pacific	Fiji	C.87
		Philippines	C.111
		Samoa	C.98
	Europe	Netherlands – Aruba	C.138
		Serbia	C.98
2015	Africa	Benin	C.105, C.138
		Egypt	C.149
		Niger	C.135
		Senegal	C.13
	Americas	Antigua and Barbuda	C.182
		Argentina	C.138
		Barbados	C.118
		Colombia	C.81
		Costa Rica	C.138
		Cuba	C.138
		Ecuador	C.169
		Honduras	C.81
		Mexico	C.161
		Suriname	C.182
		Uruguay	C.111, C.161, C.167

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2015	Arab States	Bahrain	C.182
		Jordan	C.98
	Asia and the Pacific	Australia	C.182
		Bangladesh	C.182
		Fiji	C.182
	Europe	Albania	C.182
		Austria	C.138
		Cyprus	C.138, C.182
		France	C.149
		Georgia	C.87, C.98
		Lithuania	C.87
		Republic of Moldova	C.111
		Turkey	C.87
		United Kingdom	C.98
2014	Africa	Central African Republic	C.52
		Liberia	C.182
		Libya	C.103
		Malawi	C.138
		Mauritius	C.14, C.100
		Nigeria	C.19, C.155
		United Republic of Tanzania	C.138, C.182
		Uganda	C.29, C.182
		Zimbabwe	C.87
	Americas	Argentina	C.3
		Plurinational State of Bolivia	C.87
		Colombia	C.24
		Ecuador	C.121, C.130
		Grenada	C.99
		Saint Vincent and the Grenadines	C.182
		Bolivarian Republic of Venezuela	C.9
	Arab States	Lebanon	C.138, C.182
		Yemen	C.138
	Asia and the Pacific	Japan	C.102
		Malaysia	C.95
		Samoa	C.138, C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2014	Europe	Bosnia and Herzegovina	C.87
		Czech Republic	C.132
		Denmark	C.52
		The former Yugoslav Republic of Macedonia	C.138
2013	Africa	Algeria	C.87
		Burkina Faso	C.17, C.138, C.161, C.182
		Cape Verde	C.81
		Egypt	C.87
		Guinea	C.182
		Niger	C.105
		Rwanda	C.138
	Americas	Bahamas	C.138
		Grenada	C.100
		Panama	C.98
		Saint Lucia	C.87
		Trinidad and Tobago	C.182
		United States	C.182
	Arab States	Jordan	C.182
		United Arab Emirates	C.138, C.182
	Asia and the Pacific	Australia	C.155
		Japan	C.19
		Malaysia	C.182
		Myanmar	C.29, C.87
		Pakistan	C.18
		Philippines	C.90
		Timor-Leste	C.98
	Europe	Bulgaria	C.98
		Croatia	C.119
		Hungary	C.29, C.98
		Ireland	C.182
		Portugal	C.6, C.77, C.78
		Romania	C.87
		Turkey	C.98, C.105
		Ukraine	C.87

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2012	Africa	Algeria	C.182
		Angola	C.17
		Benin	C.6, C.161
		Botswana	C.182
		Burundi	C.29, C.182
		Central African Republic	C.105
		Democratic Republic of the Congo	C.119
		Ethiopia	C.155
		Gabon	C.123
		Lesotho	C.138, C.182
		Mauritius	C.160
		Morocco	C.182
		Namibia	C.182
		South Africa	C.138, C.182
		Swaziland	C.87
		Tunisia	C.118
		Uganda	C.138
	Americas	Antigua and Barbuda	C.138
		Belize	C.98
		Brazil	C.138, C.155, C.161
		Costa Rica	C.102, C.111
		Dominica	C.138
		El Salvador	C.138, C.182
		Guatemala	C.182
		Nicaragua	C.138
		Panama	C.87
		Peru	C.138, C.169
		Suriname	C.182
		Uruguay	C.111, C.155, C.182
	Arab States	Iraq	C.115
		Kuwait	C.138
		Oman	C.182
	Asia and the Pacific	China – Macau Special Administrative Region	C.115
		Japan	C.98
		Republic of Korea	C.150

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2012	Asia and the Pacific	Lao People's Democratic Republic	C.29
		Malaysia	C.138
		New Zealand	C.160
		Pakistan	C.98
		Sri Lanka	C.138, C.182
	Europe	Azerbaijan	C.138
		Bulgaria	C.120
		Croatia	C.155
		Cyprus	C.95, C.182
		France	C.166
		France – New Caledonia	C.127
		Italy	C.139
		Luxembourg	C.155
		Republic of Moldova	C.105
		Netherlands	C.182
		Romania	C.98, C.138
		Spain	C.44, C.182
		Sweden	C.129
		The former Yugoslav Republic of Macedonia	C.182
		United Kingdom – British Virgin Islands	C.94, C.98
		United Kingdom – St Helena	C.17
	Africa	Cape Verde	C.19
		Côte d'Ivoire	C.138, C.182
		Egypt	C.138, C.182
		Kenya	C.98, C.105, C.129
		Mauritius	C.87, C.98
		Swaziland	C.98
		Togo	C.138, C.182
	Americas	Argentina	C.87, C.138
		Colombia	C.13
		Cuba	C.155
		Jamaica	C.81, C.182
		Kiribati	C.105
		Mexico	C.161



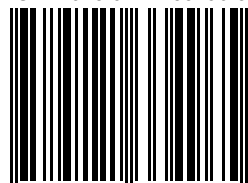
YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2011	Americas	Panama	C.16, C.87, C.182
		Paraguay	C.182
		Peru	C.139
		Uruguay	C.98, C.184
	Arab States	Jordan	C.81, C.182
		Kuwait	C.87, C.98
		Saudi Arabia	C.100
	Asia and the Pacific	Bangladesh	C.81
		China	C.23
		China – Macau Special Administrative Region	C.138
		Papua New Guinea	C.182
		Philippines	C.87, C.98
		Thailand	C.182
	Europe	Albania	C.138
		Belgium	C.87
		Croatia	C.138, C.162
		Czech Republic	C.132
		France	C.81, C.129, C.148, C.149
		Italy	C.127
		Norway	C.81
		Portugal	C.98, C.155, C.162
		San Marino	C.103
		Slovakia	C.115
		Spain	C.87, C.148
		The former Yugoslav Republic of Macedonia	C.87
		Turkey	C.29, C.98
		United Kingdom	C.98
2010	Africa	Botswana	C.111
		Central African Republic	C.182
		Côte d'Ivoire	C.182
		Gabon	C.105
		Gambia	C.98
		Kenya	C.111

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2010	Africa	Lesotho	C.111
		Liberia	C.105
		Madagascar	C.138
		Mauritius	C.26, C.105, C.138
		Mozambique	C.182
		Rwanda	C.17
		United Republic of Tanzania	C.105, C.182
		Uganda	C.182
	Americas	Barbados	C.102, C.128
		Bolivia	C.87, C.98, C.100, C.169
		Brazil	C.115, C.152
		Colombia	C.87, C.98, C.154
		El Salvador	C.87, C.151
		Mexico	C.155
		Nicaragua	C.98, C.105, C.182
		Panama	C.98
		Saint Vincent and the Grenadines	C.105
		Uruguay	C.151, C.155
	Arab States	Kuwait	C.106
		Syrian Arab Republic	C.139
		United Arab Emirates	C.182
	Asia and the Pacific	Afghanistan	C.139
		Australia	C.98, C.158
		China – Hong Kong Special Administrative Region	C.81
		Japan	C.147
		Malaysia – Sarawak	C.14
		Mongolia	C.138
		Viet Nam	C.155
	Europe	Denmark	C.87, C.129
		Finland	C.150
		Germany	C.3
		Greece	C.29, C.81, C.147, C.180
		Malta	C.132

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2010	Europe	Netherlands	C.152
		Norway	C.169
		Portugal	C.115
		Romania	C.100, C.183
		Slovakia	C.100
		Slovenia	C.148
		Spain	C.138
		Sweden	C.129, C.167
		Switzerland	C.81
		United Kingdom	C.81
		United Kingdom – Isle of Man	C.151
2009	Africa	Algeria	C.81
		Burkina Faso	C.3
		Djibouti	C.100
		Kenya	C.100, C.138
		Liberia	C.87
		Mauritius	C.94
		Senegal	C.6, C.120
		Uganda	C.17, C.105
		Zambia	C.138
	Americas	Argentina	C.138
		Colombia	C.87
		Ecuador	C.138
		Honduras	C.138
		Nicaragua	C.138
		Panama	C.98
	Arab States	Jordan	C.29, C.81
	Asia and the Pacific	Bangladesh	C.106
		China – Hong Kong Special Administrative Region	C.97
		Malaysia	C.98
	Europe	Belgium	C.111
		Bulgaria	C.106
		Croatia	C.162
		Cyprus	C.105
		Denmark	C.81

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2009	Europe	Finland	C.128, C.130
		France	C.81, C.158
		Georgia	C.138
		Latvia	C.81
		Netherlands	C.98, C.103
		Portugal	C.103, C.132
		Romania	C.14
		Slovenia	C.129
		Spain	C.87
		Switzerland	C.173
		Turkey	C.138
		Ukraine	C.111
		United Kingdom – Isle of Man	C.180
		United Kingdom – Jersey	C.98

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